



(1) JABISAN 04 (RF) PROPRIETARY LIMITED

(2) MTN ZAKHELE FUTHI (RF) LIMITED

(3) DEPFIN INVESTMENTS PROPRIETARY LIMITED
(as BFC2 Preference Shareholder)

(4) FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
(as BFC2 Preference Shareholder, New Preference Share Agent, New Calculation Agent, New Account Bank and New Preference Share Custodian)

(5) FIRSTRAND BANK LIMITED (ACTING THROUGH ITS RMB CUSTODY AND TRUSTEES SERVICES DIVISION)
(as New Security Custodian)

(6) MOMENTUM METROPOLITAN LIFE LIMITED
(as BFC2 Preference Shareholder)

(7) UNITED TOWERS PROPRIETARY LIMITED
(as BFC2 Preference Shareholder)

(8) NEDBANK LIMITED
(ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION)
(as Original Preference Share Agent, Original Account Bank, Original Calculation Agent and Original Preference Share Custodian)

(9) NEDBANK LIMITED
(ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION AND ITS NEDBANK INVESTOR SERVICES BUSINESS UNIT)
(as Original Security Custodian)

- and -

(10) NEDBANK LIMITED
(ACTING THROUGH ITS SHARE SCHEME ADMINISTRATION DIVISION)
(as BFC2 Administrator and BIC2 Administrator)

REFINANCING AGREEMENT

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THIS AGREEMENT IS MADE BETWEEN:

- (1) **JABISAN 04 (RF) PROPRIETARY LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 2014/021122/07) ("**BFC2**");
- (2) **MTN ZAKHELE FUTHI (RF) LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 2016/268837/06) ("**BIC2**");
- (3) **DEPFIN INVESTMENTS PROPRIETARY LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1982/006127/07) ("**Depfin**") (in its capacity as BFC2 Preference Shareholder);
- (4) **FIRSTRAND BANK LIMITED** (acting through its Rand Merchant Bank division), a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1929/001225/06) ("**RMB**") (in its capacity as BFC2 Preference Shareholder, New Preference Share Agent, New Calculation Agent, New Account Bank and New Preference Share Custodian);
- (5) **FIRSTRAND BANK LIMITED** (acting through its RMB Custody and Trustees Services division) a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1929/001225/06) ("**RMB Custody and Trustees Services**") (as New Security Custodian);
- (6) **MOMENTUM METROPOLITAN LIFE LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1904/002186/06) ("**MML**") (in its capacity as BFC2 Preference Shareholder);
- (7) **UNITED TOWERS PROPRIETARY LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1968/015550/07) ("**United Towers**") (in its capacity as BFC2 Preference Shareholder);
- (8) **NEDBANK LIMITED (ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION)**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1951/000009/06) ("**Nedbank CIB**") (as Original Preference Share Agent, Original Account Bank, Original Calculation Agent and Original Preference Share Custodian);
- (9) **NEDBANK LIMITED (ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION AND ITS NEDBANK INVESTOR SERVICES BUSINESS UNIT)**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1951/000009/06) ("**Nedbank NIS**") (as Original Security Custodian); and
- (10) **NEDBANK LIMITED (ACTING THROUGH ITS SHARE SCHEME ADMINISTRATION DIVISION)**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1951/000009/06) ("**Nedbank SSA**") (as BFC2 Administrator and BIC2 Administrator).

BACKGROUND:

- A Capitalised terms used in this Background section shall have the meanings defined, or incorporated by reference, in clause 1 (*Definitions and interpretation*) below.

- B Each Party has entered into the Finance Documents to which it is a party.
- C On the Refinancing Date:
- (a) BFC2 wishes to, *inter alia*:
 - (i) issue the BFC2 Tranche 2 Preference Shares to the BFC2 Refinancing Investors;
 - (ii) voluntarily, and within the sole and absolute discretion of the director of BFC2, redeem the Depfin BFC2 Preference Shares; and
 - (iii) amend its MOI to, *inter alia*, extend the BFC2 Scheduled Redemption Date to 23 November 2024 and reduce the BFC2 Dividend Rate Percentage;
 - (b) subject to, obtaining the required shareholder approval, BIC2 wishes to amend its MOI to, *inter alia*, extend the BIC2 Scheduled Redemption Date to 23 November 2024, provided that the Refinancing is implemented on 30 September 2021;
 - (c) Nedbank CIB (in its capacity as Original Preference Share Agent, Original Calculation Agent, Original Account Bank and Original Preference Share Custodian) wishes to resign from its role as Preference Share Agent, Calculation Agent, Account Bank and Preference Share Custodian;
 - (d) Nedbank NIS (in its capacity as Original Security Custodian) wishes to resign from its role as Security Custodian;
 - (e) the BFC2 Refinancing Investors wish to appoint:
 - (i) RMB as New Preference Share Agent, New Calculation Agent, New Account Bank and New Preference Share Custodian; and
 - (ii) RMB Custody and Trustees Services as New Security Custodian; and
 - (f) immediately following the implementation of the transactions above, the Parties wish to amend and restate the Amendment Documents to which they are party.
- D The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Agreement" means this refinancing agreement and its schedules;

"Amended and Restated Account Bank and Agency Agreement" means the written agreement entitled "*Amended and Restated Account Bank and Agency Agreement*" in the form set out in schedule 8 (*Amended and Restated Account Bank and Agency Agreement*);

"Amended and Restated BFC2 Preference Share Subscription Agreement" means the written agreement entitled *"Amended and Restated BFC2 Preference Share Subscription Agreement"* in the form set out in schedule 6 (*Amended and Restated BFC2 Preference Share Subscription Agreement*);

"Amended and Restated BIC2 Account Cession" means the written agreement entitled *"Amended and Restated BIC2 Account Cession"* in the form set out in schedule 12 (*Amended and Restated BIC2 Account Cession*);

"Amended and Restated BIC2 Pledge and Cession" means the written agreement entitled *"Amended and Restated BIC2 Pledge and Cession"* in the form set out in schedule 11 (*Amended and Restated BIC2 Pledge and Cession*);

"Amended and Restated BIC2 Preference Share Subscription Agreement" means the written agreement entitled *"Amended and Restated BIC2 Preference Share Subscription Agreement"* in the form set out in schedule 7 (*Amended and Restated BIC2 Preference Share Subscription Agreement*);

"Amended and Restated BIC2 Reversionary Account Cession" means the written agreement entitled *"Amended and Restated BIC2 Reversionary Account Cession"* in the form set out in schedule 14 (*Amended and Restated BIC2 Reversionary Account Cession*);

"Amended and Restated BIC2 Reversionary Pledge and Cession" means the written agreement entitled *"Amended and Restated BIC2 Reversionary Pledge and Cession"* in the form set out in schedule 13 (*Amended and Restated BIC2 Reversionary Pledge and Cession*);

"Amended and Restated Call Option Agreement" means the written agreement entitled *"Amended and Restated Call Option Agreement"* in the form set out in schedule 9 (*Amended and Restated Call Option Agreement*);

"Amended and Restated First Ranking Guarantee" means the written agreement entitled *"Amended and Restated First Ranking Guarantee Agreement"* in the form set out in schedule 10 (*Amended and Restated First Ranking Guarantee*);

"Amendment Documents" means:

- (a) the Amended and Restated BIC2 Preference Share Subscription Agreement;
- (b) the Amended and Restated BFC2 Preference Share Subscription Agreement;
- (c) the Amended and Restated Account Bank and Agency Agreement;
- (d) the Amended and Restated Call Option Agreement;
- (e) the Amended and Restated First Ranking Guarantee;
- (f) the Amended and Restated BIC2 Pledge and Cession;
- (g) the Amended and Restated BIC2 Account Cession;
- (h) the Amended and Restated BIC2 Reversionary Pledge and Cession;
- (i) the Amended and Restated BIC2 Reversionary Account Cession; and

(j) the Second Amended and Restated MTN Subordination and Undertaking Agreement, and each one an "**Amendment Document**" as context requires;

"**BFC2 STT**" means the Securities Transfer Tax payable on account of the voluntary redemption by BFC2 of the Depfin BFC2 Preference Shares;

"**CIPC**" means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;

"**Conditions Precedent**" means the conditions precedent listed in schedule 1 (*Conditions Precedent*) hereof;

"**CP Fulfilment Date**" means the date on which the Original Preference Share Agent delivers the notice contemplated in clause 2(b) below;

"**Depfin Voluntary Redemption Notice**" means the revocable written notice issued by BFC2 in relation to the proposed voluntary redemption by BFC2 of the Depfin BFC2 Preference Shares on the Refinancing Date, subject to certain steps in this Agreement having occurred;

"**Long Stop Date**" means 17 September 2021 (or such later date as agreed to in writing between MTN, BIC2 and the Original Preference Share Agent (acting on behalf of all the BFC2 Refinancing Investors);

"**MTN**" means MTN Group Limited, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1994/009584/06);

"**MTN Holdings**" means Mobile Telephone Networks Holdings Limited, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1993/001411/06);

"**New Account Bank**" means RMB;

"**New Bank Accounts**" means, collectively:

- (a) the BFC2 Collection Account;
- (b) BFC2 Top-Up Loan Account;
- (c) the BIC2 Collection Account;
- (d) the BIC2 Security Account;
- (e) the BIC2 Top-Up Loan Account;
- (f) the BIC2 Provisions Account; and
- (g) the BIC2 Tax Provisions Account,

as opened and maintained with the New Account Bank;

"**New Calculation Agent**" means RMB;

"New Preference Share Agent" means RMB;

"New Preference Share Custodian" means RMB;

"New Security Custodian" means RMB Custody and Trustees Services;

"New Subject Shares Securities Account" means the securities account opened and maintained by BIC2 with the New Security Custodian in which all Subject Shares will, pursuant to the implementation of the transactions contemplated in clause 3 (*Implementation of Refinancing*) below, be reflected;

"Notice of Amendment" means a notice of amendment as envisaged in the Companies Act (which must, in the case of certain special resolutions adopted by a company, be filed with CIPC);

"Original Account Bank" means Nedbank CIB;

"Original Account Bank and Agency Agreement" means the written agreement entitled "*Account Bank and Agency Agreement*" entered into on or about 21 August 2016 between, *inter alios*, BFC2, BIC2, MTN and the Original Preference Share Agent;

"Original Bank Accounts" means, collectively:

- (a) the BFC2 Collection Account;
- (b) BFC2 Top-Up Loan Account;
- (c) the BIC2 Collection Account;
- (d) the BIC2 Security Account;
- (e) the BIC2 Top-Up Loan Account;
- (f) the BIC2 Provisions Account; and
- (g) the BIC2 Tax Provisions Account,

as opened and maintained with the Original Account Bank;

"Original BFC2 Preference Share Subscription Agreement" means the written agreement entitled "*BFC2 Preference Share Subscription Agreement*" entered into on or about 21 August 2016 between the Original Preference Share Agent, BFC2 and the BFC2 Initial Investors;

"Original BIC2 Account Cession" means the written agreement entitled "*BIC2 Account Cession*" entered into on or about 21 August 2016 between BIC2, the BFC2 Initial Investors and the Original Preference Share Agent;

"Original BIC2 Pledge and Cession" means the written agreement entitled "*BIC2 Pledge and Cession*" entered into on or about 21 August 2016 between BIC2, the BFC2 Initial Investors and the Original Preference Share Agent;

"Original BIC2 Preference Share Subscription Agreement" means the written agreement entitled "*BIC2 Preference Share Subscription Agreement*" entered into on or about 21 August 2016 between BFC2, BIC2 and the Original Preference Share Agent;

"Original BIC2 Reversionary Account Cession" means the written agreement entitled "*BIC2 Reversionary Account Cession*" entered into on or about 21 August 2016 between BIC2, MTN and MTN Holdings;

"Original BIC2 Reversionary Pledge and Cession" means the written agreement entitled "*BIC2 Reversionary Pledge and Cession*" entered into on or about 21 August 2016 between BIC2, MTN and MTN Holdings;

"Original Calculation Agent" means Nedbank CIB;

"Original Call Option Agreement" means the written agreement entitled "*Call Option Agreement*" entered into on or about 21 August 2016 between MTN, the BFC2 Initial Investors and the Original Preference Share Agent;

"Original First Ranking Guarantee" means the written agreement entitled "*First Ranking Guarantee*" entered into on or about 21 August 2016 between BIC2, the BFC2 Initial Investors and the Original Preference Share Agent;

"Original MTN Subordination and Undertaking Agreement" means the written agreement entitled "*MTN Subordination and Undertaking Agreement*" entered into between BFC2, BIC2, MTN, MTN Holdings, the Original Preference Share Agent, Depfin, RMB and United Towers on or about 21 August 2016, as amended and restated by a written agreement entitled "*Agreement incorporating, inter alia, an amendment and restatement to the MTN Subordination and Undertaking Agreement*" entered into on or about 21 April 2021;

"Original Preference Share Agent" means Nedbank CIB;

"Original Preference Share Custodian" means Nedbank CIB;

"Original Security Custodian" means Nedbank NIS;

"Original Subject Shares Securities Account" means the securities account maintained by BIC2 with the Original Security Custodian in which the Subject Shares are, prior to the implementation of the transactions contemplated in clause 3 (*Implementation of Refinancing*) below, reflected;

"Party" means a party to this Agreement, and **"Parties"** means all or some of them (as the context may require);

"Restructuring Fee" means the fee payable by, or on behalf of, BFC2 to the BFC2 Refinancing Investors on the Refinancing Date in accordance with the Refinancing Fees Letter;

"Second Amended and Restated MTN Subordination and Undertaking Agreement" means the written agreement entitled "*Second Amended and Restated MTN Subordination and Undertaking Agreement*" in the form set out in schedule 15 (*Second Amended and Restated MTN Subordination and Undertaking Agreement*); and

"Signature Date" means the date of signature of this Agreement by the Party signing last in time.

1.2 Interpretation

- (a) Unless a contrary indication appears, terms defined in the BFC2 MOI or the BIC2 MOI (as the case may be) have the same meanings when used in this Agreement, including in the Background (unless the same are otherwise defined in this Agreement).
- (b) Unless a contrary indication appears, any reference in this Agreement to any **"BFC2 Preference Shareholder"**, any **"BIC2 Preference Shareholder"**, the **"New Preference Share Agent"**, the **"New Account Bank"**, the **"New Calculation Agent"**, the **"New Preference Share Custodian"**, the **"New Security Custodian"** or any **"Party"** shall be construed so as to include its successors in title, permitted cessionaries and permitted transferees.
- (c) The principles of construction as set out in clauses 1.4 to 1.23 (both inclusive) of the BIC2 MOI and clauses 1.3 to 1.19 (both inclusive) of the BFC2 MOI shall have effect as though they were set out in full in this Agreement.

2. CONDITIONS PRECEDENT

- (a) Save for clause 1 (*Definitions and Interpretation*) above, this clause 2 (*Conditions Precedent*) and clauses 10 (*Notices*) to 23 (*Signature*) below, all of which will become effective immediately, the Parties agree that this Agreement is subject to the fulfilment or waiver (as the case may be) of the Conditions Precedent in form and in substance to the Original Preference Share Agent by no later than 12h00 on the Long Stop Date (or such later date and/or time as the Original Preference Share Agent may agree in writing).
- (b) The Original Preference Share Agent shall, as soon as reasonably practicable, notify each other Party in writing upon being so satisfied with the fulfilment and/or waiver of the Conditions Precedent.
- (c) Unless the Conditions Precedent are fulfilled in form and in substance to the satisfaction of the Original Preference Share Agent, or waived in writing by the Original Preference Share Agent, on or before the Long Stop Date (or such later date as the Original Preference Share Agent may agree in writing (acting on the instructions of all the BFC2 Refinancing Investors)), this Agreement shall be of no force or effect.
- (d) Where any time is specified in this Agreement, it shall include such other time as the Original Preference Share Agent may agree in writing.

3. IMPLEMENTATION OF REFINANCING

3.1 Introduction

- (a) Each step in this clause 3 (*Implementation of Refinancing*) comprises a step (each a **"Step"**) that is required to be completed to ensure that the transactions contemplated in this Agreement are implemented in accordance with their terms.
- (b) The implementation of the transactions contemplated herein will occur strictly in accordance with the sequence of events set out in this clause 3 (*Implementation of Refinancing*), and each Step shall only occur if the previous Step has been completed in the manner contemplated, unless otherwise stated or where it is specifically stated that a Step may be implemented simultaneously with another Step.

- (c) Any instruction, notification, confirmation or proof required to be given to or by a Party in relation to a Step or the completion thereof must be given to or by that Party at the email address provided for in clause 11 (*Notices*) below. An instruction, notification, confirmation or proof shall be deemed to have been given when an email is sent to the relevant Party regardless of whether a confirmation of delivery or receipt is generated in respect of the email and no other acknowledgment or confirmations (whether of receipt or otherwise) shall be required for the completion of the relevant Step.

3.2 Step 1

- (a) By no later than 09h00 on the Refinancing Date, BIC2 shall apply the Priority of Payments contemplated in clause 3.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A to the BIC2 MOI, which shall include, as an Administration Cost:
 - (i) payment on behalf of BFC2 to the BFC2 Refinancing Investors of the Restructuring Fee (plus VAT thereon) owing by BFC2 to the BFC2 Refinancing Investors on the Refinancing Date, under and in terms of the Refinancing Fees Letter; and
 - (ii) payment or provision for payment by way of transfer of the required amount into the BIC2 Tax Provisions Account, of the BFC2 STT that will be payable by BFC2 if the Depfin BFC2 Preference Shares are voluntarily redeemed on the Refinancing Date (in the sole and absolute discretion of the director of BFC2) in accordance with the provisions of this Agreement.
- (b) This Step 1 shall be completed upon confirmation from the BIC2 Administrator to the other Parties that all payments required to be made or provided for on the Refinancing Date under or in terms of the Priority of Payments contemplated in clause 3.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A to the BIC2 MOI have been so paid or provided for.

3.3 Step 2

- (a) Subject to, and immediately after, the completion of Step 1 and on the Refinancing Date, BFC2 shall apply the BFC2 Priority of Payments contemplated in clause 33.3 of the BFC2 MOI.
- (b) This Step 2 shall be completed upon confirmation from:
 - (i) the BFC2 Administrator to the other Parties that all payments required to be made or provided for on the Refinancing Date under or in terms of the BFC2 Priority of Payments contemplated in clause 33.3.2 of the BFC2 MOI have been so paid or provided for; and
 - (ii) the Original Preference Share Agent that all BFC2 Preference Dividends in respect of the BFC2 Preference Shares have been paid in full.

3.4 Step 3

- (a) The Original Preference Share Agent (acting on the instructions of all the BFC2 Preference Shareholders) hereby agrees, pursuant to clause 33.2.2.2.3 of the BFC2 MOI, that a BFC2 Voluntary Redemption Notice can be in respect of the Depfin BFC2 Preference Shares only.

- (b) Subject to the occurrence of the CP Fulfilment Date, and immediately after the completion of Step 2 and by no later than 09h30 on the Refinancing Date:
- (i) BFC2 shall deliver to the Original Preference Share Agent a certificate, in substance and in form to the satisfaction of the BFC2 Refinancing Investors, certifying that, on the Refinancing Date:
- (A) no BFC2 Trigger Event or BFC2 Potential Trigger Event has occurred and is continuing or would result from the issue by BFC2 of the BFC2 Tranche 2 Preference Shares, other than in relation to any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Transaction Documents;
 - (B) the representations made and warranties given on each Warranty Date (as defined in the BFC2 Preference Share Subscription Agreement) are true and correct in all material respects, other than in relation to any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Transaction Documents;
 - (C) no Insolvency Event in relation to it has occurred and is continuing;
 - (D) no Material Adverse Effect in relation to it has occurred and is continuing or would result from the issue by BFC2 of the BFC2 Tranche 2 Preference Shares; and
 - (E) the Depfin Voluntary Redemption Notice has not been revoked and remains of full force and effect;
- (ii) BIC2 shall deliver to the Original Preference Share Agent a certificate, in substance and in form to the satisfaction of the BFC2 Refinancing Investors, certifying that, on the Refinancing Date:
- (A) no BIC2 Trigger Event or BIC2 Potential Trigger Event has occurred and is continuing, other than in relation to any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Transaction Documents;
 - (B) the representations made and warranties given on each Warranty Date (as defined in the BIC2 Preference Share Subscription Agreement) are true and correct in all material respects, other than in relation to any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Transaction Documents;
 - (C) no Insolvency Event in relation to it has occurred and is continuing; and
 - (D) no Material Adverse Effect in relation to it has occurred and is continuing;

- (iii) MTN shall deliver to the Original Preference Share Agent a certificate, in substance and in form to the satisfaction of the Original Preference Share Agent, certifying that, on the Refinancing Date:
 - (A) no Insolvency Event in relation to it has occurred and is continuing; and
 - (B) no Material Adverse Effect in relation to it has occurred and is continuing; and
- (iv) MTN Holdings shall deliver to the Original Preference Share Agent a certificate, in substance and in form to the satisfaction of the Original Preference Share Agent, certifying that, on the Refinancing Date:
 - (A) no Insolvency Event in relation to it has occurred and is continuing; and
 - (B) no Material Adverse Effect in relation to it has occurred and is continuing.
- (c) Each BFC2 Refinancing Investor shall, as soon as reasonably possible upon receipt of the certificates contemplated in clause 3.4(a) above, notify the Original Preference Share Agent upon becoming satisfied that it has received the certificates contemplated in clause 3.4(a) above.
- (d) Upon receipt of each confirmation contemplated in clause 3.4(c) above, the Original Preference Share Agent shall, as soon as reasonably possible thereafter, notify the other Parties that each BFC2 Refinancing Investor is satisfied with the certificates pursuant to clause 3.4(a) above.
- (e) This Step 3 will be completed on delivery of the notification referred to in clause 3.4(d) above by the Original Preference Share Agent.

3.5 Step 4

- (a) Subject to, and immediately after, the completion of Step 3 and by no later than 10h00 on the Refinancing Date, the BFC2 Administrator shall deliver to the Original Preference Share Agent duly signed irrevocable subscription notices in respect of the BFC2 Tranche 2 Preference Shares, addressed to each BFC2 Refinancing Investor.
- (b) This Step 4 will be completed once the Original Preference Share Agent confirms that it has received the subscription notices.

3.6 Step 5

- (a) Subject to, and immediately after, the completion of Step 4 and by no later than 10h30 on the Refinancing Date, each BFC2 Refinancing Investor will subscribe for the number of BFC2 Tranche 2 Preference Shares set out next to its name in schedule 2 (*BFC2 Tranche 2 Preference Shares Allocations*) and will pay the aggregate BFC2 Issue Price on account of the BFC2 Tranche 2 Preference Shares to be subscribed for by it into the following bank account of the Original Preference Share Agent:

Name of account: Nedbank Capital – Project Admin

Bank name:	Nedbank Limited
Branch name:	100 Main Street, Johannesburg
Branch code:	197905
SWIFT code:	NEDSZAJJ
Account number:	1979 373 078
Reference:	MTN ZF.

- (b) Each BFC2 Refinancing Investor shall deliver to the Original Preference Share Agent a copy of the proof of payment upon making the payment contemplated in clause 3.6(a) above.
- (c) This Step 5 will be completed upon the Original Preference Share Agent notifying each other Party that it has received the aggregate BFC2 Issue Price on account of the BFC2 Tranche 2 Preference Shares in its bank account.

3.7 Step 6

- (a) Subject to, and immediately after, the completion of Step 5 and on the Refinancing Date, the Original Preference Share Agent shall pay the aggregate BFC2 Issue Price on account of the BFC2 Tranche 2 Preference Shares into the BFC2 Collection Account opened with the Original Account Bank. The Original Preference Share Agent shall notify the other Parties upon making such payment.
- (b) Immediately upon receipt of the aggregate BFC2 Issue Price on account of the BFC2 Tranche 2 Preference Shares, BFC2 shall issue and allot the BFC2 Tranche 2 Preference Shares to each BFC2 Refinancing Investor in the proportions set out in schedule 2 (*BFC2 Tranche 2 Preference Shares Allocations*).
- (c) The BFC2 Administrator shall procure that on the Refinancing Date:
 - (i) the BFC2 Tranche 2 Preference Shares are allotted and issued in certificated form to each of BFC2 Refinancing Investor;
 - (ii) the share certificates in respect of the BFC2 Tranche 2 Preference Shares allotted and issued to the BFC2 Refinancing Investors are delivered to the Original Preference Share Custodian; and
 - (iii) the name of each BFC2 Refinancing Investor is entered into the securities register of BFC2 as a holder of the respective BFC2 Tranche 2 Preference Shares.
- (d) The BFC2 Administrator shall notify the other Parties as soon as the transactions contemplated in this Step 6 have been completed and this Step 6 will be completed upon such notification by the BFC2 Administrator.

3.8 Step 7

- (a) Subject to, and immediately after, the completion of Step 6 and on the Refinancing Date, the BFC2 Administrator shall pay, from the BFC2 Collection Account opened

with the Original Account Bank, the Restructuring Fee (plus VAT thereon) to each BFC2 Refinancing Investor in accordance with the provisions of the Refinancing Fees Letter.

- (b) This Step 7 will be completed upon delivery by the BFC2 Administrator to each BFC2 Refinancing Investor of the proof of payment evidencing payment of their respective Restructuring Fee (plus VAT thereon).

3.9 Step 8

- (a) Subject to, and immediately after, the completion of Step 7 and on the Refinancing Date, BFC2 shall be entitled to, in accordance with the provisions of the Depfin Voluntary Redemption Notice and subject to the Depfin Voluntary Redemption Notice not being revoked by BFC2, voluntarily redeem the Depfin BFC2 Preference Shares for the aggregate BFC2 Issue Price of the Depfin BFC2 Preference Shares, using the proceeds of the issue of the BFC2 Tranche 2 Preference Shares.
- (b) The BFC2 Administrator shall, if BFC2 voluntarily redeems the Depfin BFC2 Preference Shares, immediately pay the aggregate BFC2 Issue Price on account of the Depfin BFC2 Preference Shares to Depfin and send to Depfin, the Original Preference Share Agent and BFC2 the proof of payment evidencing such payment of the aggregate BFC2 Issue Price on account of the voluntary redemption of the Depfin BFC2 Preference Shares to Depfin.
- (c) Immediately upon receipt of the proof of payment contemplated in clause 3.9(b) above:
 - (i) the Original Preference Share Custodian shall deliver to the BFC2 Administrator the original preference share certificate(s) in respect of the Depfin BFC2 Preference Shares; and
 - (ii) the BFC2 Administrator shall:
 - (A) instruct Maitland Group South Africa Limited to update the securities register of BFC2 to reflect the voluntary redemption of the Depfin BFC2 Preference Shares; and
 - (B) procure a copy of the updated securities register of BFC2 which reflects the shareholding of BFC2 immediately after the voluntary redemption of the Depfin BFC2 Preference Shares.
- (d) The BFC2 Administrator shall, on the Refinancing Date, notify all the other Parties once the securities register of BFC2 has been updated to reflect the voluntary redemption of the Depfin BFC2 Preference Shares.
- (e) Following the voluntary redemption of the Depfin BFC2 Preference Shares by BFC2, Depfin hereby acknowledges and agrees that:
 - (i) it irrevocably and unconditionally releases the First Ranking Guarantee in relation to it and the Security provided to it for the First Ranking Guarantee; and

- (ii) from the Refinancing Date, its rights and claims as an ex-BFC2 Preference Shareholder against:
 - (A) BFC2 on account of any BFC2 Indemnity Event are limited to claims made pursuant to clause 14 of the BFC2 Preference Share Subscription Agreement and clause 33.2.1.6.7 of the BFC2 MOI; and
 - (B) BIC2 on account of any BIC2 Adjustment Event or any indemnity referred to in clause 14 of the BIC2 Preference Share Subscription Agreement are limited to claims made pursuant to clause 14.7 of the BIC2 Preference Share Subscription Agreement, and Depfin accepts the benefits of clause 14.7 of the BIC2 Preference Share Subscription Agreement.

3.10 Step 9

- (a) Subject to, and immediately after, the completion of Step 8 and on the Refinancing Date:
 - (i) the resignations in clause 4 (*Resignations*) below will occur;
 - (ii) RMB (in its capacity as New Preference Share Agent, New Calculation Agent, New Account Bank and New Preference Share Custodian) shall deliver its accession undertakings to the relevant Finance Documents, as contemplated in clause 6 (*Appointments*) below; and
 - (iii) RMB Custody and Trustees Services (in its capacity as New Security Custodian) shall deliver its accession undertaking to the relevant Finance Documents, as contemplated in clause 6 (*Appointments*) below.
- (b) This Step 9 will be completed upon confirmation from the New Preference Share Agent to all the other Parties that all the accession undertakings required to be delivered by:
 - (i) RMB (in its capacity as New Preference Share Agent, New Calculation Agent, New Account Bank and New Preference Share Custodian); and
 - (ii) RMB Custody and Trustees Services (in its capacity as New Security Custodian),

under and in terms of clause 6 (*Appointments*) below, have been so delivered.

3.11 Step 10

- (a) Subject to, and immediately after, the completion of Step 9 and on the Refinancing Date:
 - (i) in relation to the Subject Shares:
 - (A) BFC2 shall deliver to the Original Security Custodian an irrevocable instruction to transfer the Subject Shares and any monies held in the Original Subject Shares Securities Account from the Original Subject Shares Securities Account to the New Subject Shares Securities Account, substantially in the form set out in schedule 4 (*Form of transfer instruction letter*);

- (B) the New Preference Share Agent shall deliver to the Original Security Custodian an irrevocable instruction to remove the entry made over the Subject Shares, substantially in the form set out in schedule 5 (*Form of release instruction letter*) hereto;
- (C) MTN shall deliver to the Original Security Custodian an irrevocable instruction to remove the entry made over the Subject Shares, substantially in the form set out in schedule 5 (*Form of release instruction letter*) hereto;
- (D) the Original Security Custodian shall, immediately upon receiving the instructions referred to in clause 3.11(a)(i)(A), 3.11(a)(i)(B) and 3.11(a)(i)(C) above, procure the removal of the entries made pursuant to the BIC2 Pledge and Cession and the BIC2 Reversionary Pledge and Cession over the Subject Shares and effect the transfer of the Subject Shares, together with any monies held in the Original Subject Shares Securities Account, from the Original Subject Shares Securities Account to the New Subject Shares Securities Account;
- (E) the Original Security Custodian and the New Security Custodian shall do all such things as may be necessary or required in order to transfer the Subject Shares and any monies held in the Original Subject Shares Securities Account from the Original Subject Shares Securities Account to the New Subject Shares Securities Account so that the Subject Shares and any monies held in the Original Subject Shares Securities Account reflect in the New Subject Shares Securities Account on the Refinancing Date;
- (F) the New Security Custodian shall deliver the acknowledgments (in substantially the forms set out in Annexure C of the BIC2 Pledge and Cession and Annexure B of the BIC2 Reversionary Pledge and Cession) confirming that:
 - (1) the Subject Shares and any monies held in the Original Subject Shares Securities Account have been transferred from the Original Subject Shares Securities Account and reflect in the New Subject Shares Securities Account; and
 - (2) it has, in accordance with section 39 of the Financial Markets Act, made the relevant entries pursuant to the instructions contemplated in the notices received from BIC2; and
- (ii) in relation to the Original Bank Accounts and the New Bank Accounts:
 - (A) the Original Account Bank shall transfer all amounts standing to the credit of each Original Bank Account, if any, to the corresponding New Bank Account and shall deliver to the New Account Bank, BFC2, the BFC2 Administrator, BIC2 and the BIC2 Administrator proof of payment for each payment made from each Original Bank Account into each New Bank Account;
 - (B) the New Account Bank shall notify all the other Parties once each amount paid by the Original Account Bank from each Original Bank

Account into each New Bank Account has been received by the New Account Bank;

- (C) immediately after receipt of the notification from the New Account Bank in terms of clause 3.11(a)(ii)(B) above, the BFC2 Preference Shareholders, MTN and MTN Holdings hereby release their security interests in and to the Original Bank Accounts; and
 - (D) the Original Account Bank is hereby irrevocably instructed to close each Original Bank Account as soon as possible after transfer of all amounts standing to the credit of each Original Bank Account to each corresponding New Bank Account. The Original Account Bank shall notify each of BFC2, the BFC2 Administrator, BIC2 and the BIC2 Administrator confirmation once each Original Bank Account has been closed.
- (b) If any amount is paid into:
- (i) the Original Subject Shares Securities Account at any time on or after the Refinancing Date, the Original Security Custodian undertakes that it shall immediately pay such amount into the New Subject Securities Account; and
 - (ii) any Original Bank Account at any time on or after the Refinancing Date, the Original Account Bank undertakes that it shall immediately pay such amount into the corresponding New Bank Account.
- (c) This Step 10 will be completed on:
- (i) in relation to the Subject Shares, the acknowledgement contemplated in clause 3.11(a)(i)(F); and
 - (ii) in relation to the Original Bank Accounts and the New Bank Accounts, the notice contemplated in clause 3.11(a)(ii)(B).

3.12 General

Subject to, and after, the completion of Step 10, the BFC2 Administrator shall pay, from the BFC2 Collection Account opened with the New Account Bank, the BFC2 STT in accordance with the relevant provisions of the relevant Finance Documents as and when such amount becomes due for payment.

4. RESIGNATIONS

- (a) On and with effect from the Refinancing Date, and immediately after the completion of the transactions contemplated in clause 3.9 above, each of:
- (i) Nedbank CIB:
 - (A) in its capacity as Original Preference Share Agent hereby resigns as Preference Share Agent;
 - (B) in its capacity as Original Calculation Agent hereby resigns as Calculation Agent;

- (C) in its capacity as Original Preference Share Custodian hereby resigns as Preference Share Custodian; and
 - (D) in its capacity as Original Account Bank hereby resigns as Account Bank; and
- (ii) Nedbank (NIS), in its capacity as Original Security Custodian, hereby resigns as Security Custodian.
- (b) Notwithstanding the resignations of Nedbank CIB and Nedbank NIS as contemplated in clause 4(a) above, it is recorded that Nedbank SSA will remain and continue to act as BFC2 Administrator and BIC2 Administrator.

5. APPOINTMENTS

- (a) On and with effect from the Refinancing Date, immediately after each of the resignations occurring in terms of clause 4 (*Resignations*) above:
 - (i) RMB is hereby appointed as:
 - (A) Preference Share Agent, which appointment it hereby accepts, all on the terms and subject to the conditions set out in the Interfunder Agreement and the other applicable Finance Documents;
 - (B) Calculation Agent, which appointment it hereby accepts, all on the terms and subject to the conditions set out in the Account Bank and Agency Agreement and the other applicable Finance Documents;
 - (C) Preference Share Custodian, which appointment it hereby accepts, all on the terms and subject to the conditions set out in the applicable Preference Shares Custody Agreement and the other applicable Finance Documents; and
 - (D) Account Bank, which appointment it hereby accepts, all on the terms and subject to the conditions set out in the Account Bank and Agency Agreement and the other applicable Finance Documents; and
 - (ii) RMB Custody and Trustees Services is hereby appointed as Security Custodian, which appointment it hereby accepts, all on the terms and subject to the conditions set out in the applicable Subject Shares Custody Agreement and the other applicable Finance Documents.
- (b) On Refinancing Date, immediately after each appointment in terms of clause 5(a) above:
 - (i) the Original Preference Share Agent shall deliver to the New Preference Share Agent all original and other documents, agreements, models, records and other material it has in its possession in its capacity as Preference Share Agent including, without limitation, the original Finance Documents;
 - (ii) the Original Calculation Agent shall deliver to the New Calculation Agent all original and other documents, agreements, models, records and other material it has in its possession in its capacity as Calculation Agent;

- (iii) the Original Preference Share Custodian shall deliver to the New Preference Share Custodian all original and other documents, agreements and other material it has in its possession in its capacity as Preference Share Custodian (including the original share certificates in respect of the BFC2 Tranche 2 Preference Shares issued pursuant to Step 6 above);
- (iv) the Original Security Custodian shall deliver to the New Security Custodian all original and other documents, agreements and other material it has in its possession in its capacity as Security Custodian; and
- (v) the Original Account Bank shall deliver to the New Account Bank all original and other documents, agreements, models, records and other material it has in its possession in its capacity as Account Bank and in relation to the Original Bank Accounts only.

6. ACCESSIONS TO FINANCE DOCUMENTS

As contemplated in clauses 3.10(a)(ii) and 3.10(a)(iii) above:

- (a) the New Preference Share Agent hereby accedes to the Interfunder Agreement, and the other Finance Documents to which the Preference Share Agent is a party, by the delivery to the other Parties to the Interfunder Agreement of an accession undertaking substantially in the form of Annexure A to the Interfunder Agreement;
- (b) the New Calculation Agent hereby accedes to the Account Bank and Agency Agreement, and the other Finance Documents to which the Calculation Agent is a party, by the delivery to the other Parties to the Account Bank and Agency Agreement of an accession undertaking substantially in the form of Annexure B to the Account Bank and Agency Agreement;
- (c) the New Security Custodian hereby accedes to the Account Bank and Agency Agreement, and the other Finance Documents to which the Security Custodian is a party, by the delivery to the other Parties to the Account Bank and Agency Agreement of an accession undertaking substantially in the form of Annexure E to the Account Bank and Agency Agreement;
- (d) the New Preference Share Custodian hereby accedes to the Account Bank and Agency Agreement, and the other Finance Documents to which the Preference Share Custodian is a party, by the delivery to the other Parties to the Account Bank and Agency Agreement of an accession undertaking substantially in the form of Annexure F to the Account Bank and Agency Agreement; and
- (e) the New Account Bank hereby accedes to the Account Bank and Agency Agreement, and the other Finance Documents to which the Account Bank is a party, by the delivery to the other Parties to the Account Bank and Agency Agreement of an accession undertaking substantially in the form of Annexure A to the Account Bank and Agency Agreement.

7. AMENDMENT AND RESTATEMENT

On and with effect from the Refinancing Date and subject to the completion of the transactions contemplated in clauses 3 (*Implementation of Refinancing*), 4 (*Resignations*), 5 (*Appointments*) and 6 (*Accessions to Finance Documents*) above:

- (a) BFC2, the New Preference Share Agent and the BFC2 Refinancing Investors hereby amend and restate the Original BFC2 Preference Share Subscription Agreement in the form set out in schedule 6 (*Amended and Restated BFC2 Preference Share Subscription Agreement*) so that it shall be read and construed for all purposes in accordance with the Amended and Restated BFC2 Preference Share Subscription Agreement;
- (b) BFC2, BIC2 and the New Preference Share Agent hereby amend and restate the Original BIC2 Preference Share Subscription Agreement in the form set out in schedule 7 (*Amended and Restated BIC2 Preference Share Subscription Agreement*) so that it shall be read and construed for all purposes in accordance with the Amended and Restated BIC2 Preference Share Subscription Agreement;
- (c) MTN, BFC2, BIC2, the BFC2 Refinancing Investors, the BFC2 Administrator, the BIC2 Administrator, the New Account Bank, the New Preference Share Agent, the New Calculation Agent, the New Preference Share Custodian and the New Security Custodian hereby amend and restate the Original Account Bank and Agency Agreement in the form set out schedule 8 (*Amended and Restated Account Bank and Agency Agreement*) so that it shall be read and construed for all purposes in accordance with the Amended and Restated Account Bank and Agency Agreement;
- (d) MTN, the BFC2 Refinancing Investors and the New Preference Share Agent hereby amend and restate the Original Call Option Agreement in the form set out in schedule 9 (*Amended and Restated Call Option Agreement*) so that it shall be read and construed for all purposes in accordance with the Amended and Restated Call Option Agreement;
- (e) BIC2, the BFC2 Refinancing Investors and the New Preference Share Agent hereby amend and restate the Original First Ranking Guarantee in the form set out in schedule 10 (*Amended and Restated First Ranking Guarantee*) so that it shall be read and construed for all purposes in accordance with the Amended and Restated First Ranking Guarantee;
- (f) BIC2, the BFC2 Refinancing Investors and the New Preference Share Agent hereby amend and restate the Original BIC2 Pledge and Cession in the form set out in schedule 11 (*Amended and Restated BIC2 Pledge and Cession*) so that it shall be read and construed for all purposes in accordance with the Amended and Restated BIC2 Pledge and Cession;
- (g) BIC2, the BFC2 Refinancing Investors and the New Preference Share Agent hereby amend and restate the Original BIC2 Account Cession in the form set out in schedule 12 (*Amended and Restated BIC2 Account Cession*) so that it shall be read and construed for all purposes in accordance with the Amended and Restated BIC2 Account Cession;
- (h) BIC2, MTN and MTN Holdings hereby amend and restate the Original BIC2 Reversionary Pledge and Cession in the form set out in schedule 13 (*Amended and Restated BIC2 Reversionary Pledge and Cession*) so that it shall be read and construed for all purposes in accordance with the Amended and Restated BIC2 Reversionary Pledge and Cession;

- (i) BIC2, MTN and MTN Holdings hereby amend and restate the Original BIC2 Reversionary Account Cession in the form set out in schedule 14 (*Amended and Restated BIC2 Reversionary Account Cession*) so that it shall be read and construed for all purposes in accordance with the Amended and Restated BIC2 Reversionary Account Cession; and
- (j) BFC2, BIC2, MTN, MTN Holdings, the New Preference Share Agent and the BFC2 Refinancing Investors hereby amend and restate the Original MTN Subordination and Undertaking Agreement in the form set out in schedule 15 (*Second Amended and Restated MTN Subordination and Undertaking Agreement*) so that it shall be read and construed for all purposes in accordance with the Second Amended and Restated MTN Subordination and Undertaking Agreement.

8. DESIGNATION AS A FINANCE DOCUMENT

BFC2, BIC2, MTN and the Preference Share Agent hereby agree that, and designate, this Agreement as a "*Finance Document*" as contemplated in, and for the purposes of, the BFC2 MOI, the BIC2 MOI, the BFC2 Preference Share Subscription Agreement and the BIC2 Preference Share Subscription Agreement.

9. REPRESENTATIONS

9.1 Representations

- (a) Each of BFC2, BIC2, MTN and MTN Holdings hereby undertakes, represents and warrants to and in favour of the other Parties that, in relation to itself only:
 - (i) it has the legal capacity and has taken (or procured the taking of) all necessary corporate and other action required to empower and authorise it to enter into this Agreement;
 - (ii) this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
 - (iii) the execution of this Agreement and the performance of its obligations hereunder does not and shall not:
 - (A) contravene any law or regulation to which it is subject;
 - (B) contravene any provision of its constitutional documents; or
 - (C) conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it;
 - (iv) it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
 - (v) it is entering into this Agreement as principal;
 - (vi) the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
 - (vii) no other party is acting as a fiduciary for it; and

- (viii) it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set out in this Agreement.
- (b) The representations and warranties set out in clause 9.1(a) above are made:
 - (i) by BFC2 on the Signature Date and the Refinancing Date;
 - (ii) by BIC2 on the Signature Date and the Refinancing Date, it being recorded that the representations in clause 9.1(a)(i) and 9.1(a)(ii) are made by BIC2 subject to BIC2 obtaining its requisite shareholders' approvals; and
 - (iii) by each of MTN and MTN Holdings on the date on which each of MTN and MTN Holdings delivers its respective accession undertaking in accordance with clause 10 (*Accession by MTN and MTN Holdings*).
- (c) Each of the representations and warranties given by each of BFC2, BIC2, MTN and MTN Holdings in terms of clause 9.1(a) above shall:
 - (i) be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
 - (ii) continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
 - (iii) *prima facie* be deemed to be material and to be a material representation inducing the other Parties to enter into this Agreement.

9.2 Reliance

Each of BFC2, BIC2, MTN and MTN Holdings acknowledges that it makes the applicable representations, warranties and undertakings and makes or gives the applicable representations, warranties and undertakings in this Agreement with the intention of inducing the BFC2 Preference Shareholders to enter into the this Agreement and the Amendment Documents and that the BFC2 Preference Shareholders have entered into this Agreement and the Amendment Documents on the basis of, and in full reliance on, each such representation, warranty and undertaking.

10. ACCESSION BY MTN AND MTN HOLDINGS

- (a) Pursuant to paragraph 3 of schedule 1 (*Conditions Precedent*) of this Agreement, each of MTN and MTN Holdings will deliver to the Original Preference Share Agent a duly completed and signed accession undertaking, substantially in the form set out in schedule 3 (*Form of MTN and MTN Holdings Accession Undertaking*).
- (b) With effect from the date of signature of the accession undertaking by MTN and MTN Holdings (each an "**Acceding MTN Party**"), the Parties agree that:
 - (i) the Acceding MTN Party becomes a Party to this Agreement; and
 - (ii) the Acceding MTN Party acquires the same rights and obligations it would have had, were it a party to this Agreement on the Signature Date.

11. NOTICES

11.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by letter.

11.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

(a) in the case of BFC2:

Address: c/o Nedbank Limited
135 Rivonia Road
Sandown
Sandton
2196
South Africa

Email: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration

with a copy to MTN:

Address: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

Email: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba;

(b) In the case of BIC2:

Address: c/o Nedbank Limited
135 Rivonia Road
Sandown
Sandton
2196
South Africa

Email: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration

with a copy to MTN:

Address: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

Email: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba;

(c) in the case of Depfin (as BFC2 Preference Shareholder):

Address: c/o Nedbank Limited
6th Floor
F Block
135 Rivonia Road
Sandown
2196
South Africa

Email: LevFin@Nedbank.co.za
Prefops@Nedbank.co.za

Attention: Depfin Investments (Pty) Ltd and Lending Middle Office;

(d) in the case of RMB (as BFC2 Preference Shareholder, New Preference Share Agent, New Calculation Agent, New Account Bank and New Preference Share Custodian):

Address: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

Email: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management: Investment Banking;

(e) in the case of RMB Custody and Trustees Services (as New Security Custodian):

Address: 2nd Floor
1 Merchant Place
Corner Rivonia Road and Fredman Drive

Sandton
2196

Email: jean.venter@rmb.co.za

Attention: Global Securities Service;

(f) in the case of MML (as BFC2 Preference Shareholder):

Address: 268 West Avenue
Centurion
0157
South Africa

Email: Kagiso.Tsatsane@mmltd.co.za

Attention: Head: Asset Origination;

(g) in the case of United Towers (as BFC2 Preference Shareholder):

Address: c/o Absa Bank Limited
15 Alice Lane
Sandown
Sandton
2196
South Africa

Email: xradocmanvalidations@absa.africa

Attention: Transaction Administration IMPEX;

(h) in the case of Nedbank CIB (as Original Preference Share Agent, Original Calculation Agent, Original Account Bank and Original Preference Share Custodian):

Address: 3rd Floor
F Block
135 Rivonia Road
Sandown
2196
South Africa

Email: AgencyNedbank@Nedbank.co.za

Attention: Preference Share Agent – MTN Zakhele Futhi or Calculation Agent – MTN Zakhele Futhi or Account Bank – MTN Zakhele Futhi or Preference Share Custodian – MTN Zakhele Futhi (as the case may be);

(i) in the case of Nedbank NIS (as Original Security Custodian):

Address: 2nd Floor

Lakeview Campus Phase 1
16 Constantia Blvd
Constantia Kloof
Roodepoort
1709
South Africa

Email: NoncedoJ@nedbank.co.za
RonelVe@nedbank.co.za

Attention: Nedbank Investor Services; and

(j) in the case of Nedbank SSA (as BFC2 Administrator and BIC2 Administrator):

Address: 4th Floor
F Block
135 Rivonia Road
Sandown
2196
South Africa

Email: KeithB@Nedbank.co.za
RosalindF@Nedbank.co.za
MeeraB@Nedbank.co.za

Attention: BFC2 Administrator or BIC Administrator (as the case may be),

or any substitute address or department or officer as the Party may notify to the Original Preference Share Agent (or the Original Preference Share Agent may notify to the other Parties, if a change is made by the Original Preference Share Agent) by not less than 5 (five) Business Days' notice.

11.3 Domicilia

- (a) Each of the Parties chooses its physical address provided under or in connection with clause 11.2 (*Addresses*) above as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement or any other Finance Document may be served.
- (b) Any Party may by written notice to the other Parties change its *domicilium* from time to time to another address, not being a post office box or a *poste restante*, in South Africa, provided that any such change shall only be effective on the 14th (fourteenth) day after deemed receipt of the notice by the other Parties pursuant to clause 11.4 (*Delivery*) below.

11.4 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will:
 - (i) if delivered by hand, be deemed to have been received at the time of delivery;
 - (ii) if transmitted by email, be deemed to have been received by the addressee when actually received in legible form; and

- (iii) if by way of courier service, be deemed to have been received on the 7th (seventh) Business Day following the date of such sending,

and provided, if a particular department or officer is specified as part of its address details provided under clause 11.2 (*Addresses*) above, if such communication or document is addressed to that department or officer, unless the contrary is proved.

- (b) Any communication or document to be made or delivered to the Original Pref Agent will be effective only when actually received by the Original Preference Share Agent in readable form.
- (c) Any communication or document which becomes effective, in accordance with clause 11.4(b) above, after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

11.5 English language

Any notice or other document given under or in connection with any Amendment Document must be in English.

12. CALCULATION AND CERTIFICATES

12.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with an Amendment Document, the entries made in the accounts maintained by the Preference Share Agent or the Account Bank are *prima facie* evidence of the matters to which they relate.

12.2 Certificates and determinations

Any certification or determination by the Original Preference Share Agent of a rate or amount under this Agreement is, in the absence of manifest error, *prima facie* evidence of the matters to which it relates.

12.3 Day count convention

Any interest, commission or fee accruing under an Amendment Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 (three hundred and sixty five) days (irrespective of whether the year in question is a leap year).

13. PARTIAL INVALIDITY

If, at any time, any provision of the Amendment Documents is or becomes illegal, invalid, unenforceable or inoperable in any respect under any law of any jurisdiction, neither the legality, validity, enforceability or operation of the remaining provisions nor the legality, validity, enforceability or operation of such provision under the law of any other jurisdiction will in any way be affected or impaired. The term "inoperable" in this clause 13 (*Partial Invalidity*) shall include, without limitation, inoperable by way of suspension or cancellation.

14. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Original Preference Share Agent and/or any BFC2 Preference Shareholder, any right or remedy under the this Agreement

or any Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

15. RENUNCIATION OF BENEFITS

Each of BFC2, BIC2, MTN and MTN Holdings renounces, to the extent permitted under applicable law, the benefits of each of the legal exceptions of excussion, division, revision of accounts, no value received, *errore calculi, non causa debiti, non numeratae pecuniae* and cession of actions, and declares that it understands the meaning of each such legal exception and the effect of such renunciation.

16. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

17. WAIVER OF IMMUNITY

Each of BFC2, BIC2, MTN and MTN Holdings irrevocably and unconditionally waives any right it may have to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

18. SOLE AGREEMENT

- (a) This Agreement constitutes the sole record of the agreement between the Parties in regard to the subject matter thereof.
- (b) No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

19. NO IMPLIED TERMS

No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in this Agreement or any Finance Document in regard to the subject matter thereof.

20. EXTENSIONS AND WAIVERS

No latitude, extension of time or other indulgence which may be given or allowed by any Party to any other Party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement or any Finance Document and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or any Finance Document or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term of this Agreement or any Finance Document.

21. INDEPENDENT ADVICE

Each Party acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Agreement or the Finance Documents

and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, each Party acknowledges that all of the provisions of this Agreement or each Finance Document and the restrictions therein contained are part of the overall intention of the Parties in connection with this Agreement or the Finance Documents.

22. GOVERNING LAW

This Agreement is governed by South African law.

23. JURISDICTION

- (a) The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg, South Africa (or any successor to that division) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement).
- (b) The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle disputes in relation to this Agreement and accordingly no Party will argue to the contrary.
- (c) This clause 23 (*Jurisdiction*) is for the benefit of the BFC2 Investors only. As a result, the BFC2 Investors shall not be prevented from taking proceedings relating to a dispute in relation to this Agreement in any other courts with jurisdiction. To the extent allowed by law, the BFC2 Investors may take concurrent proceedings in any number of jurisdictions.

24. PROTECTION OF PERSONAL INFORMATION

Each Party acknowledges and agrees that each of RMB (in its capacity as New Account Bank, New Calculation Agent, New Preference Share Agent and New Preference Share Custodian) and RMB Custody and Trustees Services (in its capacity as New Security Custodian) is entitled to process (collect, use, store or otherwise deal with) personal information (as defined in the Protection of Personal Information Act No. 4 of 2013) for the purposes of providing the services set out in this Agreement and the other Finance Documents to which it is a party. RMB (in its capacity as New Account Bank, New Calculation Agent, New Preference Share Agent and New Preference Share Custodian) and RMB Custody and Trustees Services (in its capacity as New Security Custodian) shall do so in terms of the privacy notice which may be accessed through <https://www.rmb.co.za/page/firststrand-limited-privacy-statement>.

EXECUTION PAGES

SIGNED at Sandton on 16 July 2021

For and on behalf of
JABISAN 04 (RF) PROPRIETARY LIMITED

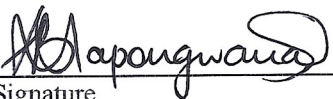
Signature

Name of Signatory

Designation of Signatory

SIGNED at SANDTON on 16 July 2021

For and on behalf of
MTN ZAKHELE FUTHI (RF) LIMITED


Signature

BELINDA MAPONGWANA
Name of Signatory

CHAIRPERSON
Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**DEPFIN INVESTMENTS PROPRIETARY
LIMITED**
(as BFC2 Preference Shareholder)

C. Smith

Signature

C. Smith

Name of Signatory

Authorised signatory

Designation of Signatory

Y. Brand

Signature

Y. Brand

Name of Signatory

Authorised Signatory

Designation of Signatory

SIGNED at Sandton on 18 July 2021

For and on behalf of
**MOMENTUM METROPOLITAN LIFE
LIMITED**
(as BFC2 Preference Shareholder)



Signature

Kagiso Tsatsane

Name of Signatory

Designation of Signatory



Signature

Warren Smith


Name of Signatory

Authorised Signatory

Designation of Signatory

SIGNED at Bryanston / Pretoria on 16 July 2021

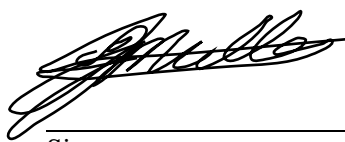
For and on behalf of
UNITED TOWERS PROPRIETARY LIMITED
(as BFC2 Preference Shareholder)



Signature

NC Wortmann
Name of Signatory

Director
Designation of Signatory



Signature

JAJ Muller
Name of Signatory

Director
Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**FIRSTRAND BANK LIMITED (ACTING
THROUGH ITS RAND MERCHANT BANK
DIVISION)**
(as BFC2 Preference Shareholder)

Niel Van Zyl

Signature

Niel van Zyl

Name of Signatory

Authorised

Designation of Signatory



Signature

Lwandle Matsinya

Name of Signatory

Authorised

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**FIRSTRAND BANK LIMITED (ACTING
THROUGH ITS RAND MERCHANT BANK
DIVISION)**
(as New Preference Share Agent)

Niel Van Zyl

Signature

Niel van Zyl

Name of Signatory

Authorised

Designation of Signatory



Signature

Lwandle Matsinya

Name of Signatory

Authorised

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**FIRSTRAND BANK LIMITED (ACTING
THROUGH ITS RAND MERCHANT BANK
DIVISION)**
(as New Calculation Agent)

Niel Van Zyl

Signature

Niel van Zyl

Name of Signatory

Authorised

Designation of Signatory



Signature

Lwandle Matsinya

Name of Signatory

Authorised

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**FIRSTRAND BANK LIMITED (ACTING
THROUGH ITS RAND MERCHANT BANK
DIVISION)**
(as New Preference Share Custodian)

Niel Van Zyl

Signature

Niel van Zyl

Name of Signatory

Authorised

Designation of Signatory



Signature

Lwandle Matsinya

Name of Signatory


Authorised

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**FIRSTRAND BANK LIMITED (ACTING
THROUGH ITS RAND MERCHANT BANK
DIVISION)**
(as New Account Bank)

Signed by: Gerard Jagga
Signed at 2021-07-16 17:37:41 +02:00
Reason: I approve this document



Signature

Gerard Jagga

Name of Signatory

Authorised

Designation of Signatory

Signature

Name of Signatory

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**FIRSTRAND BANK LIMITED (ACTING
THROUGH ITS RAND MERCHANT BANK
DIVISION)**
(as New Account Bank)

Signature

Name of Signatory

Designation of Signatory

Signed by: Shaun de Sousa
Signed at: 2021-07-16 17:48:34 +02:00
Reason: I approve this document

Shaun de Sousa

Signature

Shaun de Sousa

Name of Signatory

Authorised

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**FIRSTRAND BANK LIMITED (ACTING
THROUGH ITS CUSTODY AND TRUSTEES
SERVICES DIVISION)**
(as New Security Custodian)

Signed by: Sifiso Ndala
Signed at: 2021-07-16 19:02:05 +02:00
Reason: Witnessing Sifiso Ndala

Sifiso Ndala

Signature

Sifiso Ndala

Name of Signatory

Head Global Securities Services

Designation of Signatory

Signed by: Linda Laubscher
Signed at: 2021-07-16 18:48:50 +02:00
Reason: I approve this document

Linda Laubscher

Signature

Linda Laubscher

Name of Signatory

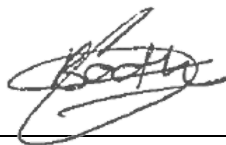
Head Sales & Relationship Management

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**NEDBANK LIMITED (ACTING THROUGH ITS
CORPORATE AND INVESTMENT BANKING
DIVISION)**

(as Original Preference Share Agent)



Signature

Cathy Booth

Name of Signatory

Authorised Signatory

Designation of Signatory



Signature

Dirk Jansen van Rensburg

Name of Signatory

Authorised Signatory

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**NEDBANK LIMITED (ACTING THROUGH ITS
CORPORATE AND INVESTMENT BANKING
DIVISION)**
(as Original Account Bank)

P Moodliar

Signature

P. Moodliar

Name of Signatory

Authorised Signatory

Designation of Signatory



Signature

Gertrude Dube

Name of Signatory

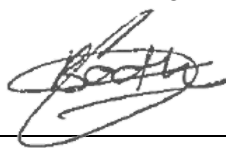
Authorised Signatory

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**NEDBANK LIMITED (ACTING THROUGH ITS
CORPORATE AND INVESTMENT BANKING
DIVISION)**

(Original Calculation Agent)



Signature

Cathy Booth

Name of Signatory

Authorised Signatory

Designation of Signatory



Signature

Dirk Jansen van Rensburg

Name of Signatory

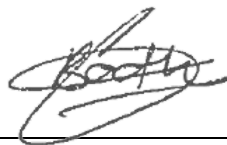
Authorised Signatory

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**NEDBANK LIMITED (ACTING THROUGH ITS
CORPORATE AND INVESTMENT BANKING
DIVISION)**

(as Original Preference Share Custodian)



Signature

Cathy Booth

Name of Signatory

Authorised Signatory

Designation of Signatory



Signature

Dirk Jansen van Rensburg

Name of Signatory

Authorised Signatory

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**NEDBANK LIMITED (ACTING THROUGH ITS
CORPORATE AND INVESTMENT BANKING
DIVISION AND ITS NEDBANK INVESTOR
SERVICES BUSINESS UNIT)**
(as Original Security Custodian)



Signature

L E Currie

Name of Signatory

General Manager

Designation of Signatory

Signature

Name of Signatory

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**NEDBANK LIMITED (ACTING THROUGH ITS
CORPORATE AND INVESTMENT BANKING
DIVISION AND ITS NEDBANK INVESTOR
SERVICES BUSINESS UNIT)**
(as Original Security Custodian)



Signature

Anke Frankland

Name of Signatory

Head: Custodial Services

Designation of Signatory

Signature

Name of Signatory

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**NEDBANK LIMITED (ACTING THROUGH ITS
SHARE SCHEME ADMINISTRATION
DIVISION DIVISION)**
(as BFC2 Administrator)



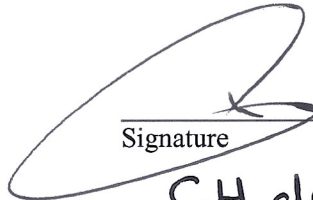
Signature

SG Bird

Name of Signatory

Executive Head: Group Financial Control

Designation of Signatory



Signature

CH de Kock

Name of Signatory

Executive Head Group Business Services

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**NEDBANK LIMITED (ACTING THROUGH ITS
SHARE SCHEME ADMINISTRATION
DIVISION DIVISION)**
(as BIC2 Administrator)



Signature

SG Bird

Name of Signatory

Exec Head : Group Financial Control

Designation of Signatory



Signature

CH de Kock

Name of Signatory

Executive Head Group Business Services

Designation of Signatory

SIGNED at Sandton on 16 July 2021

For and on behalf of
**FIRSTRAND BANK LIMITED (ACTING
THROUGH ITS RAND MERCHANT BANK
DIVISION)**
(as New Account Bank)

Niel Van Zyl

Signature

Niel van Zyl

Name of Signatory

Authorised

Designation of Signatory



Signature

Lwandle Matsinya

Name of Signatory

Authorised

Designation of Signatory

SCHEDULE 1: CONDITIONS PRECEDENT

1. BFC2

- (a) A copy of the special resolution(s) of the holders of the issued shares in BFC2 who are entitled to vote:
 - (i) authorising the adoption of a new memorandum of incorporation for BFC2 which is in form and substance to the satisfaction of the Original Preference Share Agent; and
 - (ii) to the extent required, approving all the direct and indirect financial assistance provided or to be provided by BFC2 under or in accordance with the provisions of the Finance Documents to which it is a party (as required by sections 44 and/or 45 (as applicable) of the Companies Act).
- (b) A copy of the Notice of Amendment in respect of the resolution or resolutions contemplated in paragraph 1(a) above.
- (c) A resolution passed by the director of BFC2:
 - (i) to the extent required, confirming that the board of directors of BFC2 is satisfied, in relation to the direct or indirect financial assistance provided or to be provided by BFC2 under and in terms of the Finance Documents to which it is a party, with the matters set out in sections 44 and/or 45 (as applicable) of the Companies Act;
 - (ii) authorising it, for all purposes required under section 46 of the Companies Act, to make the Distributions contemplated in the BFC2 MOI on the Refinancing Date;
 - (iii) authorising BFC2 to issue the BFC2 Tranche 2 Preference Shares to the BFC2 Refinancing Investors on Refinancing Date and in accordance with the terms and conditions contained in the Refinancing Agreement;
 - (iv) confirming that the consideration payable for the BFC2 Tranche 2 Preference Shares is adequate as required by section 40(1)(a) of the Companies Act;
 - (v) subject to (1) the Depfin Voluntary Redemption Notice not having been revoked and (2) the receipt by BFC2 of the proceeds of the aggregate BFC2 Issue Price on account of the BFC2 Tranche 2 Preference Shares, approving the voluntary redemption of the Depfin BFC2 Preference Shares on the Refinancing Date;
 - (vi) approving the terms of, and the transactions contemplated by, the Amendment Documents to which it is a party and resolving that it execute the Amendment Documents to which it is a party;
 - (vii) authorising a specified person or persons to execute the Amendment Documents to which it is a party on its behalf; and
 - (i) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Amendment Documents to which it is a party.

- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph 1(c) above.
- (e) A certificate signed by an authorised signatory of BFC2 (dated no earlier than the CP Fulfilment Date) certifying that:
 - (i) issuing the BFC2 Tranche 2 Preference Shares would not cause any limits in its constitutional documents to be exceeded;
 - (ii) BFC2 has complied with all applicable laws and regulations which relate to the conclusion of this Agreement and the Amendment Documents to which it is a party and the performance by BFC2 of its obligations thereunder; and
 - (iii) as at the date of the certificate:
 - (A) each copy document relating to BFC2 referred to in this paragraph 1 is correct, complete and in full force and effect as at a date no earlier than the CP Fulfilment Date;
 - (B) no BFC2 Potential Trigger Event or BFC2 Trigger Event has occurred or is continuing or is likely to occur as a result of the issue of the BFC2 Tranche 2 Preference Shares, other than in relation to any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Transaction Documents;
 - (C) no Material Adverse Effect in relation to it has occurred or is continuing;
 - (D) each representation made by it in the Finance Documents to which it is a party is true, accurate and correct in all material respects, other than in relation to any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Transaction Documents; and
 - (E) there is no threatened, current or pending industrial action, litigation, investigation or proceedings against BFC2.

2. BIC2

- (a) A copy of the special resolution(s) of the holders of the issued shares in BIC2 who are entitled to vote authorising the adoption of a new memorandum of incorporation for BIC2 which is in form and substance to the satisfaction of the Original Preference Share Agent.
- (b) A copy of the Notice of Amendment in respect of the resolution or resolutions contemplated in paragraph 2(a) above.
- (c) A copy of a resolution of the board of directors of BIC2:
 - (i) authorising it, for all purposes required under section 46 of the Companies Act, to make the Distributions contemplated in the BIC2 MOI on the Refinancing Date;

- (ii) approving the terms of, and the transactions contemplated by, the Amendment Documents to which it is a party and resolving that it execute the Amendment Documents to which it is a party;
 - (iii) authorising a specified person or persons to execute the Amendment Documents to which it is a party on its behalf; and
 - (i) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Amendment Documents to which it is a party.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph 2(c) above.
- (e) A certificate signed by an authorised signatory of BIC2 (dated no earlier than the CP Fulfilment Date) certifying that:
 - (i) BIC2 has complied with all applicable laws and regulations which relate to the conclusion of this Agreement and the Amendment Documents to which it is a party and the performance by BIC2 of its obligations thereunder;
 - (ii) as at the date of the certificate:
 - (A) each copy document relating to BIC2 referred to in this paragraph 2 is correct, complete and in full force and effect as at a date no earlier than the CP Fulfilment Date;
 - (B) no BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred or is continuing, other than in relation to any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Transaction Documents;
 - (C) no Material Adverse Effect in relation to it has occurred or is continuing;
 - (D) each representation made by it in the Finance Documents to which it is a party is true, accurate and correct in all material respects, other than in relation to any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Transaction Documents; and
 - (E) there is no threatened, current or pending industrial action, litigation, investigation or proceedings against BIC2.

3. MTN

- (a) A duly completed and signed accession undertaking, substantially in the form set out in schedule 3 (*Form of MTN and MTN Holdings Accession Undertaking*).
- (b) To the extent required, a copy of the special resolution(s) of the holders of the issued shares in MTN who are entitled to vote, approving the granting of any financial assistance by MTN pursuant to the Finance Documents under, and in compliance with, section 44 or 45 of the Companies Act, as obtained at the annual general meeting of MTN's shareholders on 28 May 2021.

- (c) A copy of a resolution of the board of directors of MTN:
 - (i) approving the terms of, and the transactions contemplated by, the Amendment Documents to which it is a party and resolving that it execute the Amendment Documents to which it is a party;
 - (ii) to the extent required, confirming the application of the "*solvency and liquidity test*" by the board of directors of MTN under the Companies Act in connection with any financial assistance granted by MTN under the Finance Documents to which it is a party as contemplated by section 44 or 45 of the Companies Act and/or any Distribution made or to be made by MTN under the Finance Documents to which it is a party as contemplated by section 46 of the Companies Act;
 - (iii) if applicable, confirming for the purposes of section 44 or 45 of the Companies Act that the terms under which any such financial assistance is to be given pursuant to the Finance Documents to which MTN is a party are fair and reasonable;
 - (iv) authorising a specified person or persons to execute the Amendment Documents to which it is a party on its behalf; and
 - (v) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Amendment Documents to which it is a party.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph 3(c) above.
- (e) A certificate signed by an authorised signatory of MTN (dated no earlier than the CP Fulfilment Date) certifying that:
 - (i) MTN has complied with all applicable laws and regulations which relate to the conclusion of this Agreement and the Amendment Documents to which it is a party and the performance by MTN of its obligations thereunder; and
 - (ii) as at the date of the certificate:
 - (A) each copy document relating to MTN referred to in this paragraph 3 is correct, complete and in full force and effect as at a date no earlier than the CP Fulfilment Date;
 - (B) no Material Adverse Effect in relation to it has occurred or is continuing; and
 - (C) each representation made by it in the Finance Documents to which it is a party is true, accurate and correct in all material respects.

4. MTN Holdings

- (a) A duly completed and signed accession undertaking, substantially in the form set out in schedule 3 (*Form of MTN and MTN Holdings Accession Undertaking*).

- (b) To the extent required, a copy of the special resolution(s) of the holders of the issued shares in MTN Holdings who are entitled to vote, approving the granting of any financial assistance by MTN Holdings pursuant to the Finance Documents under, and in compliance with, section 44 or 45 of the Companies Act.
- (c) A copy of a resolution of the board of directors of MTN Holdings:
 - (i) approving the terms of, and the transactions contemplated by, the Amendment Documents to which it is a party and resolving that it execute the Amendment Documents to which it is a party;
 - (ii) to the extent required, confirming the application of the "*solvency and liquidity test*" by the board of directors of MTN Holdings under the Companies Act in connection with any financial assistance granted by MTN Holdings under the Finance Documents to which it is a party as contemplated by section 44 or 45 of the Companies Act and/or any Distribution made or to be made by MTN Holdings under the Finance Documents to which it is a party as contemplated by section 46 of the Companies Act;
 - (iii) if applicable, confirming for the purposes of section 44 or 45 of the Companies Act that the terms under which any such financial assistance is to be given pursuant to the Finance Documents to which MTN Holdings is a party are fair and reasonable;
 - (iv) authorising a specified person or persons to execute the Amendment Documents to which it is a party on its behalf; and
 - (v) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Amendment Documents to which it is a party.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph 4(c) above.
- (e) A certificate signed by an authorised signatory of MTN Holdings (dated no earlier than the CP Fulfilment Date) certifying that:
 - (i) MTN Holdings has complied with all applicable laws and regulations which relate to the conclusion of this Agreement and the Amendment Documents to which it is a party and the performance by MTN Holdings of its obligations thereunder; and
 - (ii) as at the date of the certificate:
 - (A) each copy document relating to MTN Holdings referred to in this paragraph 4 is correct, complete and in full force and effect as at a date no earlier than the CP Fulfilment Date;
 - (B) no Material Adverse Effect in relation to it has occurred or is continuing; and
 - (C) each representation made by it in the Finance Documents to which it is a party is true, accurate and correct in all material respects.

5. Finance Documents

- (a) The duly executed:
 - (i) Refinancing Agreement;
 - (ii) Preference Share Custody Agreement;
 - (iii) RMB Agency Fees Letter; and
 - (iv) Refinancing Fees Letter.
- (b) The Preference Share Custody Agreement, the RMB Agency Fees Letter and the Refinancing Fees Letter have become unconditional in accordance with their terms (save for any condition requiring this Agreement to be unconditional).
- (c) Draft accession undertakings to the Account Bank and Agency Agreement and the Interfunder Agreement are in form to the satisfaction of the Original Preference Share Agent.

6. Legal opinions

Legal opinions by:

- (a) DLA Piper South Africa Incorporated, legal counsel appointed by the Original Preference Share Agent, dealing, *inter alia*, with the (i) legality, validity and enforceability of the this Agreement and the Amendment Documents and (ii) the power, capacity and authority of BFC2 to enter into this Agreement and the Amendment Documents to which it is a party and compliance by it with all applicable laws and the Companies Act in relation to the execution and implementation of the transactions contemplated in this Agreement and the Amendment Documents to which it is a party;
- (b) DLA Piper South Africa Incorporated, legal counsel appointed by the Original Preference Share Agent, dealing, *inter alia*, with the Tax consequences of the transactions contemplated in this Agreement and the Finance Documents;
- (c) Webber Wentzel, legal counsel appointed by BIC2 dealing, *inter alia*, with the authority, power and capacity of BIC2 to enter into this Agreement and the Amendment Documents to which it is a party and compliance by it with all applicable laws and the Companies Act in relation to the execution and implementation of the transactions contemplated in this Agreement and the Amendment Documents to which it is a party;
- (d) Webber Wentzel, legal counsel appointed by MTN and MTN Holdings dealing, *inter alia*, with the authority, power and capacity of each of MTN and MTN Holdings to enter into this Agreement and the Amendment Documents to which it is a party and compliance by it with all applicable laws and the Companies Act in relation to the execution and implementation of the transactions contemplated in this Agreement and the Amendment Documents to which it is a party; and
- (e) Advocate Seligson, confirming whether or not there is a reasonable likelihood of the occurrence of a "*Determination Issue*" (as such term is defined in the BIC2 Preference

Share Subscription Agreement) having occurred in respect of the BIC2 Preference Shares and/or BFC2 Preference Shares on or before the Refinancing Date,

to the satisfaction of the Original Preference Share Agent.

7. New Subject Shares Securities Account

- (a) Written evidence that the New Subject Shares Securities Account has been opened and the details of the New Subject Shares Securities Account have been provided to the Original Security Custodian, the Original Preference Share Agent and the BIC2 Administration.
- (b) Written confirmation from the Original Security Custodian to BIC2, the BIC2 Administrator and the New Security Custodian that it has received all the information and documents required to effect the transfer of the Subject Shares from the Original Subject Shares Securities Account to the New Subject Shares Securities Account on the Refinancing Date.
- (c) Written confirmation from the New Security Custodian to BIC2, the BIC2 Administrator and the Original Security Custodian that it has received all the information and documents required to effect the transfer of the Subject Shares from the Original Subject Shares Securities Account to the New Subject Shares Securities Account on the Refinancing Date, including confirmation of (i) the name of the transferor, (ii) the name of the broker, (iii) the type of transfer, (iv) confirmation of same day transfer, (v) the number of the Subject Shares being transferred and (vi) value of the Subject Shares).
- (d) A duly signed copy of the notice and acknowledgment in relation to the New Subject Shares Securities Account regarding the pledge and cession in security of the New Subject Shares Securities Account pursuant to the Finance Documents substantially in the form set out in Annexure B and Annexure C of the BIC2 Pledge and Cession and Annexure A and Annexure B of the BIC2 Reversionary Pledge and Cession.

8. New Bank Accounts

- (a) Written evidence that each New Bank Account has been opened and the details of each New Bank Account have been provided to the Original Account Bank.
- (b) A duly signed copy of each notice and acknowledgment in relation to each New Bank Account regarding the cession in security of each New Bank Account pursuant to the Finance Documents, substantially in the form provided in Annexure B and C of the BIC2 Account Cession.

9. Waiver of pre-emptive rights

All and any pre-emptive and similar rights (whether statutory or contractual) required to be waived for purposes of the implementation of, and enforcement of the rights of the BFC2 Preference Shareholder under, the relevant Finance Documents have been waived by the relevant parties in whose favour they operate.

10. BFC2 Preference Shares

- (a) Receipt of the Depfin Voluntary Redemption Notice, in a form and substance satisfactory to the Original Preference Share Agent.

- (b) Draft agreed from subscription notices to be delivered by BFC2 to each BFC2 Refinancing Investor in relation to the BFC2 Tranche 2 Preference Shares.
- (c) Draft agreed form share certificates in respect of the BFC2 Tranche 2 Preference Shares to be issued by BFC2 to the BFC2 Refinancing Investors.
- (d) The Original Preference Share Agent is satisfied that the aggregate number of issued Ordinary Shares will exceed the aggregate number of BFC2 Preference Shares issued or be issued to the BFC2 Preference Shareholders.

11. Know your customer requirements

All documentation required by the BFC2 Refinancing Investors in order for them to complete all applicable know-your-customer or similar procedures, as required by the BFC2 Refinancing Investors in connection with the transactions contemplated by the Amendment Documents.

12. BFC2 Refinancing Investor approvals

Each BFC2 Refinancing Investor has received confirmation in writing that, to the extent required, it has received all and any internal approvals (including but not limited to credit committee approval) as may be required by it in respect of the transactions contemplated by the Amendment Documents.

13. Other documents and evidence

A copy of any other authorisation, approval (including, but not limited to the necessary JSE approvals) or other document, opinion or assurance which the Original Preference Share Agent considers to be necessary or desirable (if it has notified each of BFC2, BIC2, MTN and MTN Holdings in writing accordingly) in connection with the entry into and performance of the transactions contemplated by this Agreement or any Amendment Document or for the legality, validity and enforceability of this Agreement or any Amendment Document.

SCHEDULE 2: BFC2 TRANCHE 2 PREFERENCE SHARES ALLOCATIONS

Name of BFC2 Refinancing Investor	Number of BFC2 Tranche 2 Preference Shares	Aggregate BFC2 Issue Price
FirstRand Bank Limited (acting through its Rand Merchant Bank Division) (Registration No. 1929/001225/06)	129,299	ZAR129,299,000
Momentum Metropolitan Life Limited, (Registration No. 1904/002186/06)	158,655	ZAR158,655,000
United Towers Proprietary Limited (Registration No. 1968/01555/07)	95,985	ZAR95,985,000

SCHEDULE 3: FORM OF MTN AND MTN HOLDINGS ACCESSION UNDERTAKING

[TO BE PASTED ON SIGNATORY'S LETTERHEAD]

To: **Nedbank Limited (acting through its Corporate and Investment Banking division)**
(as Original Preference Share Agent)
4th Floor
F Block
135 Rivonia Road
Sandown
2196
South Africa

Email: AgencyNedbank@Nedbank.co.za

Attention: Preference Share Agent – MTN Zakhele Futhi

Date: [◆]

Dear Sirs

ACCESSION UNDERTAKING TO THE REFINANCING AGREEMENT ("ACCESSION UNDERTAKING")

1. We refer to the written agreement entitled "*Refinancing Agreement*" concluded on or about [◆] 2021 between, *inter alios*, Jabisan 04 (RF) Proprietary Limited, MTN Zakhele Futhi (RF) Limited and Nedbank Limited (acting through its Corporate and Investment Banking division) (as Original Account Bank, Original Calculation Agent, Original Preference Share Agent and Original Preference Share Custodian) ("**Refinancing Agreement**").
2. Capitalised terms not defined herein shall have the meanings defined, or incorporated by reference, in the Refinancing Agreement.
3. We address this Accession Undertaking to you in your capacity as Original Preference Share Agent.
4. We, [◆], with registration number [◆], hereby accede (with effect from the date of this Accession Undertaking) to the Refinancing Agreement and agree to be bound by the terms and conditions contained therein.
5. We nominate the following address as our *domicilium* address for the purpose of clause 11 (*Notices*) of the Refinancing Agreement:

Physical address: [◆]

Email address: [◆]

Attention: [◆].
6. This Accession Undertaking shall be governed by the laws of South Africa.

Yours faithfully

Name:

(who warrants that he/she was duly authorised hereto)

For and on behalf of:

[◆]

SCHEDULE 4: FORM OF TRANSFER INSTRUCTION LETTER

To: **Nedbank Limited (acting through its Corporate and Investment Banking division and its Nedbank Investor Services business unit)**
2nd Floor
Lakeview Campus Phase 1
16 Constantia Blvd
Constantia Kloof
Roodepoort
1709
South Africa

Email: NoncedoJ@nedbank.co.za
RonelVe@nedbank.co.za

Attention: Nedbank Investor Services

Date: [◆]

Dear Sirs

INSTRUCTION TO TRANSFER: MTN GROUP LIMITED SHARES

1. We confirm that you act as the central securities depository participant for MTN Zakhele Futhi (RF) Limited ("**MTNZF**"), registration number 2016/268837/06 in respect of [◆] ordinary shares ("**Subject Shares**") in the issued share capital of MTN Group Limited, registration number 1994/009584/06 ("**MTN**"), recorded in a securities account held by MTNZF with you ("**Nedbank Securities Account**"), which Subject Shares have been pledged and ceded in favour of:
 - (a) on a first ranking basis, the Cessionaries under and pursuant to a written pledge and cession agreement entered into on or about 21 August 20216 between, amongst others, MTNZF (as Cedent) and Nedbank Limited (acting through its Corporate and Investment Banking division) ("**Nedbank CIB**") (as Preference Share Agent) ("**BIC2 Pledge and Cession**"); and
 - (b) on a second ranking basis, the Cessionaries under and pursuant to a written reversionary pledge and cession agreement entered into on or about 21 August 20216 between, amongst others, MTNZF (as Cedent) and MTN (as Agent) ("**BIC2 Reversionary Pledge and Cession**").
2. Capitalised terms used (but not otherwise defined) in this letter shall, unless otherwise defined, bear the meanings assigned to them in the BIC2 Pledge and Cession or the BIC2 Reversionary Pledge and Cession (as the case may be) and shall form part of this notice as and where applicable in the context.
3. You were instructed to make the appropriate entries in the Nedbank Securities Account to record the pledge of the Subject Shares in favour of:
 - (a) the Cessionaries under the BIC2 Pledge and Cession on a first ranking basis pursuant to the BIC2 Pledge and Cession; and

- (b) the Cessionaries under the BIC2 Reversionary Pledge and Cession on a second ranking basis pursuant to the BIC2 Reversionary Pledge and Cession.
- 4. MTNZF, Nedbank CIB and MTN, amongst other parties, have concluded an agreement entitled "*Refinancing Agreement*", in terms of, or pursuant to, which, *inter alia*:
 - (a) on and with effect from 30 September 2021, Nedbank CIB resigns as Preference Share Agent and FirstRand Bank Limited (acting through its Rand Merchant Bank division) ("**RMB**") is appointed as Preference Share Agent; and
 - (b) the Subject Shares and any monies held in the Nedbank Securities Account are to be transferred from the Nedbank Securities Account to a new securities account held by FirstRand Bank Limited (acting through its RMB Custody and Trustees Services division) ("**RMB Custody and Trustees Services**").
- 5. You are hereby instructed to:
 - (a) upon receipt of instructions from RMB (as Preference Share Agent) and MTN to remove the entries over the Subject Shares, transfer the Subject Shares and any monies held in the Nedbank Securities Account from the Nedbank Securities Account to the following securities account of MTNZF held by RMB Custody and Trustees Services ("**RMB Custody and Trustees Services Securities Account**"):
 Account name: [◆]
 Bank name: [◆]
 Account number: [◆]
 Reference: [◆]; and
 - (b) upon written confirmation from RMB Custody and Trustees Services that the Subject Shares reflect in the RMB Custody and Trustees Services Securities Account, close the Nedbank Securities Account.
- 6. Kindly deliver to us written confirmation once the transaction set out in paragraph 5(a) above has been implemented.

Yours faithfully

Name:

(who warrants that he/she was duly authorised hereto)

For and on behalf of:

MTN ZAKHELE FUTHI (RF) PROPRIETARY LIMITED

SCHEDULE 5: FORM OF RELEASE INSTRUCTION LETTER

To: **Nedbank Limited (acting through its Corporate and Investment Banking division and its Nedbank Investor Services business unit)**
42nd Floor
Lakeview Campus Phase 1
16 Constantia Blvd
Constantia Kloof
Roodepoort

1709
South Africa

Email: NoncedoJ@nedbank.co.za
RonelVe@nedbank.co.za

Attention: Nedbank Investor Services

Date: [◆]

Dear Sirs

NOTICE OF RELEASE: MTN GROUP LIMITED SHARES

1. We confirm that you act as the central securities depository participant for MTN Zakhele Futhi (RF) Limited ("**MTNZF**"), registration number 2016/268837/06 in respect of [◆] ordinary shares ("**Subject Shares**") in the issued share capital of MTN Group Limited, registration number 1994/009584/06 ("**MTN**"), recorded in a securities account held by MTNZF with you ("**Nedbank Securities Account**"), which Subject Shares have been pledged and ceded in favour of [on a first ranking basis, the Cessionaries under and pursuant to a written pledge and cession agreement entered into on or about 21 August 20216 between, amongst others, MTNZF (as Cedent) and Nedbank Limited (acting through its Corporate and Investment Banking division) ("**Nedbank CIB**") (as Preference Share Agent) ("**BIC2 Pledge and Cession**") / [on a second ranking basis, the Cessionaries under and pursuant to a written reversionary pledge and cession agreement entered into on or about 21 August 20216 between, amongst others, MTNZF (as Cedent) and MTN (as Agent) ("**BIC2 Reversionary Pledge and Cession**")].
2. Capitalised terms used (but not otherwise defined) in this letter shall, unless otherwise defined, bear the meanings assigned to them in the [BIC2 Pledge and Cession] / [BIC2 Reversionary Pledge and Cession] and shall form part of this notice as and where applicable in the context.
3. You were instructed to make the appropriate entries in the Nedbank Securities Account to record the pledge of the Subject Shares in favour of [the Cessionaries under the BIC2 Pledge and Cession on a first ranking basis pursuant to the BIC2 Pledge and Cession] / [the Cessionaries under the BIC2 Reversionary Pledge and Cession on a second ranking basis pursuant to the BIC2 Reversionary Pledge and Cession].
4. MTNZF, Nedbank CIB and MTN, amongst other parties, have concluded an agreement entitled "*Refinancing Agreement*", in terms of, or pursuant to, which, *inter alia*:

- (a) on and with effect from 30 September 2021, Nedbank CIB resigns as Preference Share Agent and FirstRand Bank Limited (acting through its Rand Merchant Bank division) ("**RMB**") is appointed as Preference Share Agent; and
 - (b) the Subject Shares and any monies held in the Nedbank Securities Account are to be transferred from the Nedbank Securities Account to a new securities account held by FirstRand Bank Limited (acting through its RMB Custody and Trustees Services division) ("**RMB Custody and Trustees Services**").
- 5. You are hereby irrevocably instructed to:
 - (a) on 30 September 2021, remove the entry made in accordance with section 39 of the Financial Markets Act that was made pursuant to the [BIC2 Pledge and Cession] / [BIC2 Reversionary Pledge and Cession] in respect of the Subject Shares; and
 - (b) upon written confirmation from RMB Custody and Trustees Services Securities that the Subject Shares reflect in the RMB Custody and Trustees Services Securities Account, close the Nedbank Securities Account.
- 6. Kindly deliver to us written confirmation once the transaction set out in paragraphs 5(a) above has been implemented.

Yours faithfully

Name:

(who warrants that he/she was duly authorised hereto)

For and on behalf of:

[FIRSTRAND BANK LIMITED (ACTING THROUGH ITS RAND MERCHANT BANK DIVISION) (as Preference Share Agent)] / [MTN GROUP LIMITED (as Agent)]

**SCHEDULE 6: AMENDED AND RESTATED BFC2 PREFERENCE SHARE
SUBSCRIPTION AGREEMENT**



(1) FIRSTRAND BANK LIMITED

(acting through its Rand Merchant Bank division)
(in its capacity as BFC2 Preference Shareholder)

(2) UNITED TOWERS PROPRIETARY LIMITED

(in its capacity as BFC2 Preference Shareholder)

(3) MOMENTUM METROPOLITAN LIFE LIMITED

(in its capacity as BFC2 Preference Shareholder)

(4) JABISAN 04 (RF) PROPRIETARY LIMITED

(in its capacity as Company)

and

(5) FIRSTRAND BANK LIMITED

(acting through its Rand Merchant Bank division)
(in its capacity as Preference Share Agent)

**AMENDED AND RESTATED
BFC2 PREFERENCE SHARE SUBSCRIPTION AGREEMENT**

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WHEREBY IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears –

1.1 words importing –

1.1.1 any one gender include the other two genders;

1.1.2 the singular include the plural and *vice versa*; and

1.1.3 natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2 save as defined herein, words and expressions defined in or incorporated by reference in the BIC2 Memorandum of Incorporation (as defined below) or the BFC2 Memorandum of Incorporation (as defined below) shall have the same meanings when used herein. In this Agreement the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

1.2.1 "**Agreement**" means this BFC2 Preference Share Subscription Agreement (together with all annexures hereto);

1.2.2 "**Amendment Date**" means the date on which this Agreement is amended and restated by the Parties thereto;

1.2.3 "**Assignment Party**" means each of the entities listed in **Annexure B** hereto;

1.2.4 "**Auditors**" shall mean the auditors of the Company from time to time;

1.2.5 "**BFC2 Adjustment Notice**" shall bear the meaning ascribed thereto in the BFC2 Definitions;

1.2.6 "**BFC2 Investor Proportion**" means the percentage of the aggregate BFC2 Issue Price paid or payable (as the case may be) by each BFC2 Investor in respect of the BFC2 Preference Shares subscribed for or to be subscribed for by such BFC2 Investor as set out in **Annexure A** hereto;

1.2.7 "**BFC2 Memorandum of Incorporation**" means the memorandum of incorporation of the Company from time to time;

1.2.8 "**BFC2 Participation Fee**" means the fee that was paid by the Company to United Towers, RMB and Depfin as contemplated in clause 5;

1.2.9 "**BFC2 Preference Share Terms**" means the preferences, rights, limitations and other terms attaching to the BFC2 Preference Share as set out in the BFC2 Memorandum of Incorporation from time to time;

1.2.10 "**BFC2 Preference Shares**" means the cumulative redeemable non-participating preference shares in the issued share capital of the Company from time to time, having the rights and privileges attaching thereto set forth in the BFC2 Preference Share Terms;

1.2.11 "**Code**" means the US Internal Revenue Code of 1986;

- 1.2.12 **"Company"** means Jabisan 04 (RF) Proprietary Limited (Registration No. 2014/021122/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.13 **"Company Board Meeting"** means each meeting of the board of directors of the Company from time to time, including, without limitation, meetings of the Company's board of directors required to be held in terms of the Company's Constitutional Documents;
- 1.2.14 **"Company Board Meeting Documents"** means each document relating to or resulting from a Company Board Meeting;
- 1.2.15 **"Constitutional Documents"** means, in respect of any entity incorporated in South Africa at any time, the then current and up-to-date memorandum of incorporation, certificate of incorporation and certificate to commence business of such entity or, in the case of a trust, the trust deed of such trust and the letters of authority issued to the trustees of such trust;
- 1.2.16 **"Continuing"** means in relation to the occurrence of any BFC2 Trigger Event:
- 1.2.16.1 where the BFC2 Trigger Event is incapable of remedy, such BFC2 Trigger Event is deemed to be continuing unless it has been expressly waived in writing by the Preference Share Agent and any conditions of such waiver have been fulfilled to the satisfaction of the Preference Share Agent;
- 1.2.16.2 in any other case, the BFC2 Trigger Event, is deemed to be continuing unless and until it has been expressly waived in writing by the Preference Share Agent or remedied in accordance with the provisions of the BFC2 Preference Share Terms and any conditions of such waiver or remedy, as the case may be, have been fulfilled to the satisfaction of the Preference Share Agent;
- 1.2.17 **"CTC"** means "*contributed tax capital*" as defined in section 1 of the Income Tax Act;
- 1.2.18 **"Equity Share"** means an "*equity share*", as such term is defined in the Income Tax Act, and **"Equity Shares"** shall be construed accordingly;
- 1.2.19 **"FATCA"** means:
- 1.2.19.1 sections 1471 to 1474 of the Code or any associated regulations;
- 1.2.19.2 any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in clause 1.2.19.1; or
- 1.2.19.3 any agreement pursuant to the implementation of any treaty, law or regulation referred to in clauses 1.2.19.1 or 1.2.19.2 with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

- 1.2.20 **"FATCA Application Date"** means:
- 1.2.20.1 in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
 - 1.2.20.2 in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
 - 1.2.20.3 in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within clauses 1.2.20.1 or 1.2.20.2, 1 January 2019,
 - 1.2.20.4 or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement;
- 1.2.21 **"FATCA Deduction"** means a deduction or withholding from a payment under a Finance Document required by FATCA;
- 1.2.22 **"FATCA Exempt Party"** means a Party that is entitled to receive payments free from any FATCA Deduction;
- 1.2.23 **"Final Capital Structure"** shall bear the meaning ascribed thereto in the Implementation Agreement;
- 1.2.24 **"Final Capital Structure Documents"** shall bear the meaning ascribed thereto in the Implementation Agreement;
- 1.2.25 **"Indemnified Party"** shall bear the meaning ascribed thereto in clause 14.1 hereof;
- 1.2.26 **"Operating Company"** means an "*operating company*", as such term is defined in section 8EA of the Income Tax Act;
- 1.2.27 **"Original Signature Date"** means 21 August 2016;
- 1.2.28 **"Parties"** means the BFC2 Refinancing Investors, the Company and the Preference Share Agent, and **"Party"** shall mean any of them;
- 1.2.29 **"Permitted Financial Indebtedness"** means any Financial Indebtedness of the Company –
- 1.2.29.1 incurred under and in accordance with the Transaction Documents;
 - 1.2.29.2 incurred for the purposes of BFC2 Refinancing the BFC2 Preference Shares as contemplated in the BFC2 Preference Share Terms; or

- 1.2.29.3 incurred with the prior written consent of the Preference Share Agent (it being recorded that no such consent was given as at the Original Signature Date);
- 1.2.30 **"Required Declaration"** means, to the extent required under Applicable Law, a declaration made by the Company to BIC2 confirming that it is a South African resident company for the purposes of ensuring that any amounts paid by the Company to any person on account of Distributions received by the Company shall not become subject to a withholding on account of Dividends Tax by the person making such Distribution;
- 1.2.31 **"Solvency and Liquidity Test"** means the solvency and liquidity test as set out in section 4 of the Companies Act;
- 1.2.32 **"Transfer Date"** shall bear the meaning ascribed thereto in clause 12.2 hereof;
- 1.2.33 **"Warranty Date"** means the Original Signature Date, the Issue Date (2016) and each day thereafter (including, for the avoidance of doubt, the Issue Date (2021)) until all the BFC2 Preference Shares have been fully, finally and irrevocably redeemed;
- 1.3 any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted or replaced from time to time;
- 1.4 any reference in this Agreement to any other agreement or document copy shall be construed as a reference to such other agreement as same may have been, or may from time to time be, amended, restated, varied, novated, replaced or supplemented;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.6 where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;
- 1.7 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day unless if as a result of such adjustment any redemption of a Preference Share will occur before 3 (three) years and 1 (one) day after any Issue Date in which event the relevant day for payment shall be the next succeeding Business Day;
- 1.8 any reference to a Party includes that Party's successors-in-title and permitted assigns;
- 1.9 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.10 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.11 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or

termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

- 1.12 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.13 the Finance Documents shall to the extent permitted by Applicable Laws be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted assigns or liquidators, as the case may be;
- 1.14 the use of any expression in any Finance Document covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the parties to the Finance Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2. RECORDAL

It is recorded that:

- 2.1 the Company required funding to enable it to *inter alia* subscribe for the BIC2 Preference Shares;
- 2.2 the BFC2 Initial Investors agreed to fully fund the Company, by the subscription for the BFC2 Tranche 1 Preference Shares, to enable it to subscribe for the BIC2 Preference Shares, the proceeds of which BFC2 Tranche 1 Preference Shares were used by BIC2 to subscribe for the Subscription Shares, which constituted Equity Shares in an Operating Company;
- 2.3 the Company accordingly allotted and issued to the BFC2 Initial Investors, which subscribed for, the BFC2 Tranche 1 Preference Shares on the Issue Date (2016) in order to enable the Company to subscribe for the BIC2 Preference Shares, all on the terms and subject to the conditions set out in this Agreement; and
- 2.4 subject to the terms and conditions of, and in accordance with the terms of, the Refinancing Agreement, the BFC2 Refinancing Investors shall subscribe for the BFC2 Tranche 2 Preference Shares on the Refinancing Date, and the Company shall be entitled to use the proceeds of the BFC2 Tranche 2 Preference Shares solely for the purpose of voluntarily redeeming the BFC2 Tranche 1 Preference Shares.

3. CONDITION PRECEDENT

[Intentionally left blank]

4. SUBSCRIPTION FOR BFC2 PREFERENCE SHARES

- 4.1 On the Issue Date (2016) –
 - 4.1.1 each BFC2 Initial Investor subscribed for its BFC2 Tranche 1 Preference Shares by paying its BFC2 Investor Proportion of the BFC2 Issue Price (by way of electronic funds transfer) as set out in part 1 of Annexure A into its respective BFC2 Subscription Account;

- 4.1.2 the Company, against payment of the BFC2 Issue Price in respect of the BFC2 Tranche 1 Preference Shares –
 - 4.1.2.1 allotted and issued the number of BFC2 Tranche 1 Preference Shares to the relevant BFC2 Initial Investor as set out in the Final Capital Structure Documents; and
 - 4.1.2.2 simultaneously delivered to the Preference Share Agent a duly executed share certificate in respect of the BFC2 Tranche 1 Preference Shares issued to each BFC2 Initial Investor (which share certificates shall be in proper form in all respects); and
- 4.1.3 the Company applied the aggregate BFC2 Issue Price on account of all the BFC2 Tranche 1 Preference Shares solely for the subscription of the BIC2 Preference Shares, the proceeds of which BIC2 Preference Shares were used solely for the subscription of the Subscription Shares, which constituted Equity Shares in an Operating Company.
- 4.2 On the Issue Date (2021), and subject to the Refinancing Agreement becoming unconditional in accordance with its terms and the other applicable conditions in the Refinancing Agreement being satisfied -
 - 4.2.1 each BFC2 Refinancing Investor will subscribe for its BFC2 Tranche 2 Preference Shares by paying its BFC2 Investor Proportion of the BFC2 Issue Price as set out in part 2 of Annexure A (by way of electronic funds transfer) to the Preference Share Agent, who shall pay the aggregate BFC2 Issue Price in respect of the BFC2 Tranche 2 Preference Shares into the BFC2 Collection Account;
 - 4.2.2 the Company, against payment of the aggregate BFC2 Issue Price in respect of the BFC2 Tranche 2 Preference Shares –
 - 4.2.2.1 will allot and issue the applicable number of BFC2 Tranche 2 Preference Shares to each BFC2 Refinancing Investor as set out in Part 2 of Annexure A; and
 - 4.2.2.2 simultaneously deliver to the Preference Share Custodian duly executed share certificates in respect of the BFC2 Tranche 2 Preference Shares to be issued to each BFC2 Refinancing Investor (which share certificates shall be in proper form in all respects);
 - 4.2.3 the Company shall apply the aggregate BFC2 Issue Price on account of all the BFC2 Tranche 2 Preference Shares solely for the voluntary redemption, in the sole and absolute discretion of the Company, of the Depfin BFC2 Preference Shares, and the BFC2 Issue Price on account of any or all of BFC2 Tranche 2 Preference Shares shall be used for no other purpose whatsoever.

5. FEES

The Company paid a non-refundable BFC2 Participation Fee (plus VAT thereon) to each of United Towers, RMB and Depfin on the Issue Date (2016) calculated in accordance with the formula below:

$$A = 0.5\% \times B \times C$$

where:

A = the BFC2 Participation Fee;

B = the aggregate BFC2 Issue Price for the BFC2 Tranche 1 Preference Shares; and

C = in respect of the Participation Fee payable to (i) United Towers, 30% (thirty per cent); (ii) RMB, 30% (thirty per cent); and Depfin, 40% (forty per cent).

6. REPRESENTATIONS AND WARRANTIES

6.1 The Company represents and warrants in favour of each BFC2 Investor that:

6.1.1 on each Warranty Date, the Company 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;

6.1.2 on each Warranty Date, the Company has the power to enter into, exercise its rights and perform and comply with its obligations contained in, the Transaction Documents 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 to which it is a party;

6.1.3 on the Issue Date (2016), the directors of the Company had the necessary authority and took all steps necessary to allot and to issue the BFC2 Preference Shares to the BFC2 Initial Investors and the Company had full power, capacity and authority to issue the BFC2 Tranche 1 Preference Shares to the BFC2 Initial Investors;

6.1.4 on the Issue Date (2021), the directors of the Company will have the necessary authority and will have taken all steps necessary to allot and to issue the BFC2 Preference Shares to the BFC2 Refinancing Investors and the Company will have full power, capacity and authority to issue the BFC2 Tranche 2 Preference Shares to the BFC2 Refinancing Investors;

6.1.5 on each Warranty Date, save for -

6.1.5.1 its subscription for the BIC2 Preference Shares;

6.1.5.2 its Disposal of any assets pursuant to any Permitted Disposal;

6.1.5.3 the liabilities incurred or assumed in terms of the Transaction Documents to which it is a party;

6.1.5.4 Tax liabilities incurred by the Company pursuant to the Transaction Documents to which it is a party;

6.1.5.5 its entry into of the Transaction Documents to which it is a party;

6.1.5.6 any other acquisition of assets or incurrence of liabilities by the Company with the prior written consent of the Preference Share Agent;

- 6.1.5.7 the Company incurring any Permitted Financial Indebtedness, the Company has not and will not have acquired any assets and/or incurred any liabilities of whatsoever nature;
- 6.1.6 from the date of its incorporation up to and including each Warranty Date thereafter, the Company has not and will not have traded in any manner or entered into any transaction whatsoever, save -
- 6.1.6.1 in respect of the issue of the Ordinary Shares to the Ordinary Shareholder;
- 6.1.6.2 for its entry into of the Transaction Documents to which it is a party and performance of any obligations and/or exercise of any rights under such Transaction Documents;
- 6.1.6.3 for the appointment of auditors, directors, its public officer and company secretary;
- 6.1.6.4 for its subscription for the BIC2 Preference Shares; and
- 6.1.6.5 to open the BFC2 Subscription Accounts, BFC2 Collection Account, the BFC2 Implementation Accounts and any other bank account approved by the Preference Share Agent and MTN;
- 6.1.7 on each Warranty Date, all of the information supplied by it or its directors to the BFC2 Investors in connection with the Finance Documents to which it is a party is true, complete and accurate in all material respects on the date such information is supplied;
- 6.1.8 on the Issue Date (2016) and on each Warranty Date thereafter (including, for the avoidance of doubt, the Issue Date (2021)), save as a result of any Permitted Disposal, the Company shall be the legal and beneficial owner of the BIC2 Preference Shares;
- 6.1.9 on each Warranty Date, the Company is not in default in the payment of any Taxes which have been assessed and demanded;
- 6.1.10 on each Warranty Date, every consent, authorisation, permit, licence, certificate or approval of, or declaration to, any government entity required by the Company to authorise, or required by the Company in connection with, the validity, enforceability or admissibility in evidence of the Transaction Documents to which it is a party or the performance by the Company of its obligations under the Transaction Documents to which it is a party have, been obtained or made or, prior to each applicable Issue Date, 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;
- 6.1.11 on each Warranty Date, the obligations expressed to be assumed by the Company in terms of the Transaction Documents to which it is a party are legal and valid obligations binding on the Company and enforceable against the Company in accordance with the terms thereof and do, and will, not conflict with any Applicable Laws binding on the Company or the assets of the Company;

- 6.1.12 on each Warranty Date, no Insolvency Event in respect of the Company, BFC2 Illegality Event nor BFC2 Trigger Event will have occurred or be Continuing;
- 6.1.13 on each Warranty Date (for so long as no BFC2 Trigger Event has occurred and is Continuing), there shall be no class of shares in the authorised and/or issued share capital of the Company which ranks in priority to and/or *pari passu* with the BFC2 Preference Shares other than in respect of voting rights;
- 6.1.14 on each Warranty Date, the proceeds of the BFC2 Tranche 1 Preference Shares were applied for the direct or indirect acquisition of Equity Shares in an Operating Company, the proceeds of the BFC2 Tranche 2 Preference Shares shall be applied solely for the voluntary redemption, in the sole and absolute discretion of the Company, of the Depfin BFC2 Preference Shares, and the BFC2 Preference Shares shall not constitute "*hybrid equity instruments*" or "*third party backed shares*" as those terms are defined in section 8E and section 8EA of the Income Tax Act, respectively;
- 6.1.15 on each Warranty Date, each BFC2 Preference Dividend in respect of the BFC2 Preference Shares, will, in respect of the full amount of such BFC2 Preference Dividend –
- 6.1.15.1 be made in compliance with section 46 of the Companies Act;
- 6.1.15.2 be a dividend as defined in section 1 of the Income Tax Act and will be exempt from income Tax as contemplated in section 10(1)(k) of the Income Tax Act or as otherwise contemplated under the Income Tax Act and will not be a foreign dividend;
- 6.1.15.3 carry the maximum Dividends Tax Credit, if any, that is permissible under the Income Tax Act in respect of a dividend declared or Distributed by a company of an equivalent amount to a shareholder;
- 6.1.15.4 not constitute a "foreign dividend" as defined in section 1 of the Income Tax Act;
- 6.1.15.5 not be distributed from the CTC of the Company, including CTC attributable to a different class of shares issued by the Company;
- 6.1.15.6 shall not be determined, by the directors of the Company or any other person or body of persons with comparable authority, to constitute a reduction of the CTC of the Company, including CTC attributable to a different class of shares issued by the Company;
- 6.1.16 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 the Company other than as provided for in terms of the Transaction Documents or save as required by any Applicable Law;
- 6.1.17 on the Issue Date (2016) and on each Warranty Date thereafter (including, for the avoidance of doubt, the Issue Date (2021)), the Company has good and unencumbered title to the BIC2 Preference Shares;

- 6.1.18 on each Warranty Date, the Company is fully aware of and acquainted with the provisions of the Transaction Documents and the meaning and effect of all such provisions;
- 6.1.19 on each Warranty Date, the execution and delivery of, the performance of the Company's obligations under, and compliance with the provisions of, each of the Transaction Documents by the Company will not:
- 6.1.19.1 contravene any Applicable Law to which the Company is subject;
 - 6.1.19.2 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 the Company is party or which is binding upon it or any of its assets or revenues;
 - 6.1.19.3 contravene or conflict with any provision of the Company's Constitutional Documents; or
 - 6.1.19.4 result in the Company's winding-up or liquidation or the appointment to it of a receiver, administrator, business rescue practitioner or liquidator or similar person;
- 6.1.20 on each Warranty Date, save for any litigation, arbitration or other proceedings of a litigious nature which may arise in connection with any BFC2 Permitted Enforcement Action the Company is not involved in, nor is there pending or threatened against the Company, 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;
- 6.1.21 on each Warranty Date, the Company has not incurred any Financial Indebtedness other than Permitted Financial Indebtedness;
- 6.1.22 on each Warranty Date, all information furnished by the Company to the BFC2 Investors in connection with the Finance Documents 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;
- 6.1.23 on each Warranty Date, the Company is not in breach of any terms of any agreement of whatsoever nature to which it is party;
- 6.1.24 on each Warranty Date, the Company is not aware of any material facts or circumstances that have not been disclosed to the BFC2 Investors which facts or circumstances may adversely influence the decision of any third party to subscribe for the BFC2 Preference Shares in the issued share capital of the Company on terms and conditions similar to those contained in the Finance Documents;
- 6.1.25 on each Warranty Date, the execution and delivery of the Transaction Documents and performance of its obligations thereunder by the Company represent commercial acts of the Company entered into and done for private and commercial purposes and neither the Company nor any of its assets are entitled to any right of immunity from set-off, suit or execution in respect of its obligations under the Transaction Documents;

- 6.1.26 on each Warranty Date, in entering into each of the Transaction Documents and in performing its rights and obligations hereunder and thereunder, the Company acts and will continue to act solely for its own account;
- 6.1.27 on each Warranty Date, the Company has not taken any action nor have any other steps been taken or legal proceedings been started or threatened against the Company for its winding-up, dissolution, administration, re-organisation or placing under supervision for business rescue proceedings or for the appointment of a receiver, administrator, administrative receiver, trustee, business rescue practitioner or similar officer of the Company or of any or all of its respective assets or revenues;
- 6.1.28 on each Warranty Date, no Encumbrance exists over all or any of the Company's present or future assets or revenues;
- 6.1.29 on each Warranty Date, save for the Permitted Disposals the Company shall not have Disposed of any of its assets;
- 6.1.30 on each Warranty Date, save as required in terms of Applicable Law, there shall be no amendment of the Company's Constitutional Documents and/or any Transaction Documents to which the Company is a party without the prior written consent of the Preference Share Agent and MTN;
- 6.1.31 on each Warranty Date, the BFC2 Memorandum of Incorporation constitutes the Company as a ring fenced company, as contemplated in sections 11(3)(b), 13(3) and 15(2)(b) of the Companies Act, capable only of –
 - 6.1.31.1 acquiring, holding and redeeming of the BIC2 Preference Shares in accordance with or as contemplated in the provisions of the Transaction Documents to which it is a party;
 - 6.1.31.2 entering into, performing its obligations and enforcing rights under and in terms of the Transaction Documents to which it is a party and/or which may be required to render same unconditional;
 - 6.1.31.3 exercising any voting or other rights attaching to the BIC2 Preference Shares;
 - 6.1.31.4 issuing of Ordinary Shares in its share capital;
 - 6.1.31.5 appointing auditors and professional advisors;
 - 6.1.31.6 opening the BFC2 Subscription Accounts, the BFC2 Implementation Accounts and the BFC2 Collection Account;
 - 6.1.31.7 rendering Tax and other statutory returns; and
 - 6.1.31.8 carrying on the business of holding and managing the BIC2 Preference Shares;
- 6.1.32 on each Warranty Date:
 - 6.1.32.1 no compliance notice has been issued to the Company in terms of section 171(1) of the Companies Act or, if issued, remains in force as contemplated in terms of section 171(5) of the Companies Act;

- 6.1.32.2 no application has been made or threatened to render any Transaction Document or any document or authorisation relating thereto, void, voidable or unlawful, and no court has made an order or declaration that any Transaction Document or any document or authorisation relating thereto, void, voidable or unlawful;
 - 6.1.33 on each Issue Date:
 - 6.1.33.1 the board of directors of the Company have determined that the BFC2 Issue Price is adequate consideration for the issue of each BFC2 Preference Share issued on such Issue Date; and
 - 6.1.33.2 no determination contemplated in clause 6.1.33.1 above or any other determination by the board of directors of the Company in respect of the adequacy of the consideration for any other class of shares in the Company has been challenged in terms of Applicable Laws;
 - 6.1.34 on each Warranty Date, the Company will not have incurred any Financial Indebtedness other than Permitted Financial Indebtedness; and
 - 6.1.35 on each Warranty Date:
 - 6.1.35.1 the Company is not a party to or participates in any Sanctioned Transaction, has contravened any Sanctions nor is targeted under any Sanctions; and
 - 6.1.35.2 the Company has conducted its businesses in compliance with applicable anti-corruption laws.
- 6.2 Each of the BFC2 Investors and BFC2 Preference Shareholders has entered into the Finance Documents to which it is party on the strength of, and relying on, the representations and warranties set out in this clause 6, each of which shall be deemed to be a separate representation and warranty given without prejudice to any other representation or warranty and deemed to be a material representation inducing each of the BFC2 Investors and BFC2 Preference Shareholders to enter into the Transaction Documents to which it is party and/or to invest in or acquire the BFC2 Preference Shares.

7. GENERAL UNDERTAKINGS

- 7.1 The Company hereby irrevocably and unconditionally undertakes to the BFC2 Investors that immediately after the receipt of :
 - 7.1.1 the aggregate BFC2 Issue Price on account of the BFC2 Tranche 1 Preference Shares on the Issue Date (2016), such aggregate BFC2 Issue Price was applied solely towards the discharge of its obligations to pay the BIC2 Issue Price on account of the BIC2 Preference Shares, the proceeds of which BIC2 Preference Shares were used solely to subscribe for Equity Shares in an Operating Company, all in accordance with the Final Capital Structure Documents; and
 - 7.1.2 the aggregate BFC2 Issue Price on account of the BFC2 Tranche 2 Preference Shares on the Issue Date (2021), such aggregate BFC2 Issue Price shall be applied solely towards the voluntary redemption of the Depfin BFC2 Preference Shares on the Refinancing Date on the terms and conditions set out in the Refinancing Agreement, being the voluntary redemption of BFC2

Preference Shares the proceeds of which were applied for the direct or indirect acquisition of Equity Shares in an Operating Company on the Issue Date (2106).

- 7.2 The Company undertakes to procure that all board resolutions required to make a Distribution under section 46 of the Companies Act are duly and timeously passed in order to ensure the valid payment of any Distribution on the date on which such Distribution is paid and, in particular, the Company undertakes to ensure compliance with the requirements of section 46 of the Companies Act in respect of the payment of each BFC2 Preference Dividend on account of the BFC2 Preference Shares.
- 7.3 The Company shall, on or before each BFC2 Dividend Date, apply the Solvency and Liquidity Test and once the board is reasonably satisfied that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant BFC2 Preference Dividends:
- 7.3.1 the board shall pass a resolution acknowledging that the board has applied the Solvency and Liquidity Test and has reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant BFC2 Preference Dividends; and
- 7.3.2 the Company shall pay the relevant BFC2 Preference Dividends on such date.
- 7.4 With effect from the Original Signature Date until the BFC2 Discharge Date, the Company hereby unconditionally and irrevocably undertakes to the BFC2 Preference Shareholders that, unless specifically provided for in the Transaction Documents or the Preference Share Agent and MTN (where MTN's consent is required as provided for below) otherwise agrees in writing –
- 7.4.1 the Company shall not without the prior written consent of MTN which shall not be unreasonably held or delayed or save as required in terms of any Applicable Law permit any variation, amendment, deletion, addition and/or alteration to and/or cancellation of :
- 7.4.1.1 any of the rights and/or privileges of the BFC2 Preference Shareholders arising in terms of and/or in connection with the BFC2 Preference Shares; or
- 7.4.1.2 any of the Transaction Documents;
- 7.4.2 the Company 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;
- 7.4.3 save as expressly contemplated in the Transaction Documents, the Company will not implement, or incur any obligation to propose, approve or implement, any resolution (whether of the directors or members of the Company) or transaction in relation to the Company for –
- 7.4.3.1 the issue of shares by the Company, other than the issue of the BFC2 Preference Shares to the BFC2 Investors or the issue of the Ordinary Shares to the Ordinary Shareholder;
- 7.4.3.2 the repurchase by the Company of any of its shares (it being recorded for the avoidance of doubt that the redemption of any BFC2 Preference Shares in accordance with the provisions of

- the BFC2 Memorandum of Incorporation shall not be a breach of this undertaking);
- 7.4.3.3 the reduction, return or repayment of the Company's share capital, non-distributable reserve account or reserves (other than payments made in accordance with the BFC2 Memorandum of Incorporation);
 - 7.4.3.4 a capitalisation issue by the Company;
 - 7.4.3.5 a declaration, payment or Distribution of any assets (whether cash assets or non-cash assets) by the Company (other than payments made in accordance with the Transaction Documents and save for Permitted Disposals);
 - 7.4.3.6 any amendment to the Constitutional Documents of the Company;
 - 7.4.3.7 any change to the Financial Year of the Company;
 - 7.4.3.8 any change in the auditors of the Company; or
 - 7.4.3.9 any change in the accounting policies of the Company as at the Original Signature Date;
- 7.4.4 the Company shall procure that its audited financial statements are prepared in accordance with IFRS and all Applicable Law;
 - 7.4.5 the Company shall maintain its corporate existence in South Africa according to Applicable Laws;
 - 7.4.6 the Company shall maintain its books and records as required by Applicable Laws and, where applicable, in accordance with IFRS;
 - 7.4.7 the Company shall not repudiate nor give written notice of an intention to repudiate any Transaction Document to which it is a party or any of its obligations under any such Transaction Document;
 - 7.4.8 the Company shall promptly pay and discharge all Taxes and other liabilities payable by or assessed upon it when due;
 - 7.4.9 the Company shall duly file all Tax returns containing information required by law to be contained therein, shall qualify at all times as a resident as defined in section 1 of the Income Tax Act in South Africa and shall not surrender or dispose of any Tax credit, loss, relief or allowance to any person;
 - 7.4.10 any filing duties or Securities Transfer Tax or Dividends Tax (if any) payable in relation to the Transaction and in respect of which the Company is liable shall be paid by the Company when due;
 - 7.4.11 if business rescue proceedings have commenced in relation to the Company in accordance with the Companies Act, the Company shall not, and shall, to the extent that it is within the control of the Company, procure that the

Ordinary Shareholders do not -

- 7.4.11.1 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
- 7.4.11.2 propose the development of an alternative business rescue plan in the manner contemplated in the Companies Act; and/or
- 7.4.11.3 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 the BIC2 Preference Shareholder under this Agreement or any other Finance Document;

- 7.4.12 the Company shall not act in any manner which would contravene its Constitutional Documents;
- 7.4.13 save for any Permitted Indebtedness, the Company 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;
- 7.4.14 the Company shall not enter into any type of merger, demerger, any amalgamation or consolidation with any other person or enter into any type of corporate reconstruction;
- 7.4.15 the Company shall not acquire or incorporate any subsidiary or participate in or enter into any joint venture;
- 7.4.16 the Company shall not, save for Permitted Disposals or as otherwise contemplated by the Transaction Documents, sell, transfer, cede, assign, pledge, mortgage or otherwise alienate or Dispose of any of its assets (or any interest therein), nor allow any of its assets to become subject to any Encumbrance;
- 7.4.17 the Company shall not acquire any assets or businesses and the only business of the Company shall be the holding of the BIC2 Preference Shares;
- 7.4.18 any cash Distribution or other payment of whatsoever nature including, without limitation, any disposal proceeds, received by the Company in respect of or in connection with any of the BIC2 Preference Shares shall be paid directly by the payer thereof into the BFC2 Collection Account;
- 7.4.19 the Company shall comply with all Applicable Laws necessary to carry on its business;
- 7.4.20 the Company shall maintain all necessary authorisations under any Applicable Laws required for the entering into and implementation of the transactions contemplated by the Transaction Documents;
- 7.4.21 the Company shall at all times and in all respects comply with its obligations in terms of the Transaction Documents to which it is a party;

- 7.4.22 the Company shall not enter into any agreement, arrangement or understanding whatsoever with any third party whomsoever, save for the Transaction Documents to which it is a party and save for any agreement or arrangement in connection with the appointment of its directors, public officer and company secretary;
- 7.4.23 notwithstanding anything to the contrary herein contained, the Company shall promptly inform the Preference Share Agent of any change of name and furnish the Preference Share Agent with a copy of the form approved by the Registrar of Companies in relation to such change of name;
- 7.4.24 the Company shall maintain the terms of the BFC2 Preference Shares and ensure that the BFC2 Preference Shares remain validly issued until redeemed in accordance with the BFC2 Memorandum of Incorporation;
- 7.4.25 the Company:
- 7.4.25.1 is not a Sanctioned Entity nor in contravention of any Sanctions;
 - 7.4.25.2 will not be a party to nor participate in a Sanctioned Transaction in any manner;
 - 7.4.25.3 shall not directly or indirectly use the proceeds of the BFC2 Preference Shares for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions; and
 - 7.4.25.4 shall conduct its businesses in compliance with anti-corruption laws applicable to it;
- 7.4.26 to the extent permissible by Applicable Law, the Company shall not apply for any order of court in terms of section 48(6) of the Companies Act;
- 7.4.27 the Company shall take all action and fulfil all conditions required by the Company in order to enable the Company lawfully to enter into, exercise its rights under and comply with its obligations contained in, each 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;
- 7.4.28 the Company shall not be entitled to make, declare or pay any Distribution in respect of the BFC2 Preference Shares from any source other than –
- 7.4.28.1 Distributions made or paid to the Company on account of the BIC2 Preference Shares;
 - 7.4.28.2 the proceeds of any Permitted Disposal;
 - 7.4.28.3 the proceeds of any BFC2 Refinancing;
 - 7.4.28.4 the proceeds of any BFC2 Subordinated Loan; or
 - 7.4.28.5 any other source as may be agreed to in writing by the Preference Share Agent;

- 7.4.29 the Company shall procure that –
- 7.4.29.1 all requisite resolutions (the "**Requisite Resolutions**") of the Company's board of directors to authorise the Company's 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
- 7.4.29.2 the Requisite Resolutions remain of full force and effect and are not varied or rescinded;
- 7.4.30 in relation to any amounts paid by the Company to any person on account of Distributions received by the Company, the Company shall deliver a Required Declaration to such person within the period contemplated by the relevant section of the Income Tax Act.

8. INFORMATION UNDERTAKINGS

- 8.1 Until the BFC2 Discharge Date unless the Preference Share Agent otherwise agrees in writing, the Company shall deliver to the Preference Share Agent –
- 8.1.1 notification of any litigation, arbitration or other analogous proceedings in respect of the Company, and of any BFC2 Potential Trigger Event or BFC2 Illegality Event or any fact or circumstance that, with the giving of notice or the passing of time or otherwise would become a BFC2 Illegality Event promptly after becoming aware thereof;
- 8.1.2 the audited annual financial statements of the Company for each Financial Year ending after the Issue Date (2016) within 120 (one hundred and twenty) Business Days of the end of such Financial Year;
- 8.1.3 copies of all documents delivered by the Company to its creditors from time to time on the Business Day following such documents having been delivered to such creditors;
- 8.1.4 such other information in relation to the Company as the Preference Share Agent or any BFC2 Preference Shareholder may require, promptly after such information is requested by such person;
- 8.1.5 as soon as reasonably possible after becoming aware of them, the details of any litigation, arbitration or administrative proceedings and/or any liquidation applications, winding up applications or business rescue applications, which are current, threatened or pending against the Company;
- 8.1.6 copies of all the Company Board Meeting Documents to the Preference Share Agent which shall be delivered on the date on which such Board Meeting Documents are delivered to the directors of the Company; and
- 8.1.7 promptly, and in any event by no later than 5 (five) Business Days following a Distribution by the Company, provide the Preference Share agent with copies of all such director resolutions as are required to be passed by the Company in order to comply with section 46 of the Companies Act in respect of each Distribution made by the Company to the Preference Share Agent.

- 8.2 If the Preference Share Agent consents to any action by the Company contemplated in clause 7.4.2 hereof, the Company shall, as soon as practicably possible thereafter, give written notice thereof to MTN.
- 8.3 Until the BFC2 Discharge Date, the Company shall allow any one or more representatives, agents and/or advisors of the BFC2 Preference Shareholders and the Preference Share Agent, upon reasonable notice, to have access to its assets, books and records and to inspect same during normal business hours.

9. FATCA INFORMATION

- 9.1 On the Original Signature Date, the Issue Date (2016), the Issue Date (2021) and the Refinancing Date, each Party warrants that it is a FATCA Exempt Party.
- 9.2 Subject to clause 9.4, each Party shall, within ten Business Days of a reasonable request by the other Parties:
- 9.2.1 confirm to such other Parties whether it is:
 - 9.2.1.1 a FATCA Exempt Party; or
 - 9.2.1.2 not a FATCA Exempt Party;
 - 9.2.2 supply to such other Parties such forms, documentation and other information relating to its status under FATCA as each such other Party reasonably requests for the purposes of each such other Party's compliance with FATCA; and
 - 9.2.3 supply to such other Parties such forms, documentation and other information relating to its status as each such other Party reasonably requests for the purposes of each such other Party's compliance with any other law, regulation, or exchange of information regime.
- 9.3 If a Party confirms to the other Parties pursuant to clause 9.2.1 that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify the other Parties promptly.
- 9.4 Clause 9.2 shall not oblige any Party to do anything, which would or might in its reasonable opinion constitute a breach of:
- 9.4.1 any law or regulation;
 - 9.4.2 any fiduciary duty; or
 - 9.4.3 any duty of confidentiality.
- 9.5 If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with clause 9.2.1 or clause 9.2.1.2 (including, for the avoidance of doubt, where clause 9.4 applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- 9.6 The Company irrevocably and unconditionally undertakes that it shall not, at any time during the Term, be or become a US Tax Obligor.

10. FATCA DEDUCTION

- 10.1 Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- 10.2 Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Preference Share Agent and the Preference Share Agent shall notify the BFC2 Preference Shareholders.

11. DISTRIBUTIONS

Without limiting or derogating from any other provisions hereof, the Company hereby irrevocably and unconditionally undertakes that, save as provided in the BFC2 Memorandum of Incorporation and the BFC2 Priority of Payments, the Company shall not, unless otherwise agreed in writing by the Preference Share Agent, prepay or repay any loans or declare and/or pay and/or make any Distribution in respect of the Ordinary Shares, whether in cash or *in specie*, unless and until the BFC2 Preference Shares have been redeemed in full in accordance with their terms.

12. CESSION AND DELEGATION

- 12.1 Subject to the terms of the Finance Documents and clauses 12.2 and 12.3 hereof, each BFC2 Preference Shareholder shall be entitled to sell, pledge, cede or otherwise Dispose of any or all of the BFC2 Preference Shares held by it to MTN (or a Call Option MTN Acceded Nominee) or any Assignment Party and/or each BFC2 Investor and BFC2 Preference Shareholder shall be entitled to cede, assign and/or delegate any or all of its rights and/or obligations under the Finance Documents to MTN (or a Call Option MTN Acceded Nominee) or any Assignment Party. If any BFC2 Preference Shareholder wishes to sell, pledge, cede or otherwise Dispose of any or all of the BFC2 Preference Shares held by it to any person and/or any BFC2 Investor or BFC2 Preference Shareholder wishes to cede, assign and/or delegate any or all of its rights and/or obligations under the Finance Documents to any person other than MTN (or a Call Option MTN Acceded Nominee) or any person who is not an Assignment Party, such cession, sale, pledge, delegation or Disposal, as the case may be, shall require the prior written consent of MTN. To the extent that any such cession, delegation, sale, pledge or other Disposal results in a splitting of claims, the Company hereby irrevocably consents thereto.
- 12.2 Save in respect of any sale, pledge, cession or other Disposal of the BFC2 Preference Shares to any Assignment Party or any cession, delegation or assignment of rights and/or obligations under the Finance Documents to an Assignment Party in each case, as a result of the occurrence of a BFC2 Trigger Event which is Continuing or a BFC2 Illegality Event, no BFC2 Preference Shareholder or BFC2 Investor shall be entitled to sell, pledge, cede or otherwise Dispose of any or all of the BFC2 Preference Shares held by it to any Assignment Party and/or to cede, assign and/or delegate any or all of its rights and/or obligations under the Finance Documents to any Assignment Party (as applicable) if as a result of such sale, pledge, cession or other Disposal of the BFC2 Preference Shares or such cession, delegation or assignment of rights and/or obligations under the Finance Documents (the date of such sale, pledge, cession or other Disposal of the Preference Shares or such cession, delegation or assignment of rights and/or obligations under the Finance Documents, hereinafter referred to as the "**Transfer Date**"), such Assignment Party, having regard to the circumstances prevailing at the Transfer Date, would be entitled to deliver a BFC2 Adjustment Notice to the Company on the Transfer Date.

- 12.3 Following the occurrence of a BFC2 Trigger Event which is Continuing, each BFC2 Preference Shareholder shall be entitled to sell, pledge, cede or otherwise Dispose of any or all of the BFC2 Preference Shares held by it to any third party and each BFC2 Preference Shareholder and BFC2 Investor shall be entitled and/or to cede, assign and/or delegate any or all of its rights and/or obligations under the Finance Documents to any third party. To the extent that any such cession, delegation, sale, pledge or other Disposal results in a splitting of claims, the Company hereby irrevocably consents thereto.
- 12.4 The Company shall not be entitled to cede all or any of its rights and/or delegate all or any of its obligations under any Key Transaction Document to any person without the express prior written consent of the Preference Share Agent and MTN.

13. ADDITIONAL EXPENSES

The Company hereby unconditionally and irrevocably undertakes to each of the BFC2 Investors and BFC2 Preference Shareholders that, until the BFC2 Discharge Date –

- 13.1 it shall, from time to time and in accordance with the BFC2 Priority of Payments reimburse each BFC2 Investor and each Preference Shareholder on the applicable BFC2 Dividend Date and BFC2 Redemption Date, for -

13.1.1 all costs and expenses (including legal fees as between attorney and own client) together with any VAT thereon incurred (provided that any such costs and expenses incurred prior to the enforcement of any right or remedy by any BFC2 Investor or BFC2 Preference Shareholder under this Agreement shall be costs reasonably incurred), in or in connection with the preservation of any of the rights of such BFC2 Preference Shareholder in terms of the Finance Documents; and

13.1.2 all costs and expenses (including legal fees as between attorney and own client) together with any VAT thereon, incurred in or in connection with the enforcement of any of the rights of such BFC2 Preference Shareholder in terms of the Finance Documents,

including in both cases any costs and expenses relating to any investigation undertaken as to whether or not a BFC2 Potential Trigger Event or BFC2 Illegality Event might have occurred or is likely to occur or any steps which become necessary or prudent in connection with any proposal for remedying or otherwise resolving a BFC2 Potential Trigger Event or BFC2 Illegality Event;

- 13.2 it shall pay all Securities Transfer Tax and registration duties and other Taxes and all other duties and Taxes to which this Agreement, any of the other Transaction Documents, or any judgment given in connection herewith or therewith, is or at any time may be subject; and
- 13.3 if the Company requests any amendment, waiver or consent in terms of this Agreement or any of the other Key Transaction Documents, then it shall reimburse each BFC2 Preference Shareholder and the Preference Share Agent for all costs and expenses (including legal fees as between attorney and own client), together with any VAT thereon, incurred by such BFC2 Preference Shareholder and/or the Preference Share Agent in responding to or complying with such request.

14. INDEMNITIES

- 14.1 The Company hereby unconditionally and irrevocably agrees to indemnify and hold harmless each BFC2 Investor and BFC2 Preference Shareholder (and each of its officers, directors, employees and agents) (each an “**Indemnified Party**”) against any cost, claim, liability, loss or expense (including legal fees) together with VAT thereon (save for

consequential losses and any cost, claim, liability, loss or expense incurred as a result of the wilful misconduct or gross negligence of any Indemnified Party) ("**Losses**"), which any such Indemnified Party may sustain or incur as a consequence of –

- 14.1.1 the failure of the Company to make payment on the due date of any sum due or scheduled or required to be paid in terms of the Finance Documents; or
- 14.1.2 the breach of any representation, warranty or undertaking in the Finance Documents including, without limitation, the warranty in clause 6.1.15; or
- 14.1.3 any breach of any Environmental Law by BIC2, BFC2 and/or MTN and/or in connection with an Environmental Claim by BIC2, BFC2 and/or MTN which gives rise to a liability for any of the BFC2 Preference Shareholders and/or the Preference Share Agent which liability arises as a result of the BFC2 Preference Shareholder's participation in the Finance Documents; or
- 14.1.4 the BFC2 Preference Shares (or any of them) not being validly created and/or issued to the BFC2 Investor and/or, for any reason whatsoever, any BFC2 Preference Shareholder not (in respect of any BFC2 Preference Share held by it) being entitled to all or any rights and/or privileges set out in the BFC2 Preference Share Terms; or
- 14.1.5 the occurrence of any BFC2 Trigger Event, BFC2 Potential Trigger Event or BFC2 Illegality Event; or
- 14.1.6 the BFC2 Preference Shares at any time constituting "*hybrid equity instruments*" or "*third party backed shares*" as those terms are defined in section 8E and section 8EA of the Income Tax Act, respectively, save if this occurs solely by reason of any BFC2 Investor and/or any BFC2 Preference Shareholder having taken, without the consent of the Company, and prior to the occurrence of any BFC2 Potential Trigger Event or BFC2 Trigger Event, any action in respect of BFC2 Preference Shares held by it which results in it acquiring an "*enforcement right*" in relation to such BFC2 Preference Shares (as defined in section 8EA(1) of the Income Tax Act); or
- 14.1.7 any payment in respect of any BFC2 Preference Share or under any Finance Document being or becoming subject to any Tax in the hands of the applicable BFC2 Investor or BFC2 Preference Shareholder at any time, whether before or after the redemption of such BFC2 Preference Share in accordance with the BFC2 Memorandum of Incorporation; or
- 14.1.8 the occurrence of any BFC2 Adjustment Event (whether before or after redemption of the BFC2 Preference Shares (or any of them)), it being agreed that any amount payable by the Company under the indemnity contemplated in this clause 14 will be calculated on the same basis and using the same methodology set out in the BFC2 Preference Share Terms; or
- 14.1.9 any BFC2 Preference Share not being redeemed in accordance with the BFC2 Preference Share Terms; or
- 14.1.10 any payment which the applicable BFC2 Preference Shareholder may previously have received or may thereafter receive from any person in respect of the BFC2 Preference Shares being set aside, whether before or after the redemption of the BFC2 Preference Shares, refunded or reduced under any Applicable Law or proving to have been for any reason invalid; or

14.1.11 any Tax payable by the applicable BFC2 Preference Shareholder on account of any indemnity payment made under this clause 14.1,

provided that the Company shall be under no obligation to indemnify any BFC2 Investor and/or any BFC2 Preference Shareholder against any losses which any BFC2 Investor and/or any BFC2 Preference Shareholder may sustain or incur as a consequence of as a result of any BFC2 Preference Dividend paid or payable by the Company to any BFC2 Investor and/or any BFC2 Preference Shareholder being deemed an amount of income in terms of section 8EA(2) of the Income Tax Act, solely by reason of any BFC2 Investor and/or any BFC2 Preference Shareholder having taken, without the consent of the Company, and prior to the occurrence of any BFC2 Potential Trigger Event or BFC2 Trigger Event, any action in respect of BFC2 Preference Shares held by it which results in it acquiring an "*enforcement right*" in relation to such BFC2 Preference Shares (as defined in section 8EA(1) of the Income Tax Act).

14.2 Subject to the provisions of clause 14.4 hereof, each indemnity in this clause 14 shall constitute a separate and independent obligation from the other obligations contained in this Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due in terms of this Agreement or under any such judgment or order or any redemption of the BFC2 Preference Shares or any of them, notwithstanding any redemption of the BFC2 Preference Shares or any of them and/or the BFC2 Preference Shareholder ceasing to be a BFC2 Preference Shareholder pursuant to any such redemption.

14.3 Any amount due to an Indemnified Party under this clause 14 shall be certified by such Indemnified Party, which certificate shall in the absence of manifest error constitute *prima facie* proof of the amount due to any Indemnified Party.

14.4 No claims for the Losses under clause 14.1 shall result in any duplication of any payment made to any Indemnified Party in respect of substantially the same cause of action.

14.5 The provisions of this clause 14 shall survive the termination of this Agreement for whatsoever reason and shall survive the redemption of the BFC2 Preference Shares and shall be enforceable by any BFC2 Investor in relation to the holding of any BFC2 Preference Shares by it at any time, notwithstanding such BFC2 Investor ceasing to be a BFC2 Preference Shareholder, and shall remain in full force and effect until the expiry of the applicable Indemnity Period.

14.6 No provision of this Agreement or any other Finance Document will:

14.6.1 interfere with the right of the BFC2 Preference Shareholder and/or its Consolidating Company (if any) to arrange its affairs (Tax, reserving or otherwise) in whatever manner it thinks fit in its sole discretion;

14.6.2 oblige the BFC2 Preference Shareholder and/or its Consolidating Company (if any) to investigate or claim any credit, relief, remission or repayment available to it, or to alter the extent, order and manner of any claim; or

14.6.3 oblige the BFC2 Preference Shareholder and/or its Consolidating Company (if any) to disclose any information relating to its affairs (Tax, reserving or otherwise), or any computation in respect of Taxes.

15. PREFERENCE SHARE AGENT

15.1 The Company acknowledges that:

- 15.1.1 the BFC2 Initial Investors appointed Nedbank as the Preference Share Agent with effect from the Original Signature Date; and
- 15.1.2 subject to the Refinancing Agreement becoming unconditional and being implemented in accordance with its terms, the BFC2 Refinancing Investors will, in terms of the applicable provisions of the Refinancing Agreement, appoint RMB as the Preference Share Agent on and with effect from the Refinancing Date,

as their agent in terms of the Interfunder Agreement and the other Finance Documents to which the BFC2 Preference Shareholders are a party from time to time and the BFC2 Preference Shareholders are entitled, from time to time, to remove the Preference Share Agent, provided that they replace the Preference Share Agent in accordance with the provisions of the Interfunder Agreement.

15.2 Where this Agreement –

- 15.2.1 makes reference to the Preference Share Agent exercising any discretion or election, performing any function, exercising or enforcing any right, requiring the performance of any obligation or in any other manner whatsoever, such reference shall be to the Preference Share Agent acting on behalf of the relevant BFC2 Preference Shareholders in accordance with the provisions of the Interfunder Agreement;
- 15.2.2 requires that the waiver, consent, instruction, approval or permission of the Preference Share Agent is to be obtained, such waiver, consent, instruction, approval or permission shall at all times be required to be obtained from the relevant BFC2 Preference Shareholders directly and the granting or withholding of such waiver, consent, instruction, approval or permission shall be issued by the Preference Share Agent and not by the relevant BFC2 Preference Shareholders.

15.3 The Company shall be entitled to rely on any written instructions received from the Preference Share Agent and on any written waivers, consents and approvals given by the Preference Share Agent as being that of the subscribers for the BFC2 Preference Shares (in respect of the period up to the Issue Date (2016)) or of the relevant BFC2 Preference Shareholders (in respect of the period after the Issue Date (2016)). Any action taken by the Company in fulfilment of or pursuant to any such written instructions, waivers, consents and/or approvals shall constitute a valid discharge of its obligations (including payment) in terms of this Agreement.

16. PAYMENTS

16.1 All payments to be made by the Company to the BFC2 Preference Shareholders in terms of this Agreement and in terms of the BFC2 Priority of Payments contained in the BFC2 Memorandum of Incorporation shall be made –

- 16.1.1 without set-off or deduction of any nature;
- 16.1.2 free and clear of and without deduction for or on account of Tax unless the Company is required to make such payment subject to the deduction or withholding of Tax, in which case the sum payable by the Company (in respect of which such deduction or withholding is required to be made) shall,

other than as provided in clause 10 above, be increased to the extent necessary to ensure that the BFC2 Preference Shareholders receive a sum net of any deduction or withholding such that they are in the same after Tax net economic position they would have been in had no such deduction or withholding been made or required to be made;

- 16.1.3 in respect of the BFC2 Preference Shares held by each BFC2 Preference Shareholder by electronic funds transfer into the account notified in writing by such BFC2 Preference Shareholder to the Preference Share Agent and the Account Bank.
- 16.2 Any applicable BFC2 Preference Shareholder may change the bank account set out in clause 16.1.3 by giving 3 (three) Business Days written notice thereof to the Company.
- 16.3 Notwithstanding anything to the contrary contained herein or in any other Finance Document, no payment obligations of the Company under any Finance Document became due or payable prior to the Issue Date (2016).

17. BREACH

- 17.1 Subject to clause 17.2 hereof, without limiting any rights the BFC2 Preference Shareholders may have under the Finance Documents or the BFC2 Preference Shares, should the Company breach any provision of any Finance Document to which it is a party and such breach has not been remedied or waived for a period of 3 (three) Business Days after receiving written notice thereof from the Preference Share Agent (which written notice shall specify the breach in question and shall demand remedy of such breach within a period of 3 (three) Business Days after receipt of such written notice), the Preference Share Agent shall be entitled, without prejudice to its/their other rights in law including without limitation any right to claim damages, to claim immediate specific performance of all of the Company's obligations then due for performance in terms of this Agreement and the other Finance Documents; provided that, notwithstanding anything to the contrary contained in this Agreement, a Party shall not be entitled to unilaterally cancel this Agreement for any reason whatsoever, it being recorded that cancellation is not an appropriate remedy for purposes of this Agreement.
- 17.2 Notwithstanding the provisions of clause 17.1 hereof, if the BFC2 Preference Share Terms prescribe a particular period to remedy any BFC2 Potential Trigger Event (the "**Required Period**"), the Preference Share Agent shall provide the Company with such Required Period to remedy such BFC2 Potential Trigger Event before such BFC2 Potential Trigger Event becomes a BFC2 Trigger Event.

18. CONFLICTS AND TERMINATION

- 18.1 Any clause hereof which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect and shall be enforceable by either Party, its successors, assignees and cessionaries.
- 18.2 Save as otherwise provided for in the Companies Act, should there be any conflict between the provisions of this Agreement and the provisions of the Constitutional Documents of the Company, as between the Parties hereto, the provisions of this Agreement shall prevail. In such event the Company shall forthwith upon receipt of written request from the BFC2 Preference Shareholders, at the Company's own cost, alter such Constitutional Documents so as to conform to the terms of this Agreement.

19. DOMICILIUM CITANDI ET EXECUTANDI

19.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

19.1.1 United Towers (as BFC2 Investor and BFC2 Preference Shareholder):

Physical: c/o Absa Bank Limited
15 Alice Lane
Sandown
Sandton
2196
South Africa

E-mail: xradocmanvalidations@absa.africa

Attention: Transaction Administration IMPEX;

19.1.2 RMB (as BFC2 Investor and BFC2 Preference Shareholder):

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

E-mail: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management: Investment
Banking;

19.1.3 MML (as BFC2 Investor and BFC2 Preference Shareholder):

Physical: 268 West Avenue
Centurion
0157
South Africa

Email: Kagiso.Tsatsane@mmltd.co.za

Attention: Head: Asset Origination;

19.1.4 the Company:

Physical: 135 Rivonia Road
Sandown
Sandton
2196
South Africa

E-mail: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration

with a copy to:

MTN:

Physical: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

E-mail: Kholekile.Nsamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba; and

19.1.5 the Preference Share Agent:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

E-mail: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Preference Share Agent – MTN Zakhele Futhi.

19.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by e-mail.

19.3 Any Party may by notice to the other Parties change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in Gauteng or its e-mail address, provided that the change shall become effective on the 5th (fifth) Business Day from the deemed receipt of the notice by the other Party.

19.4 Any notice to a Party -

19.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the date of delivery or if such delivery is not during normal business hours or such date is not a Business Day, on the immediately succeeding Business Day; or

19.4.2 sent by email to its chosen email address stipulated in clause 19.1 during ordinary business hours, shall be deemed to have been received on the date of despatch or if delivery is not during normal business hours or such date is not a Business Day, on the immediately succeeding Business Day.

- 19.5 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 it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

20. ENGLISH LANGUAGE

All correspondence issued and all information provided hereunder and in relation to the BFC2 Preference Shares shall be in the English language.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This Agreement shall in all respects be governed by the laws of South Africa.
- 21.2 The Parties agree that any legal action or proceedings arising out of or in connection with the Finance Documents to which they are party may be brought against such Party in the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) and irrevocably submits to the non-exclusive jurisdiction of such court. The Parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. Nothing herein shall affect the any Party's right to serve process in any manner permitted by law. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of any Party to take proceedings against any other Party in whatever other jurisdiction the Party taking such proceedings considers appropriate nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.
- 21.3 The Company irrevocably and unconditionally -
- 21.3.1 agrees that if any BFC2 Investor and/or the Preference Share Agent brings legal proceedings against it or its assets in relation to the Finance Documents to which it is party no immunity from such legal proceedings (which will be deemed to include without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) will be claimed by or on behalf of itself or with respect to its assets;
- 21.3.2 waives any such right of immunity from suit which it or its assets now has or may in the future acquire in connection with any action against it based on the Finance Documents; and
- 21.3.3 consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

22. WHOLE AGREEMENT, NO AMENDMENT

- 22.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.
- 22.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms

of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

22.3 No oral *pactum de non petendo* shall be of any force or effect.

22.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

22.5 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

23. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction shall, with respect to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

24. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, all of which shall together constitute one and the same instrument. A scanned and emailed counterpart shall constitute a valid counterpart for all purposes hereunder.

25. STIPULATIO ALTERI

25.1 The obligations of the Company in this Agreement expressed to be in favour of MTN each constitute a *stipulatio alteri* in favour of MTN and are capable of acceptance by MTN at any time and in any manner.

25.2 Subject to clause 25.1 hereof, no part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a party to this Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

26. COSTS

The Company shall on redemption of the BFC2 Preference Shares pay all Securities Transfer Tax (if any) in connection with the redemption of the BFC2 Preference Shares.

27. INDEPENDENT ADVICE

The Company acknowledges in favour of the BFC2 Investors that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Company acknowledges that all of the provisions of this Agreement have been negotiated as between it and the BFC2 Investors and are part of the overall intention of the Parties in connection with this Agreement.

28. CONFIDENTIALITY

28.1 Save to the extent required to be disclosed for the purposes of implementing the Transaction or with the prior written consent of MTN to the contrary, each Party will keep confidential and will not disclose to any person:

28.1.1 the details of this Agreement, the details of the negotiations leading to this Agreement, and the information handed over to such Party during the course of negotiations, as well as the details of all the transactions or agreements contemplated in this Agreement; and

28.1.2 all information relating to the business or the operations and affairs of the other Parties (together "**Confidential Information**"),

save that a BFC2 Preference Shareholder will be entitled to disclose Confidential Information to the members of its group and to any person to whom a BFC2 Preference Shareholder may wish to transfer any BFC2 Preference Shares, and their officers, directors, employees and professional advisers, subject to -

28.1.3 any such member of its group, potential financier or their officers, directors, employees granting a confidentiality undertaking in favour of the relevant BFC2 Preference Shareholder in writing, substantially in a form approved by the Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or

28.1.4 in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the relevant BFC2 Preference Shareholder, any such professional adviser granting a confidentiality undertaking in favour of the relevant BFC2 Preference Shareholder in writing in a form, and in substance reasonably satisfactory to the Preference Share Agent.

28.2 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:

28.2.1 is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality; or

28.2.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who received such Confidential Information; or

28.2.3 is disclosed to any professional adviser or potential financier of the Company or MTN subject to:

28.2.3.1 any such potential financier granting a confidentiality undertaking in favour of the relevant BFC2 Preference Shareholder in writing, substantially in a form approved by the Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or

28.2.3.2 in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the relevant BFC2 Preference Shareholder, any such professional adviser granting a confidentiality undertaking in favour of the relevant BFC2 Preference Shareholder in writing

in a form, and in substance reasonably satisfactory to the Preference Share Agent; or

- 28.2.4 is required by the provisions of any Applicable Law, statute or regulation or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed.
- 28.3 The provisions of clauses 28.1 and 28.2 will not apply to the relevant BFC2 Preference Shareholder to the extent that disclosure of Confidential Information is made by (or on behalf of) the relevant BFC2 Preference Shareholder pursuant to any enforcement of their rights under any Finance Document in accordance with its terms.
- 28.4 The provisions of this clause supersede any prior confidentiality undertaking given by a BFC2 Preference Shareholder in favour of MTN pursuant to any confidentiality letter in relation to the Transaction and shall endure for a period of 24 (twenty four) months after termination of this Agreement, or any Party ceasing to be a Party to this Agreement for any reason.

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Annexure A – BFC2 Investor Proportions

Part 1: As at the Issue Date (2016)

	BFC2 Initial Investor	BFC2 Investor Proportion	Aggregate BFC2 Issue Price for its BFC2 Tranche 12 Preference Shares payable by the BFC2 Initial Investor
1.	United Towers	30% (thirty per cent)	The amount set out against its name in the Final Capital Structure and the other Final Capital Structure Documents
2.	RMB	30% (thirty per cent)	The amount set out against its name in the Final Capital Structure and the other Final Capital Structure Documents
3.	Depfin	40% (forty per cent)	The amount set out against its name in the Final Capital Structure and the other Final Capital Structure Documents

Part 2: As at the Issue Date (2021)

	BFC2 Refinancing Investor	BFC2 Investor Proportion	Aggregate BFC2 Issue Price for its BFC2 Tranche 2 Preference Shares payable by the BFC2 Refinancing Investor
1.	United Towers	40% (forty per cent)	R95,985,000
2.	RMB	40% (forty per cent)	R129,299,000
3.	MML	20% (twenty per cent)	R158,655,000

Annexure B – Assignment Parties

Part 1: LOCAL BANKS

Absa Bank Limited

FirstRand Limited

Grindrod Bank Limited

Investec Bank Limited

Nedbank Group Limited

The Standard Bank of South Africa Limited

Part 2: FINANCIAL INSTITUTIONS

ABSA Insurance Company Limited

Development Bank of Southern Africa Limited

Grindrod Investments Trust Proprietary Limited

Grindrod Preference Share Investment Trust Proprietary Limited

Industrial Development Corporation Limited

Liberty Group Limited

Momentum Metropolitan Holdings Limited

Momentum Metropolitan Life Limited

Ninety One Limited

Old Mutual Investment Group (South Africa) Proprietary Limited

Old Mutual Life Assurance Company (South Africa) Limited

Old Mutual Specialised Finance Proprietary Limited

Outsurance Insurance Company Limited

Public Investment Corporation Limited

Sanlam Alternative Income Fund

Sanlam Capital Markets Proprietary Limited

Sanlam Life Insurance Limited

Sanlam Optimised Income Fund

Sanlam Prefco Proprietary Limited

Sanpref Proprietary Limited

Santam Limited

Stanlib Limited

Part 3:
AFFILIATES

Any affiliate (other than a hedge fund), subsidiaries, holding companies or funds under management of any of the BFC2 Preference Shareholders and the banks or financial institutions listed in this Part 3 of **Annexure B**.

**SCHEDULE 7: AMENDED AND RESTATED BIC2 PREFERENCE SHARE
SUBSCRIPTION AGREEMENT**



(1) JABISAN 04 (RF) PROPRIETARY LIMITED

(2) MTN ZAKHELE FUTHI (RF) LIMITED
(as Company)

and

(3) FIRSTRAND BANK LIMITED
(acting through its Rand Merchant Bank division)
(in its capacity as Preference Share Agent)

**AMENDED AND RESTATED
BIC2 PREFERENCE SHARE SUBSCRIPTION AGREEMENT**

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WHEREBY IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

1.1 words importing:

1.1.1 any one gender include the other two genders;

1.1.2 the singular include the plural and vice versa; and

1.1.3 natural persons include created entities (corporate or unincorporate) and the state and vice versa;

1.2 capitalised terms used but not defined herein shall bear the meaning ascribed to them in the BIC2 Memorandum of Incorporation (as defined below) and the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1 "Affected Holder" means:

1.2.1.1 in the case of clause 14.9.1.3 below, the Holder of the applicable BFC2 Illegality Affected Preference Shares; or

1.2.1.2 in the case of clause 14.9.1.4 below, the Holder of the applicable BFC2 Adjustment Affected Preference Shares;

1.2.2 "**Agreement**" means this BIC2 Preference Share Subscription Agreement (together with all annexures hereto, if any);

1.2.3 "**Amendment Date**" means the date on which this Agreement is amended and restated by the Parties thereto;

1.2.4 "**April Priority of Payments Date**" means 30 April of each year during the Term;

1.2.5 "**Auditors**" shall mean the auditors of the Company from time to time;

1.2.6 "**Available Administration Costs**" means, at any time during any Dividend Period that occurs during the BEE Listing Period, that portion of the Administration Costs that has not been applied by the Company towards the payment of, or provision for, the Administration Costs incurred or to be incurred during such Dividend Period, and which is available to be utilised by the Company for the payment of any JSE Losses;

1.2.7 "**Available Operational Expenses Amount**" means, at any time during a Dividend Period that occurs during the BEE Listing Period, that portion of the Operational Expenses Amount that has not been applied by the Company at such time towards the payment of JSE Losses during such period;

1.2.8 "**BFC2**" means Jabisan 04 (RF) Proprietary Limited (Registration No. 2014/021122/07), a special-purpose limited liability company duly registered and incorporated in accordance with the laws of South Africa;

- 1.2.9 **"BFC2 Additional Expenses"** means any cost or expense (including VAT thereon) for which BFC2 is liable in terms of clause 13 of the BFC2 Preference Share Subscription Agreement;
- 1.2.10 **"BFC2 Adjustment Affected Preference Shares"** shall bear the meaning ascribed thereto in the Call Option Agreement;
- 1.2.11 **"BFC2 Illegality Affected Preference Shares"** shall bear the meaning ascribed thereto in the Call Option Agreement;
- 1.2.12 **"BFC2 Indemnity Event"** means any event or circumstance pursuant to which BFC2 is or may be required to pay any amount to any BFC2 Preference Shareholder in accordance with the provisions of clause 14 of the BFC2 Preference Share Subscription Agreement;
- 1.2.13 **"BIC2 Memorandum of Incorporation"** means the memorandum of incorporation of the Company from time to time;
- 1.2.14 **"BIC2 Participation Fee"** means the non-refundable fee paid by the Company to the BIC2 Investor as contemplated in clause 5;
- 1.2.15 **"BIC2 Preference Share Terms"** means the preferences, rights, limitations and other terms attaching to the BIC2 Preference Shares as set out in the BIC2 Memorandum of Incorporation from time to time;
- 1.2.16 **"BIC2 Security Account"** means the bank account to be maintained by the Company with the Account Bank into which certain sums are required under the Finance Documents to be paid in respect of the BIC2 Preference Shares;
- 1.2.17 **"Call Option Strike Price"** shall bear the meaning ascribed thereto in the Call Option Agreement;
- 1.2.18 **"CIPC"** means the Companies and Intellectual Property Commission;
- 1.2.19 **"Code"** means the US Internal Revenue Code of 1986;
- 1.2.20 **"Company"** means MTN Zakhele Futhi (RF) Limited (Registration No. 2016/268837/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.21 **"Company Board Meeting"** means each meeting of the board of directors of the Company from time to time, including, without limitation, meetings of the Company's board of directors required to be held in terms of the Company's Constitutional Documents;
- 1.2.22 **"Company Notification Date"** shall bear the meaning ascribed thereto in clause 14.8.1 hereof;
- 1.2.23 **"Constitutional Documents"** means, in respect of any entity incorporated in South Africa at any time, the then current and up-to-date memorandum of incorporation, certificate of incorporation and certificate to commence business of such entity or, in the case of a trust, the trust deed of such trust and the letters of authority issued to the trustees of such trust;

- 1.2.24 **"Continuing"** means in relation to the occurrence of any BIC2 Potential Trigger Event:
- 1.2.24.1 where the BIC2 Potential Trigger Event is incapable of remedy, such BIC2 Potential Trigger Event is deemed to be continuing unless it has been expressly waived in writing by the Preference Share Agent and any conditions of such waiver have been fulfilled to the satisfaction of the Preference Share Agent;
 - 1.2.24.2 in any other case, the BIC2 Potential Trigger Event, is deemed to be continuing unless and until it has been expressly waived in writing by the Preference Share Agent or remedied in accordance with the provisions of the BIC2 Preference Share Terms and any conditions of such waiver or remedy, as the case may be, have been fulfilled to the satisfaction of the Preference Share Agent;
- 1.2.25 **"CTC"** means "*contributed tax capital*" as defined in section 1 of the Income Tax Act;
- 1.2.26 **"Designated Shareholder"** means, at any time, an Ordinary Shareholder who is the registered holder of 5% (five per cent) or more of the Ordinary Shares;
- 1.2.27 **"Determination Issue"** means any one of the following events, namely, that:
- 1.2.27.1 a Post Redemption Event has occurred or there is a reasonable likelihood of a Post Redemption Event occurring in respect of the BIC2 Preference Shares and/or the BFC2 Preference Shares (or any of them); and/or
 - 1.2.27.2 the SARS Amount will or may become payable to SARS after the redemption of all BIC2 Preference Shares;
- 1.2.28 **"Dividend Period"** means a period of 12 (twelve) consecutive months commencing on an April Priority of Payments Date and ending on the immediately succeeding April Priority of Payments Date, provided that the last such period shall commence on the April Priority of Payments Date occurring immediately prior to the Final Redemption Date and end on the Final Redemption Date;
- 1.2.29 **"Environment"** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:
- 1.2.29.1 air (including, without limitation, air within natural or man-made structures, whether above or below ground);
 - 1.2.29.2 water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
 - 1.2.29.3 land (including, without limitation, land under water);
- 1.2.30 **"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;
- 1.2.31 **"Environmental Law"** means any applicable law or regulation which relates to:
- 1.2.31.1 the pollution or protection of the Environment;

- 1.2.31.2 harm to or the protection of human health;
- 1.2.31.3 the conditions of the workplace; or
- 1.2.31.4 the generation, handling, storage, use, release, emission or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste;
- 1.2.32 **"Environmental Permits"** means any permit and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Company conducted on or from the properties owned or used by the Company;
- 1.2.33 **"Equity Share"** means an *"equity share"*, as such term is defined in the Income Tax Act, and **"Equity Shares"** shall be construed accordingly;
- 1.2.34 **"Exit Senior Counsel"** shall bear the meaning ascribed thereto in clause 14.9.2;
- 1.2.35 **"Exit Senior Counsel Determination"** shall bear the meaning ascribed thereto in clause 14.9.4;
- 1.2.36 **"Exit Senior Counsel Determination Date"** shall bear the meaning ascribed thereto in clause 14.9.4;
- 1.2.37 **"Exit Senior Counsel Opinion"** shall bear the meaning ascribed thereto in clause 14.9.4;
- 1.2.38 **"FATCA"** means:
 - 1.2.38.1 sections 1471 to 1474 of the Code or any associated regulations;
 - 1.2.38.2 any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in clause 1.2.38.1; or
 - 1.2.38.3 any agreement pursuant to the implementation of any treaty, law or regulation referred to in clauses 1.2.38.1 or 1.2.38.2 with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;
- 1.2.39 **"FATCA Application Date"** means:
 - 1.2.39.1 in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
 - 1.2.39.2 in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or

1.2.39.3 in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within clauses 1.2.39.1 or 1.2.39.2 above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement;

1.2.40 **"FATCA Deduction"** means a deduction or withholding from a payment under a Finance Document required by FATCA;

1.2.41 **"FATCA Exempt Party"** means a Party that is entitled to receive payments free from any FATCA Deduction;

1.2.42 **"Final Senior Counsel Determination Date"** shall bear the meaning ascribed thereto in clause 14.8.7 hereof;

1.2.43 **"Final Senior Counsel Opinion"** shall bear the meaning ascribed thereto in clause 14.8.7 hereof;

1.2.44 **"Holders"** and **"Holder"** shall bear the meaning ascribed thereto in the Call Option Agreement;

1.2.45 **"Income Tax Act"** means the Income Tax Act, 1962 (Act No. 58 of 1962);

1.2.46 **"Indemnified Party"** shall bear the meaning ascribed thereto in clause 14.1 hereof;

1.2.47 **"Indemnity Period Claims"** means, during the Indemnity Period applicable to any BFC2 Preference Shares, the rights and claims and recourse that the ex-Holder of such BFC2 Preference Shares has against the Company and BFC2 respectively pursuant to the Finance Documents on account of, and in relation to, such BFC2 Preference Shares, being its rights and claims and recourse in terms of:

1.2.47.1 clause 14 of the BFC2 Preference Share Subscription Agreement;

1.2.47.2 clause 33.2.1.6.7 of the BFC2 MOI; and

1.2.47.3 clauses 14.7 to 14.10.4 (both inclusive) of this Agreement;

1.2.48 **"Indemnity Period Security"** means, in respect of any BFC2 Preference Shares, all the rights that the ex-Holder of such BFC2 Preference Shares has against the Company pursuant to and under:

1.2.48.1 the First Ranking Guarantee;

1.2.48.2 the BIC2 Account Cession; and

1.2.48.3 the BIC2 Pledge and Cession,

on account of, and in relation to, the Indemnity Period Claims held by that ex-Holder of such BFC2 Preference Shares against the Company in respect of such BFC2 Preference Shares;

1.2.49 **"Issue Date"** means the date on which the BIC2 Preference Shares were issued to the BIC2 Preference Shareholder, being 23 November 2016;

- 1.2.50 **"Initial Senior Counsel Opinion"** shall bear the meaning ascribed thereto in clause 14.8.4 hereof;
- 1.2.51 **"Initial Senior Counsel Determination Date"** shall bear the meaning ascribed thereto in clause 14.8.4 hereof;
- 1.2.52 **"JSE Rules and Directives"** means the rules and directives governing, *inter alia*, the JSE's role as a market regulator and the compliance obligations of members of the JSE;
- 1.2.53 **"Legal Costs and Expenses"** shall bear the meaning ascribed thereto in the Fees Letter;
- 1.2.54 **"Loan Undertaking"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.55 **"MTN Material Adverse Event"** means, in respect of MTN and/or a Subordinated MTN Acceded Nominee, the occurrence of any event, circumstance or matter or combination of events, circumstances or matters which has or is reasonably likely to have a material adverse effect on:
- 1.2.55.1 the financial condition (including assets, revenues and liabilities), business, operations or affairs of MTN or any Subordinated MTN Acceded Nominee taken as a whole; and/or
 - 1.2.55.2 the ability of MTN or any Subordinated MTN Acceded Nominee to timeously perform any or all of its material obligations under any of the Key Transaction Documents to which it is party; and/or
 - 1.2.55.3 the validity and/or enforceability of any of the Key Transaction Documents to which MTN or any Subordinated MTN Acceded Nominee is party;
- 1.2.56 **"Obligor Material Adverse Event"** means, in respect of the Company and/or BFC2, the occurrence of any event, circumstance or matter or combination of events, circumstances or matters which has or is reasonably likely to have a material adverse effect on:
- 1.2.56.1 the financial condition (including assets, revenues and liabilities), business, operations or affairs of the Company and/or BFC2 taken as a whole; and/or
 - 1.2.56.2 the ability of the Company or BFC2, to timeously perform (i) in relation to the Key Transaction Documents, any or all of its obligations under any of the Key Transaction Documents to which it is a party; and/or (ii) in relation to the Service Provider Agreements, its payment obligations under any of the Service Provider Agreements;
 - 1.2.56.3 the validity and/or enforceability of any of the Key Transaction Documents to which the BFC2 and/or the Company is party;
- 1.2.57 **"Operating Company"** means an *"operating company"*, as such term is defined in section 8EA of the Income Tax Act;

- 1.2.58 **"Operational Expenses Amount"** means, during the BEE Listing Period:
- 1.2.58.1 in relation to any Dividend Period that is for a full period of 12 (twelve) months, the sum of: (i) the Administration Costs for that Dividend Period; plus (ii) an amount of R30 000 000,00 (thirty million Rand); and
 - 1.2.58.2 in relation to any Dividend Period that is for a period of less than 12 (twelve) months, the sum of: (i) the Administration Costs for that Dividend Period; plus (ii) an amount of R30 000 000,00 (thirty million Rand) pro rated for such shorter period;
- 1.2.59 **"Original Signature Date"** means 21 August 2016;
- 1.2.60 **"Parties"** means the BIC2 Investor, the Company and the Preference Share Agent, and **"Party"** shall mean any of them;
- 1.2.61 **"Permitted Encumbrance"** means:
- 1.2.61.1 any Encumbrance arising or permitted under or evidenced by the Finance Documents and the BIC2 Reversionary Pledge and Cession and the BIC2 Reversionary Account Cession; or
 - 1.2.61.2 any Encumbrance created with the prior written consent of the Preference Share Agent;
- 1.2.62 **"Permitted Enforcement Action"** means, in respect of the Company:
- 1.2.62.1 BIC2 Permitted Enforcement Action; and/or
 - 1.2.62.2 any Service Provider Permitted Enforcement Action;
- 1.2.63 **"Permitted Financial Indebtedness"** means any Financial Indebtedness of the Company:
- 1.2.63.1 incurred under and in accordance with the Transaction Documents;
 - 1.2.63.2 incurred for the purposes of Refinancing the BIC2 Preference Shares as contemplated in the BIC2 Preference Share Terms; or
 - 1.2.63.3 incurred with the prior written consent of the Preference Share Agent;
- 1.2.64 **"Post Redemption Event"** shall bear the meaning ascribed thereto in clause 14.7 below;
- 1.2.65 **"Quarter"** means each 3 (three) month period ending on 30 April, 31 July, 31 October and 31 January of each and every year until the BIC2 Discharge Date;
- 1.2.66 **"Redemption Notice"** the notice pursuant to which the Company notifies the Preference Share Agent of the BIC2 Scheduled Redemption Date in terms of clause 14.8.1 below;
- 1.2.67 **"Refinancing Agreements"** means all documents and agreements in respect of or required for or in connection with a BFC2 Further Refinancing (as such terms is defined in the BFC2 MOI);

- 1.2.68 **"Refinancing Date"** means, subject to the Refinancing Agreement becoming unconditional in accordance with its terms, 30 September 2021;
- 1.2.69 **"Relevant Exit Date"** shall bear the meaning ascribed thereto in clause 14.9.1;
- 1.2.70 **"Required Declaration"** means, to the extent required under Applicable Laws, a declaration made by the Company to MTN or any other issuer of Additional Shares confirming that it is a South African resident company for the purposes of ensuring that any amounts paid by the Company to any person on account of Distributions received by the Company shall not become subject to a withholding on account of Dividends Tax by the person making such Distribution;
- 1.2.71 **"Required Documents"** shall bear the meaning ascribed thereto in clause 14.8.1 hereof;
- 1.2.72 **"Required Exit Documents"** shall bear the meaning ascribed thereto in clause 14.9.1;
- 1.2.73 **"Sanctioned Transaction"** means financing or providing any credit, directly or indirectly, to:
- 1.2.73.1 a Sanctioned Entity;
- 1.2.73.2 any other person or entity, if the Company has actual knowledge that the person or entity proposes to use the financing or credit for the purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Entity,
- in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions;
- 1.2.74 **"Senior Counsel"** shall bear the meaning ascribed thereto in clause 14.8.2 hereof;
- 1.2.75 **"Senior Counsel Consultation Date"** shall bear the meaning ascribed thereto in clause 14.8.3 hereof;
- 1.2.76 **"Senior Counsel Determination"** shall bear the meaning ascribed thereto in clause 14.8.2 hereof;
- 1.2.77 **"Senior Counsel Exit Determination"** shall bear the meaning ascribed thereto in clause 14.9.2;
- 1.2.78 **"Service Provider Losses"** means all and any losses, damages, liabilities, claims, penalties, fines, charges, judgments, costs and expenses incurred or sustained by the Company arising from or pursuant to the Service Provider Agreements;
- 1.2.79 **"Service Provider Permitted Enforcement Action"** means:
- 1.2.79.1 all applications and other proceedings instituted by, or interdicts or declaratory relief sought by, the Company for the purposes of enforcing and/or protecting its rights under any Service Provider Agreement and/or against any Service Provider;
- 1.2.79.2 any steps, actions, proceedings or applications which may or will have the effect of requiring the Company to indemnify the JSE in terms of the JSE

Listings Requirements, including but not limited to, the indemnity contemplated in Sections 4.32A and 4.32B of the JSE Listings Requirements;

- 1.2.79.3 all and any steps, actions, proceedings or applications taken by or relief sought by, the Company in defending any action, claim or application brought against it by any Service Provider and/or in respect of any Service Provider Agreement,

(collectively "**Service Provider Enforcement Action**"), provided that the Preference Share Agent:

- 1.2.79.4 is provided with copies of all correspondence and legal process sent to or by the Company in respect of any Service Provider Enforcement Action which, if successful, would result in a Service Provider Loss of R5 000 000,00 (five million Rand) or more in any Dividend Period;

- 1.2.79.5 is given written notice of all steps proposed to be taken and which are in fact taken against any Service Provider in respect of Service Provider Enforcement Action, which, if successful, would result in a Service Provider Loss of R5 000 000,00 (five million Rand) or more in any Dividend Period;

- 1.2.79.6 is satisfied that the steps, actions, proceedings or applications proposed to be taken by the Company against such Service Provider will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders;

- 1.2.80 "**Solvency and Liquidity Test**" means the solvency and liquidity test as set out in section 4 of the Companies Act;

- 1.2.81 "**Subordinated MTN Acceded Nominee**" shall bear the meaning ascribed to the term "*MTN Acceded Nominee*" in the MTN Subordination and Undertaking Agreement;

- 1.2.82 "**Target Shares**" means:

- 1.2.82.1 the Subscription Shares; and

- 1.2.82.2 the MTN Tranche 1 Additional Subscription Shares acquired and/or subscribed for and legally and beneficially owned by the Company from time to time pursuant to the MTN Tranche 1 Subscription and Call Option Agreement in accordance with the applicable Priority of Payments; and

- 1.2.82.3 any other MTN Shares legally and beneficially owned by the Company as a result of the Company being the legal and beneficial owner of the Subscription Shares and/or the MTN Tranche 1 Additional Subscription Shares;

- 1.2.83 "**Trading Platform Losses Differential**" means, at any time during a Dividend Period that occurs during the BEE Listing Period, the amount by which:

- 1.2.83.1 the amount of any JSE Loss that is due and payable by the Company at such time or the amount of any JSE Loss that the Company at such time

reasonably expects to become due and payable during such Dividend Period,

exceeds the sum of:

- 1.2.83.2 the Available Operational Expenses Amount for that Dividend Period; plus
- 1.2.83.3 the Available Administration Costs for that Dividend Period, if any; plus
- 1.2.83.4 the net after Tax portion of any amount actually recovered by BIC2 in relation to any JSE Loss recovered from any JSE Trading Platform Third Party, as the case may be;

1.2.84 **"US Tax Obligor"** means the Company:

- 1.2.84.1 if it becomes resident for tax purposes in the US; or
- 1.2.84.2 if some or all of its payments under the Finance Documents are from sources within the US for US federal income tax purposes;

1.2.85 **"Warranty Date"** means the Original Signature Date, the Issue Date and each day thereafter (including, for the avoidance of doubt, the Amendment Date and the Refinancing Date) until all the BIC2 Preference Shares have been fully, finally and irrevocably redeemed;

- 1.3 any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted or replaced from time to time;
- 1.4 any reference in this Agreement to any other agreement or document copy shall be construed as a reference to such other agreement as same may have been, or may from time to time be, amended, restated, varied, novated, replaced or supplemented;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.6 where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;
- 1.7 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day unless if as a result of such adjustment any redemption of a preference share will occur before 3 (three) years and 1 (one) day after the date of issue of such preference share in which event the relevant day for payment shall be the next succeeding Business Day;
- 1.8 any reference to a Party includes that Party's successors-in-title and permitted assigns;
- 1.9 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.10 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited

application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;

- 1.11 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.12 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.13 the Finance Documents shall to the extent permitted by Applicable Laws be binding on and enforceable by the business rescue practitioner, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's business rescue practitioner, trustees, permitted assigns or liquidators, as the case may be;
- 1.14 the use of any expression in any Finance Document covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the parties to the Finance Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2. RECORDAL

It is recorded that:

- 2.1 the Company required funding to enable it to subscribe for the Subscription Shares;
- 2.2 the BIC2 Investor agreed to partially fund the Company to enable it to subscribe for the Subscription Shares; and
- 2.3 the Company accordingly allotted and issued to the BIC2 Investor, which subscribed for, the BIC2 Preference Shares in order to enable the Company to subscribe for the Subscription Shares, all on the terms and subject to the conditions set out in this Agreement.

3. CONDITIONS PRECEDENT

[Intentionally left blank]

4. SUBSCRIPTION FOR BIC2 PREFERENCE SHARES

- 4.1 On the Issue Date, the BIC2 Investor paid the BIC2 Issue Price (by way of electronic funds transfer) into the BIC2 Subscriptions Account, in accordance with the provisions of the Implementation Agreement.
- 4.2 The Company, against payment of the BIC2 Issue Price:
 - 4.2.1 allotted and issued to the BIC2 Preference Shares to the BIC2 Investor by entering the details of the BIC2 Investor in the Company's securities register the BIC2 Preference Shares to the BIC2 Investor; and
 - 4.2.2 simultaneously delivered to the BIC2 Investor a duly executed share certificate in respect of the BIC2 Preference Shares.

- 4.3 The Company applied the aggregate BIC2 Issue Price on account of all the BIC2 Preference Shares solely and directly on account of the subscription of Equity Shares in an Operating Company

5. FEES

The Company paid the BIC2 Participation Fee (plus VAT thereon) to the BIC2 Investor on the Issue Date calculated in accordance with the formula below:

$$A = 0.5\% \times B$$

where:

A = the BIC2 Participation Fee

B = the aggregate Issue Price for the BIC2 Preference Shares.

6. REPRESENTATIONS AND WARRANTIES

- 6.1 The Company represents and warrants in favour of the BIC2 Investor that:

- 6.1.1 on each Warranty Date, the Company 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;
- 6.1.2 on each Warranty Date, the Company has the power to enter into, exercise its rights and perform and comply with its obligations contained in, the Transaction Documents 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 to which it is a party;
- 6.1.3 on the Issue Date, the directors of the Company had the necessary authority and took all steps necessary to allot and to issue the BIC2 Preference Shares to the BIC2 Investor on the Issue Date and the Company had full power, capacity and authority to issue such BIC2 Preference Shares;
- 6.1.4 on each Warranty Date, save for:
 - 6.1.4.1 its acquisition of the Subject Shares;
 - 6.1.4.2 its acquisition of the MTN Loan Account;
 - 6.1.4.3 its acquisition or Disposal of any assets pursuant to any Permitted Action or Permitted Disposal;
 - 6.1.4.4 the liabilities incurred or assumed in terms of the Transaction Documents to which it is a party;
 - 6.1.4.5 Service Provider Expenses and Tax liabilities incurred by the Company pursuant to the Transaction Documents to which it is a party;
 - 6.1.4.6 its entry into and implementation of the Transaction Documents to which it is a party;

- 6.1.4.7 the making of the Public Offer and performance of any of the Company's obligations in terms of the Public Offer and Reinvestment Documents;
- 6.1.4.8 any other acquisition of assets or incurrence of liabilities by the Company with the prior written consent of the Preference Share Agent;
- 6.1.4.9 incurring any Permitted Financial Indebtedness;
- 6.1.4.10 establishing, maintaining and operating the JSE Trading Platform during the BEE Listing Period; and
- 6.1.4.11 its entry into and implementation of any Refinancing Agreements, if applicable,

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

- 6.1.5 from the date of its incorporation up to and including each Warranty Date thereafter, the Company has not and will not have traded in any manner or entered into any transaction whatsoever, save:
 - 6.1.5.1 in respect of the issue to the black public of South Africa of the Ordinary Shares, the making of the Public Offer and performance of any of the Company's obligations in terms of the Public Offer and Reinvestment Documents;
 - 6.1.5.2 for its entry into of the Transaction Documents to which it is a party and performance of any obligations and/or exercise of any rights under such Transaction Documents;
 - 6.1.5.3 for the appointment of Professional Advisors;
 - 6.1.5.4 for its acquisition of the Subject Shares;
 - 6.1.5.5 for its acquisition of the MTN Loan Account;
 - 6.1.5.6 to open the BIC2 Subscriptions Account, the BIC2 Public Offer Accounts, the Subject Shares Securities Account, the BIC2 Collection Account, the BIC2 Security Account, the BIC2 Provisions Account, the BIC2 Tax Provisions Account, the BIC2 Top-Up Loan Account and any other bank account approved by the Preference Share Agent and MTN;
 - 6.1.5.7 in respect of the issue to the BIC2 Investor, the issue of the BIC2 Preference Shares;
 - 6.1.5.8 for establishing and operating the JSE Trading Platform during the BEE Listing Period; and
 - 6.1.5.9 for its entry into of any Refinancing Agreements (if applicable) and performance of any obligations and/or exercise of any rights under such Refinancing Agreements;

- 6.1.6 on each Warranty Date, all of the information supplied by it or its directors to the BIC2 Investor in connection with the Finance Documents to which it is a party is true, complete and accurate in all material respects on the date such information is supplied;
- 6.1.7 on the Issue Date and on each Warranty Date thereafter, save as a result of any Permitted Disposal, the Company shall be the legal and beneficial owner of the Subscription Shares;
- 6.1.8 on each date on which the Company subscribes for the MTN Tranche 1 Additional Subscription Shares in accordance with the MTN Tranche 1 Subscription and Call Option Agreement or any MTN Shares contemplated in clause 1.2.82.3 hereof and on each Warranty Date thereafter, the Company shall, save as a result of a Permitted Disposal, be the legal and beneficial owner of such MTN Tranche 1 Additional Subscription Shares and the MTN Shares contemplated in clause 1.2.82.3 hereof;
- 6.1.9 on the date on which the Company acquires any Additional Shares and each Warranty Date thereafter, save as a result of any Permitted Disposal, the Company shall be the legal and beneficial owner of such Additional Shares;
- 6.1.10 on each Warranty Date, the Company is in compliance with clauses 7.4.2 and 7.4.3 and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is likely to have an Obligor Material Adverse Effect;
- 6.1.11 on each Warranty Date, no Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against the Company where that claim has or is likely to have an Obligor Material Adverse Effect;
- 6.1.12 on each Warranty Date, the Company is not in default in the payment of any Taxes which have been assessed and demanded;
- 6.1.13 on each Warranty Date, every consent, authorisation, permit, licence, certificate or approval of, or declaration to, any government entity required by the Company to authorise, or required by the Company in connection with, the validity, enforceability or admissibility in evidence of the Key Transaction Documents to which it is a party or the performance by the Company of its obligations under the Key Transaction Documents to which it is a party which were required prior to the Issue Date have, been obtained or made or, prior to the Issue Date, 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;
- 6.1.14 on each Warranty Date, the obligations expressed to be assumed by the Company in terms of the Key Transaction Documents to which it is a party are legal and valid obligations binding on the Company and enforceable against the Company in accordance with the terms thereof and do, and will, not conflict with any Applicable Laws binding on the Company or the assets of the Company;
- 6.1.15 on each Warranty Date, no Insolvency Event in respect of the Company, BIC2 Illegality Event, BIC2 Trigger Event nor a BFC2 Trigger Event will have occurred;
- 6.1.16 on each Warranty Date (for so long as no BIC2 Potential Trigger Event has occurred and is Continuing), there shall be no class of shares in the authorised and/or issued

share capital of the Company which ranks in priority to and/or *pari passu* with the BIC2 Preference Shares other than in respect of voting rights;

- 6.1.17 on each Warranty Date, the Subject Shares constitute Equity Shares in an Operating Company, the BIC2 Preference Shares shall not constitute "*hybrid equity instruments*" or "*third party backed shares*" as those terms are defined in section 8E and section 8EA of the Income Tax Act, respectively;
- 6.1.18 on each Warranty Date, each BIC2 Preference Dividend in respect of the BIC2 Preference Shares, will, in respect of the full amount of such BIC2 Preference Dividend:
 - 6.1.18.1 be made in compliance with section 46 of the Companies Act;
 - 6.1.18.2 be a dividend as defined in section 1 of the Income Tax Act and will be exempt from income Tax as contemplated in section 10(1)(k) of the Income Tax Act or as otherwise contemplated under the Income Tax Act;
 - 6.1.18.3 carry the maximum Dividends Tax Credit, if any, that is permissible under the Income Tax Act in respect of a dividend declared or Distributed by a company of an equivalent amount to a shareholder;
 - 6.1.18.4 not constitute a "foreign dividend" as defined in section 1 of the Income Tax Act;
 - 6.1.18.5 shall not be determined, by the directors of the Company or any other person or body of persons with comparable authority, to constitute a reduction of the CTC of the Company, including CTC attributable to a different class of shares issued by the Company without the Preference Share Agent's prior written consent being obtained;
- 6.1.19 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 the Company other than as provided for in terms of the Transaction Documents, the Public Offer or save as required by any Applicable Laws;
- 6.1.20 on the Issue Date and on each Warranty Date thereafter, save for any Permitted Disposal, the Company is the sole, legal and beneficial owner of the Subject Shares and, save for any Permitted Encumbrance, the Company has good and unencumbered title to the Subject Shares;
- 6.1.21 on each Warranty Date, the Company is fully aware of and acquainted with the provisions of the Transaction Documents to which it is a party and the meaning and effect of all such provisions;
- 6.1.22 on each Warranty Date, the execution and delivery of, the performance of the Company's obligations under, and compliance with the provisions of, each of the Transaction Documents by the Company will not:
 - 6.1.22.1 contravene any Applicable Laws to which the Company is subject;
 - 6.1.22.2 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 the Company is party or which is binding upon it or any of its assets or revenues;
- 6.1.22.3 contravene or conflict with any provision of the Company's Constitutional Documents; or
 - 6.1.22.4 result in the Company's winding-up or liquidation or the appointment to it of a receiver, business rescue practitioner or liquidator or similar person;
- 6.1.23 on each Warranty Date, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency have been started or threatened against the Company by any person, save for any litigation, arbitration or other proceedings of a litigious nature which:
- 6.1.23.1 may arise in connection with any Permitted Enforcement Action; or
 - 6.1.23.2 does not comprise Permitted Enforcement Action provided that (i) the Preference Share Agent has been provided with all relevant information relating to such proceedings if such proceedings are reasonably likely to result in a liability for the Company in excess of R5 000 000,00 (five million Rand); and (ii) the Preference Share Agent has confirmed in writing that such proceedings will not, or are not reasonably likely to, adversely affect the rights of the BFC2 Preference Shareholders under the Finance Documents;
- 6.1.24 on each Warranty Date, the Company has not incurred any Financial Indebtedness other than Permitted Financial Indebtedness;
- 6.1.25 on each Warranty Date, all information furnished by the Company to the BIC2 Investor in connection with:
- 6.1.25.1 the Key Transaction Documents and the transactions contemplated thereby was, and remains, as at the date provided or on which such information is stated to apply, 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; and
 - 6.1.25.2 the Service Provider Agreements and the transactions contemplated thereby was, and remains, as at the date provided or on which such information is stated to apply, 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;
- 6.1.26 on each Warranty Date, the Company 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 the Company is in breach of any Service Provider Agreement, any such breach does not relate in any way to the payment obligations of the Company under such Service Provider Agreement;
- 6.1.27 on each Warranty Date, the Company is not aware of any material facts or circumstances that have not been disclosed to the BIC2 Investor which facts or circumstances may adversely influence the decision of any third party to subscribe for BIC2 Preference Shares in the issued share capital of the Company on terms and conditions similar to those contained in the Finance Documents;

- 6.1.28 on each Warranty Date, the execution and delivery of the Transaction Documents and performance of its obligations thereunder by the Company represent commercial acts of the Company entered into and done for private and commercial purposes and neither the Company nor any of its assets are entitled to any right of immunity from set-off, suit or execution in respect of its obligations under the Transaction Documents;
- 6.1.29 on each Warranty Date, in entering into each of the Transaction Documents and in performing its rights and obligations hereunder and thereunder, save as otherwise consented to by the Preference Share Agent and MTN, the Company acts and will continue to act solely for its own account;
- 6.1.30 on each Warranty Date, the Company has not taken any action nor have any other steps been taken or legal proceedings been started or threatened against the Company for its winding-up, dissolution, re-organisation or placing under business rescue or for the appointment of a receiver, trustee, business rescue practitioner or similar officer of the Company or of any or all of its respective assets or revenues;
- 6.1.31 on each Warranty Date, save for any Permitted Encumbrance, no Encumbrance exists over all or any of the Company's present or future assets or revenues;
- 6.1.32 on each Warranty Date, save for the Permitted Disposals and save for any Disposal made in connection with any Permitted Action, the Company shall not have Disposed of any of its assets;
- 6.1.33 on each Warranty Date, save as required in terms of Applicable Laws, there shall be no amendment of the Company's Constitutional Documents and/or any Finance Documents to which the Company is a party without the prior written consent of the Preference Share Agent and MTN;
- 6.1.34 on the Issue Date and each Warranty Date thereafter, the BIC2 Memorandum of Incorporation constitutes the Company as a ring fenced company, as contemplated in sections 11(3)(b), 13(3) and 15(2)(b) of the Companies Act, capable only of:
 - 6.1.34.1 acquiring, holding and Disposing of the Subject Shares and the MTN Loan Account in accordance with or as contemplated in the provisions of the Transaction Documents to which it is a party;
 - 6.1.34.2 entering into, performing its obligations and enforcing rights under and in terms of the Transaction Documents to which it is a party and/or which may be required to render same unconditional;
 - 6.1.34.3 exercising any voting or other rights attaching to the Subject Shares and the MTN Loan Account;
 - 6.1.34.4 issuing of Ordinary Shares in its share capital;
 - 6.1.34.5 appointing Professional Advisors;
 - 6.1.34.6 opening the BIC2 Subscriptions Account, the BIC2 Public Offer Accounts, the Subject Shares Securities Account, the BIC2 Collection Account, the BIC2 Security Account, the BIC2 Provisions Account, the BIC2 Tax Provisions Account and the BIC2 Top-Up Loan Account;
 - 6.1.34.7 rendering Tax and other statutory returns; and

- 6.1.34.8 carrying on the business of holding and managing the Subject Shares;
- 6.1.35 on the Original Signature Date, the Issue Date, the Amendment Date and the Refinancing Date:
 - 6.1.35.1 no compliance notice has been issued to the Company in terms of section 171(1) of the Companies Act or, if issued, remains in force as contemplated in terms of section 171(5) of the Companies Act;
 - 6.1.35.2 no application has been made or threatened to render any Transaction Document (other than a Service Provider Agreement) or any document or authorisation relating thereto, void, voidable or unlawful, and no court has made an order or declaration that any Transaction Document (other than a Service Provider Agreement) or any document or authorisation relating thereto, void, voidable or unlawful, provided that in relation to any Service Provider Agreement, any such application, order or declaration:
 - 6.1.35.2.1 will not or is not reasonably likely to result in the Company not being able to fully and timeously perform its obligations under the Finance Documents to which it is a party; and
 - 6.1.35.2.2 will not affect the validity and/or enforceability of any of the security granted under and/or pursuant to the Finance Documents;
- 6.1.36 on the Issue Date:
 - 6.1.36.1 the board of directors of the Company determined that the BIC2 Issue Price was adequate consideration for the issue of each BIC2 Preference Share; and
 - 6.1.36.2 no determination contemplated in clause 6.1.36.1 above or any other determination by the board of directors of the Company in respect of the adequacy of the consideration for any other class of shares in the Company had been challenged in terms of Applicable Laws; and
- 6.1.37 on each Warranty Date:
 - 6.1.37.1 the Company is not a party to or participates in any Sanctioned Transaction, has contravened any Sanctions nor is targeted under any Sanctions; and
 - 6.1.37.2 the Company has conducted its businesses in compliance with anti-corruption laws applicable to it and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.
- 6.2 The BIC2 Preference Shareholder has entered into the Finance Documents to which it is party on the strength of, and relying on, the representations and warranties set out in this clause 6, each of which shall be deemed to be a separate representation and warranty given without prejudice to any other representation or warranty and deemed to be a material representation inducing the BIC2 Preference Shareholder to enter into the Transaction Documents to which it is party and/or to invest in or acquire the BIC2 Preference Shares. The representations and warranties set out in this clause 6 shall survive until the expiry of the Indemnity Period.

7. GENERAL UNDERTAKINGS

- 7.1 The Company hereby irrevocably and unconditionally undertakes to the BIC2 Investor that, immediately after the receipt of the BIC2 Issue Price on the Issue Date, the BIC2 Issue Price was applied solely in accordance with the provisions of the Final Capital Structure Documents, namely to subscribe for the Subscription Shares, being Equity Shares in an Operating Company.
- 7.2 The Company undertakes to procure that all board resolutions required to make a Distribution under section 46 of the Companies Act are duly and timeously passed in order to ensure the valid payment of any Distribution on the date on which such Distribution is paid and, in particular, the Company undertakes to ensure compliance with the requirements of section 46 of the Companies Act in respect of the payment of each BIC2 Preference Dividend on account of the BIC2 Preference Shares.
- 7.3 The Company shall, on or before each BIC2 Dividend Date, apply the Solvency and Liquidity Test and once the board is reasonably satisfied that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant BIC2 Preference Dividends:
- 7.3.1 the board shall pass a resolution acknowledging that the board has applied the Solvency and Liquidity Test and has reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after paying the relevant BIC2 Preference Dividends; and
- 7.3.2 the Company shall pay the relevant BIC2 Preference Dividends on such date.
- 7.4 With effect from the Original Signature Date and until the BIC2 Discharge Date, the Company hereby unconditionally and irrevocably undertakes to the BIC2 Preference Shareholder that, unless specifically provided for in the Transaction Documents or the Preference Share Agent otherwise agrees in writing:
- 7.4.1 the Company shall not without also having obtained the prior written consent of MTN which shall not be unreasonably held or delayed or save as required in terms of any Applicable Laws permit any variation, amendment, deletion, addition and/or alteration to and/or cancellation of :
- 7.4.1.1 any of the rights and/or privileges of the BIC2 Preference Shareholder arising in terms of and/or in connection with the BIC2 Preference Shares; or
- 7.4.1.2 any of the Transaction Documents (unless such amendment is effected in compliance with clause 12 of the Implementation Agreement), other than the Service Provider Agreements;
- 7.4.1.3 any of the Service Provider Agreements, unless such variation, amendment, deletion, addition, alteration and/or cancellation:
- 7.4.1.3.1 is, for the purposes of the Company to effectively and properly manage the operational requirements and risks in respect of establishing, operating and/or maintaining the JSE Trading Platform;
- 7.4.1.3.2 will not or is not reasonably likely to result in the Company not being able to fully and timeously perform its obligations under the Finance Documents to which it is a party; and

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

7.4.2 the Company shall:

7.4.2.1 comply with all Environmental Law;

7.4.2.2 obtain, maintain and ensure compliance with all requisite Environmental Permits;

7.4.2.3 implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

in each case, where failure to do so has or is likely to have an Obligor Material Adverse Effect;

7.4.3 the Company shall, promptly upon becoming aware of the same, inform the Preference Share Agent in writing of:

7.4.3.1 any Environmental Claim against the Company which is current, pending or threatened; and

7.4.3.2 any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against the Company,

in each case, where the claim, if determined against the Company, has or is likely to have an Obligor Material Adverse Effect;

7.4.4 unless the Preference Share Agent and MTN give their prior written consent:

7.4.4.1 the Company 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:

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

7.4.4.1.2 will not or is not reasonably likely to result in the Company not being able to fully and timeously perform its obligations under the Finance Documents to which it is a party; and

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

7.4.4.2 the Company shall promptly renew any JSE Trading Platform Agreement that is reasonably necessary or required in order to ensure that all

operational risks arising in respect of establishing, operating and/or maintaining the JSE Trading Platform are in force and effective at all times;

- 7.4.4.3 the Company shall be obliged to manage the JSE Platform in a manner such that the operational 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 the Company not being able to fully and timeously perform its obligations under the Finance Documents to which it is a party; and/or (ii) affect the validity and/or enforceability of the security given pursuant to the Finance Documents;
- 7.4.5 save as expressly contemplated in the Transaction Documents, the Company will not, without the prior written consent of MTN, implement, or incur any obligation to propose, approve or implement, any resolution (whether of the directors or members of the Company) or transaction in relation to the Company for:
 - 7.4.5.1 the issue of shares by the Company, other than the issue of the BIC2 Preference Shares to the BIC2 Investor, the issue of the BIC2 Underwrite Shares, if any, to MTN (or its duly appointed nominee in terms of the BIC2 Ords Subscription Agreement) and the issue of Ordinary Shares to (i) the Ordinary Shareholders in terms of the Public Offer to enable the Company to meet its obligations under the Transaction Documents or to subscribe for the MTN Tranche 1 Additional Subscription Shares in terms of the MTN Tranche 1 Subscription and Call Option Agreement; and (ii) to MTN Zakhele, in discharge of its obligations under and in terms of the MTN Loan Transfer and Cession Agreement;
 - 7.4.5.2 the repurchase by the Company of any of its shares (it being recorded for the avoidance of doubt that the redemption of any BIC2 Preference Shares in accordance with the provisions of the BIC2 Preference Share Terms shall not be a breach of this undertaking);
 - 7.4.5.3 the reduction, return or repayment of the Company's share capital, non-distributable reserve account or reserves (other than payments made in accordance with the BIC2 Preference Share Terms);
 - 7.4.5.4 a capitalisation issue by the Company;
 - 7.4.5.5 a declaration, payment or Distribution of any assets (whether cash assets or non-cash assets) by the Company (other than payments made in accordance with the Transaction Documents and save for Permitted Disposals);
 - 7.4.5.6 any amendment to the Constitutional Documents of the Company;
 - 7.4.5.7 any change to the Financial Year of the Company;
 - 7.4.5.8 any change in the auditors of the Company; or
 - 7.4.5.9 any change in the accounting policies of the Company since the Original Signature Date;
- 7.4.6 the Company shall procure that its audited financial statements are prepared in accordance with IFRS and all Applicable Laws;

- 7.4.7 the Company shall maintain its corporate existence in South Africa according to Applicable Laws;
- 7.4.8 the Company shall maintain its books and records as required by Applicable Laws and, where applicable, in accordance with IFRS;
- 7.4.9 the Company shall not repudiate nor give written notice of an intention to repudiate any Transaction Document (save for any repudiation in relation to a Service Provider Agreement) to which it 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 the Company to effectively and properly manage the operational requirements and risks in respect of establishing, operating and/or maintaining the JSE Trading Platform; (ii) will not or is not reasonably likely to result in the Company not being able to fully and timeously perform its obligations under the Finance Documents to which it is a party; and (iii) will not affect the validity and/or enforceability of any of the security granted under and/or pursuant to the Finance Documents;
- 7.4.10 the Company shall promptly pay and discharge all Taxes and other liabilities payable by or assessed upon it when due;
- 7.4.11 the Company shall duly file all Tax returns containing information required by law to be contained therein, shall qualify at all times as a resident as defined in section 1 of the Income Tax Act in South Africa and shall not surrender or dispose of any Dividends Tax Credit, loss, relief or allowance to any person;
- 7.4.12 any filing duties or Securities Transfer Tax or Dividends Tax (if any) payable in relation to the Transaction and in respect of which the Company is liable shall be paid by the Company when due;
- 7.4.13 the Company shall not vote in favour of, commence and/or implement any business rescue proceedings in respect of itself;
- 7.4.14 if business rescue proceedings have commenced in relation to the Company in accordance with the Companies Act, the Company shall not:
 - 7.4.14.1 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
 - 7.4.14.2 propose the development of an alternative business rescue plan in the manner contemplated in the Companies Act; and/or
 - 7.4.14.3 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 the BIC2 Preference Shareholder under this Agreement or any other Finance Document;
- 7.4.15 the Company shall not act in any manner which would contravene its Constitutional Documents;
- 7.4.16 save for any Permitted Financial Indebtedness or any Permitted Encumbrance, the Company 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;

- 7.4.17 the Company shall not enter into any type of merger, demerger, any amalgamation or consolidation with any other person or enter into any type of corporate reconstruction;
- 7.4.18 the Company shall not acquire or incorporate any subsidiary or participate in or enter into any joint venture;
- 7.4.19 the Company shall not, save for Permitted Disposals and save for the Permitted Actions, sell, transfer, cede, assign, pledge, mortgage or otherwise alienate or Dispose of any of its assets (or any interest therein), nor allow any of its assets to become subject to any Encumbrance (other than a Permitted Encumbrance);
- 7.4.20 the Company shall not acquire any assets or businesses (other than any additional interest in MTN that is acquired in terms of the MTN Tranche 1 Subscription and Call Option Agreement in accordance with the applicable Priority of Payments or otherwise on terms and conditions acceptable to the Preference Share Agent in advance and in writing and any assets acquired pursuant to any Permitted Action) and the only business of the Company shall be (i) the holding of the Subject Shares and the MTN Loan Account; and (ii) the implementation of the Transaction Documents;
- 7.4.21 any cash Distribution or other payment of whatsoever nature including, without limitation, any disposal proceeds, received by the Company in respect of or in connection with any of the Subject Shares shall be paid directly by the payer thereof into the BIC2 Collection Account via STRATE and the Security Custodian in respect of any shares held through STRATE;
- 7.4.22 save as provided for in the Account Bank and Agency Agreement, the Subject Shares shall be reflected in the Subject Shares Securities Account;
- 7.4.23 any MTN Shares issued by MTN to the Company at any time from the Issue Date until the BIC2 Discharge Date shall be dematerialised by no later than the date which is 10 (ten) Business Days calculated from the date of issue thereof and upon such MTN Shares becoming dematerialised the Company shall procure the delivery of each notice contemplated in clause 3.2 of the BIC2 Pledge and Cession, to the Preference Share Agent;
- 7.4.24 the Company shall comply with all Applicable Laws necessary to carry on its business;
- 7.4.25 the Company shall maintain all necessary authorisations under any Applicable Laws required for the entering into and implementation of the transactions contemplated by the Transaction Documents;
- 7.4.26 the Company shall at all times and in all respects comply with its:
 - 7.4.26.1 obligations in terms of the Finance Documents to which it is a party;
 - 7.4.26.2 payment obligations in terms of the Material Agreements to which it is a party; and

- 7.4.26.3 obligations in terms of such Material Agreements (other than its payment obligations thereunder), where a failure to do so has or is reasonably likely to adversely affect the Preference Shareholders;
- 7.4.27 the Company 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) any agreement or arrangement in connection with the Public Offer and Reinvestment Documents; (iii) any agreement, arrangement or understanding in connection with the exercise of the Company's rights or performance of its obligations in terms of the Transaction Documents to which it is a party; (iv) any agreement, arrangement or understanding in connection with the implementation of the provisions of the Transaction Documents to which it is a party; (v) the appointment of directors, its public officer and company secretary, or other corporate or statutory office required to be filled by law; and (vi) any Refinancing Agreements provided that the Preference Share Agent has confirmed in writing that such Refinancing Agreements are not adverse to the interests of BFC2 and the BFC2 Preference Shareholders which confirmation shall not be unreasonably withheld or delayed (provided that it shall not be unreasonable for the Preference Share Agent to withhold such confirmation if the rights of the funders under the Refinancing Agreements are not, at all times up to the BIC2 Discharge Date, subordinated to the rights of BFC2 and the BFC2 Preference Shareholders in all respects);
- 7.4.28 notwithstanding anything to the contrary herein contained, the Company shall promptly inform the Preference Share Agent of any change of name and furnish the Preference Share Agent with a copy of the form approved by the Registrar of Companies in relation to such change of name;
- 7.4.29 the Company shall maintain the terms of the BIC2 Preference Shares and ensure that the BIC2 Preference Shares remain validly issued until redeemed in accordance with the BIC2 Preference Share Terms;
- 7.4.30 the Company:
- 7.4.30.1 is not a Sanctioned Entity nor in contravention of any Sanctions;
 - 7.4.30.2 will not be a party to nor participate in a Sanctioned Transaction in any manner; or
 - 7.4.30.3 shall not directly or indirectly use the proceeds of the BIC2 Preference Shares for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions;
 - 7.4.30.4 shall take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it from being or becoming involved in a Sanctioned Transaction; and
 - 7.4.30.5 shall conduct its businesses in compliance with anti-corruption laws applicable to it and maintain policies and procedures designed to promote and achieve compliance with such laws;
- 7.4.31 if the Company is entitled to receive cash or a distribution *in specie* on account of the Subject Shares, the Company shall elect to receive cash on account of such Subject Shares;

- 7.4.32 the Company was obliged to deliver to MTN, in the performance of its obligations under the MTN Tranche 1 Subscription and Call Option Agreement, MTN Shares which were the MTN Tranche 1 Initial Subscription Shares which were issued and allotted to the Company on the Issue Date by MTN (which MTN Tranche 1 Initial Subscription Shares are separately identified in STRATE);
- 7.4.33 to the extent permissible by Applicable Laws, the Company shall not apply for any order of court in terms of section 48(6) of the Companies Act;
- 7.4.34 the Company shall take all action and fulfil all conditions required by the Company in order to enable the Company 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;
- 7.4.35 the Company shall take all action and fulfil all conditions required by the Company in order to enable the Company 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;
- 7.4.36 the Company shall not be entitled to make, declare or pay any Distribution in respect of the BIC2 Preference Shares from any source other than:
- 7.4.36.1 Distributions made or paid to the Company on account of the Subject Shares;
 - 7.4.36.2 the proceeds of any Permitted Disposal;
 - 7.4.36.3 the proceeds of any Refinancing;
 - 7.4.36.4 the proceeds of any BIC2 Subordinated Loan (other than a Permanent Initial Subordinated Loan); or
 - 7.4.36.5 any other source as may be agreed to in writing by the Preference Share Agent;
- 7.4.37 the Company shall procure that:
- 7.4.37.1 all requisite resolutions (the "**Requisite Resolutions**") of the Company's board of directors to authorise the Company's execution and performance of each of the Key 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 or otherwise passed by means of a round robin in accordance with the provisions of section 74 of the Companies Act; and
 - 7.4.37.2 the Requisite Resolutions remain of full force and effect and are not varied or rescinded;
- 7.4.38 the Company shall not list its shares on any stock exchange save for the BEE Listing during the BEE Listing Period, without the prior written consent of MTN and the Preference Share Agent;

- 7.4.39 in relation to any amounts paid by the Company to any person on account of Distributions received by the Company, the Company shall deliver a Required Declaration to such person within the period contemplated by the relevant section of the Income Tax Act;
- 7.4.40 the Company shall, if so required by the Preference Share Agent, Dispose of any Designated Additional Shares acquired by the Company and deposit the proceeds of such Disposal into the BIC2 Collection Account on the Business Day following date on which the Company receives such proceeds;
- 7.4.41 the Company shall, from time to time pay to BFC2, on first written demand, an amount equal to any BFC2 Additional Expense which is or becomes due and payable by BFC2 in terms of the BFC2 Preference Share Subscription Agreement; and
- 7.4.42 the Company shall ensure that if any information provided to the BFC2 Preference Shareholders in connection with the Transaction Documents and the transactions contemplated thereby is no longer true and correct, in respect of (i) the Key Transaction Documents, in all respects; and (ii) the Service Provider Agreements, in all material respects, then the Company shall forthwith advise the Preference Share Agent thereof and shall provide the Preference Share Agent with updated information which is true and correct (i) in respect of the Key Transaction Documents, in all respects; and (ii) in respect of the Service Provider Agreements, in all material respects.

8. INFORMATION UNDERTAKINGS

- 8.1 Until the BIC2 Discharge Date unless the Preference Share Agent otherwise agrees in writing, the Company shall deliver to the Preference Share Agent:
 - 8.1.1 as soon as reasonably possible after becoming aware of them, the details of any litigation, arbitration or administrative proceedings and/or any liquidation applications, winding up applications or business rescue applications, which are current, threatened or pending against the Company (other than litigation, arbitration or administrative proceedings and/or any liquidation applications, winding up applications or business rescue applications which (i) are announced by the Stock Exchange News Service; and/or (ii) relate to Service Provider Expenses, and which are reasonably likely to result in a liability of the Company of less than R5 000 000,00 (five million Rand) whether in relation to (a) any single claim, action or proceeding instituted against the Company; or (b) in aggregate over any calendar year during the Term);
 - 8.1.2 notification, promptly after becoming aware thereof, of any BIC2 Potential Trigger Event or BIC2 Illegality Event or any fact or circumstance that, with the giving of notice or the passing of time or otherwise would become BIC2 Illegality Event;
 - 8.1.3 the audited annual financial statements of the Company for each Financial Year ending after the Issue Date within 120 (one hundred and twenty) Business Days of the end of such Financial Year;
 - 8.1.4 each audit report of the Company prepared by the Auditors from time to time, within 10 (ten) Business Days after delivery of such audit report by the Auditors to the Company;
 - 8.1.5 or make available to the Preference Share Agent by electronic means, as the case may be, copies of all notices, circulars, and other documents delivered by MTN to the

Company, in its capacity as shareholder of MTN, within 3 (three) Business Days following receipt by the Company of such documents from MTN;

- 8.1.6 copies of all Utilisation Requests (as such term is defined in the MTN Subordination and Undertaking Agreement) which are delivered by BIC2 to MTN or an MTN Acceded Nominee and copies of all BIC2 Subordinated Loan Agreements concluded between BIC2 and MTN or an MTN Acceded Nominee within 3 (three) Business Days following delivery of such Utilisation Request or conclusion of a BIC2 Subordinated Loan Agreement, as the case may be;
- 8.1.7 copies of all documents delivered by the Company 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 to the extent that any such documents do not relate to the non-payment of, or dispute in respect of, any amounts owing by the Company to any Service Provider;
- 8.1.8 such other information in relation to the Company as the Preference Share Agent or the BIC2 Preference Shareholder may require, promptly after such information is requested by such person;
- 8.1.9 copies of:
 - 8.1.9.1 all the Company Board Meeting Documents to the Preference Share Agent which shall be delivered on the date on which such Board Meeting Documents are delivered to the directors of the Company, but only if and for so long as (i) a Material Adverse Event has occurred and is continuing or (ii) a BIC2 Potential Trigger Event has occurred and is Continuing; and
 - 8.1.9.2 at all other times, only those Company Board Meeting Documents which relate directly to any Finance Document, which shall be delivered within a reasonable period after the board has considered such matters,

provided that no delivery of any Company Board Meeting Documents shall be required if:

- 8.1.9.3 disclosure of such documents would constitute a breach of any confidentiality obligations or any other laws binding on the Company;
- 8.1.9.4 any such documents include legal advice in respect of any Finance Document given by the Company's legal advisors;
- 8.1.9.5 any such documents include proposals in relation to the refinancing of the funding (or any part thereof) provided pursuant to the Finance Documents; or
- 8.1.9.6 the contents of such documents relate to (or in the reasonable opinion of the board of the Company, are reasonably likely to relate to) a potential or actual dispute between the Company and any other party to the Finance Documents,

(Notwithstanding the above, the Company will advise the Preference Share Agent of the outcome of any decision made by the Company to implement any refinancing, within a reasonable period following finalisation of any such decision);

- 8.1.10 promptly, and in any event by no later than 5 (five) Business Days following a Distribution by the Company, provide the Preference Share agent with copies of all such director resolutions as are required to be passed by the Company in order to comply with section 46 of the Companies Act in respect of each Distribution made by the Company to the Preference Share Agent;
 - 8.1.11 within a reasonable period of time after receipt of written notice from the Preference Share Agent, the name of any Designated Shareholder from time to time and the number of Ordinary Shares registered in the name of such Designated Shareholder;
 - 8.1.12 during the BEE Listing Period:
 - 8.1.12.1 promptly, and in any event by no later than;
 - 8.1.12.1.1 5 (five) Business Days after becoming aware thereof, notification of:
 - 8.1.11.1.1.1 any JSE Loss (other than in relation to any JSE Trading Platform Expenses) in an amount of R5 000 000,00 (five million Rand) or more;
 - 8.1.11.1.1.2 the amount of all and any JSE Losses (other than in relation to any JSE Trading Platform Expenses) if these, in the aggregate, would be equal to or more than R10 000 000,00 (ten million Rand) in any Dividend Period; and
 - 8.1.11.1.1.3 the amount of all and any JSE Losses (other than in relation to any JSE Trading Platform Expenses) if these, in the aggregate, would be equal to or more than R10 000 000,00 (ten million Rand) in any Dividend Period; and
 - 8.1.12.1.2 10 (ten) Business Days after the end of each Quarter, notification of any other JSE Losses (other than in relation to any JSE Trading Platform Expenses) which:
 - 8.1.11.1.2.1 arose during that Quarter; and
 - 8.1.11.1.2.2 the Company reasonably foresees that it will or is reasonably likely to become liable to pay during the immediately succeeding Quarter,
- together with details of such JSE Losses, including the amount thereof, the circumstances under which such JSE Losses arose, how the Company proposes to or has paid such JSE Losses, and the amount of any Trading Platform Losses Differential that arose or may arise in respect thereof;

8.1.12.2 promptly, and in any event by no later than:

8.1.12.2.1 5 (five) Business Days after the payment of:

8.1.11.2.1.1 any JSE Loss (other than in relation to any JSE Trading Platform Expense) in an amount of R5 000 000,00 (five million Rand) or more;

8.1.11.2.1.2 any JSE Loss (other than in relation to any JSE Trading Platform Expense) in respect of which a Trading Platform Losses Differential arose,

notification of such JSE Losses paid by the Company; and

8.1.12.2.2 10 (ten) Business Days after the end of each Quarter, notification of any other JSE Losses (other than any JSE Trading Platform Expenses) paid by the Company during that Quarter;

8.1.12.3 promptly, and in any event by no later than 5 (five) Business Days after any payment or recovery, notification of any amount actually recovered by the Company on account of any JSE Loss (other than any JSE Trading Platform Expense);

8.1.12.4 promptly, and in any event not less than 15 (fifteen) Business Days prior to the date on which any JSE Loss (other than any JSE Trading Platform Expense) becomes due and payable, and in respect of which a Trading Platform Losses Differential arises, a written notice given by the Company to MTN, requesting MTN and/or a Subordinated MTN Acceded Nominee to advance a BIC2 Subordinated Loan to the Company pursuant to the provisions of clause 4.4.2 of the MTN Subordination and Undertaking Agreement, in an amount equal to such Trading Platform Losses Differential.

8.2 If the Preference Share Agent consents to any action by the Company contemplated in clause 7.4.4 hereof, the Company shall, as soon as practicably possible thereafter, give written notice thereof to MTN.

8.3 Until the BIC2 Discharge Date, the Company shall allow any one or more representatives, agents and/or advisors of the BIC2 Preference Shareholder and the Preference Share Agent, upon reasonable notice, to have access to its assets, books and records and to inspect same during normal business hours.

9. FATCA INFORMATION

9.1 On the Original Signature Date, the Issue Date, the Amendment Date and the Refinancing Date, each Party warrants that it is a FATCA Exempt Party.

- 9.2 Subject to clause 9.4, each Party shall, within 10 (ten) Business Days of a reasonable request by the other Parties:
- 9.2.1 confirm to such other Parties whether it is:
 - 9.2.1.1 a FATCA Exempt Party; or
 - 9.2.1.2 not a FATCA Exempt Party;
 - 9.2.2 supply to such other Parties such forms, documentation and other information relating to its status under FATCA as each such other Party reasonably requests for the purposes of each such other Party's compliance with FATCA; and
 - 9.2.3 supply to such other Parties such forms, documentation and other information relating to its status as each such other Party reasonably requests for the purposes of each such other Party's compliance with any other law, regulation, or exchange of information regime.
- 9.3 If a Party confirms to the other Parties pursuant to clause 9.2.1 that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify the other Parties promptly.
- 9.4 Clause 9.2 shall not oblige any Party to do anything, which would or might in its reasonable opinion constitute a breach of:
- 9.4.1 any law or regulation;
 - 9.4.2 any fiduciary duty; or
 - 9.4.3 any duty of confidentiality.
- 9.5 If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with clause 9.2.1 or clause 9.2.1.2 (including, for the avoidance of doubt, where clause 9.4 applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- 9.6 The Company irrevocably and unconditionally undertakes that it shall not, at any time during the Term, be or become a US Tax Obligor.

10. FATCA DEDUCTION

- 10.1 Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- 10.2 Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Preference Share Agent and the Preference Share Agent shall notify the BIC2 Preference Shareholder.

11. DISTRIBUTIONS

Without limiting or derogating from any other provisions hereof, the Company hereby irrevocably and unconditionally undertakes that, save as provided in the BIC2 Preference Share Terms and the applicable Priority of Payments, the Company shall not, unless otherwise agreed in writing by the Preference Share Agent, prepay or repay any loans or declare and/or pay and/or make any Distribution in respect of the Ordinary Shares, whether in cash or *in specie*, unless and until the BIC2 Preference Shares have been redeemed in full in accordance with their terms.

12. CESSION AND DELEGATION

- 12.1 Subject to the terms of the Finance Documents, the BIC2 Preference Shareholder shall not be entitled to sell, pledge, cede or otherwise Dispose of any or all of the BIC2 Preference Shares held by it to any third party or to cede, assign and/or delegate any or all of its rights and/or obligations under the Finance Documents to any third party without the prior written consent of the Preference Share Agent and MTN.
- 12.2 The Company shall not be entitled to cede all or any of its rights and/or delegate all or any of its obligations under any Key Transaction Document to any person without the express prior written consent of the Preference Share Agent and MTN.

13. ADDITIONAL EXPENSES

The Company hereby unconditionally and irrevocably undertakes to the BIC2 Preference Shareholder that, until the BIC2 Discharge Date:

- 13.1 it shall, from time to time and in accordance with the applicable Priority of Payments reimburse the BIC2 Preference Shareholder on the applicable BIC2 Dividend Date or BIC2 Redemption Date, as the case may be, for:
- 13.1.1 all costs and expenses (including legal fees as between attorney and own client) together with any VAT thereon incurred (provided that any such costs and expenses incurred prior to the enforcement of any right or remedy by any BIC2 Preference Shareholder under this Agreement shall be costs reasonably incurred), in or in connection with the preservation of any of the rights of the BIC2 Preference Shareholder in terms of the Finance Documents; and
- 13.1.2 all costs and expenses (including legal fees as between attorney and own client) together with any VAT thereon, incurred in or in connection with the enforcement of any of the rights of the BIC2 Preference Shareholder in terms of the Finance Documents,
- including in both cases any costs and expenses relating to any investigation undertaken as to whether or not a BIC2 Potential Trigger Event or BIC2 Illegality Event might have occurred or is likely to occur or any steps which become necessary or prudent in connection with any proposal for remedying or otherwise resolving a BIC2 Potential Trigger Event or BIC2 Illegality Event;
- 13.2 it shall pay all Securities Transfer Tax and registration duties and other Taxes and all other duties and Taxes to which this Agreement, any of the other Transaction Documents, or any judgment given in connection herewith or therewith, is or at any time may be subject; and
- 13.3 if the Company requests any amendment, waiver or consent in terms of this Agreement or any of the other Key Transaction Documents, then it shall reimburse the BIC2 Preference

Shareholder, the Preference Share Agent and/or any BFC2 Preference Shareholder for all costs and expenses (including legal fees as between attorney and own client), together with any VAT thereon, incurred by the BIC2 Preference Shareholder, the Preference Share Agent and/or any BFC2 Preference Shareholder in responding to or complying with such request.

14. INDEMNITIES

14.1 The Company hereby unconditionally and irrevocably agrees to indemnify and hold harmless the BIC2 Preference Shareholder and its officers, directors, employees and agents (each an **"Indemnified Party"**) against any cost, claim, liability, loss or expense (including legal fees) together with VAT thereon (save for consequential losses and any cost, claim, liability, loss or expense incurred as a result of the wilful misconduct or gross negligence of any Indemnified Party) (**"Losses"**), which any such Indemnified Party may sustain or incur as a consequence of:

14.1.1 the failure of the Company to make payment, including, without limitation, any BFC2 Additional Expenses payable in terms of clause 13 of the BFC2 Preference Share Subscription Agreement, on the due date of any sum due or scheduled or required to be paid in terms of the Finance Documents; or

14.1.2 the breach of any representation, warranty or undertaking in the Finance Documents including, without limitation, the undertakings in clause 6.1.18; or

14.1.3 the BIC2 Preference Shares (or any of them) not being validly created and/or issued to the BIC2 Subscriber and/or, for any reason whatsoever, the BIC2 Preference Shareholder not (in respect of any BIC2 Preference Share held by it) being entitled to all or any rights and/or privileges set out in the BIC2 Preference Share Terms; or

14.1.4 the occurrence of any BIC2 Trigger Event, BIC2 Potential Trigger Event or BIC2 Illegality Event; or

14.1.5 the BIC2 Preference Shares at any time constituting *"hybrid equity instruments"* or *"third party backed shares"* as those terms are defined in section 8E and section 8EA of the Income Tax Act, respectively, save if this arises solely by reason of the BIC2 Preference Shareholder having taken, without the consent of the Company, and prior to the occurrence of any BIC2 Potential Trigger Event or BIC2 Trigger Event, any action in respect of BIC2 Preference Shares held by it which results in it acquiring an *"enforcement right"* in relation to such BIC2 Preference Shares (as defined in section 8EA(1) of the Income Tax Act); or

14.1.6 any payment in respect of any BIC2 Preference Share or under any Finance Document being or becoming subject to any Tax in the hands of the BIC2 Preference Shareholder at any time, whether before or after the redemption of such BIC2 Preference Share in accordance with the BIC2 Preference Share Terms; or

14.1.7 the occurrence of any BIC2 Adjustment Event (whether before or after redemption of the BIC2 Preference Shares (or any of them)), it being agreed that any amount payable by the Company under the indemnity contemplated in this clause 14 will be calculated on the same basis and using the same methodology set out in the BIC2 Preference Share Terms; or

14.1.8 any BIC2 Preference Share not being redeemed in accordance with the BIC2 Preference Share Terms; or

- 14.1.9 any payment which the BIC2 Preference Shareholder may previously have received or may thereafter receive from any person in respect of the BIC2 Preference Shares being set aside, whether before or after the redemption of the BIC2 Preference Shares, refunded or reduced under any Applicable Laws or proving to have been for any reason invalid; or
- 14.1.10 any Tax payable by the BIC2 Preference Shareholder on account of any indemnity payment made under this clause 14.1; or
- 14.1.11 the occurrence of any BFC2 Indemnity Event; or
- 14.1.12 the occurrence of any JSE Loss,
- provided that the Company shall be under no obligation to indemnify the BIC2 Preference Shareholder against any losses which the BIC2 Preference Shareholder may sustain or incur as a consequence of as a result of any BIC2 Preference Dividend paid or payable by the Company to the BIC2 Preference Shareholder being deemed an amount of income in terms of section 8EA(2) of the Income Tax Act, solely by reason of the BIC2 Preference Shareholder having taken, without the consent of the Company, and prior to the occurrence of any BIC2 Potential Trigger Event or BIC2 Trigger Event, any action in respect of BIC2 Preference Shares held by it which results in it acquiring an "*enforcement right*" in relation to such BIC2 Preference Shares (as defined in section 8EA(1) of the Income Tax Act).
- 14.2 Subject to the provisions of clause 14.4 hereof, each indemnity in this clause 14 shall constitute a separate and independent obligation from the other obligations contained in this Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due in terms of this Agreement or under any such judgment or order or any redemption of the BIC2 Preference Shares or any of them, notwithstanding any redemption of the BIC2 Preference Shares or any of them and/or the BIC2 Preference Shareholder ceasing to be a BIC2 Preference Shareholder pursuant to any such redemption.
- 14.3 Any amount due to an Indemnified Party under this clause 14 shall be certified by such Indemnified Party, which certificate shall in the absence of manifest error constitute *prima facie* proof of the amount due to such Indemnified Party .
- 14.4 No claims for the Losses under clause 14.1 shall result in any duplication of any payment made to any Indemnified Party in respect of substantially the same cause of action.
- 14.5 The provisions of this clause 14 shall survive the termination of this Agreement for whatsoever reason and shall survive the redemption of the BIC2 Preference Shares and shall be enforceable by the BIC2 Preference Shareholder in relation to the holding of any BIC2 Preference Shares by it at any time, shall be of force and effect during the indemnity period provided for in clause 2.1.6.6 of Annex A to the BIC2 MOI and shall expire and cease to be of force and effect upon the expiry of the indemnity period provided for in clause 2.1.6.6 of Annex A to the BIC2 MOI.
- 14.6 No provision of this Agreement or any other Finance Document will:
- 14.6.1 interfere with the right of the BIC2 Preference Shareholder and/or its Consolidating Company (if any) to arrange its affairs (Tax, reserving or otherwise) in whatever manner it thinks fit in its sole discretion;

- 14.6.2 oblige the BIC2 Preference Shareholder and/or its Consolidating Company (if any) to investigate or claim any credit, relief, remission or repayment available to it, or to alter the extent, order and manner of any claim; or
- 14.6.3 oblige the BIC2 Preference Shareholder and/or its Consolidating Company (if any) to disclose any information relating to its affairs (Tax, reserving or otherwise), or any computation in respect of Taxes.
- 14.7 If, at any time during the Indemnity Period of any ex-BFC2 Preference Shareholder, the effect of a BFC2 Adjustment Event in respect of the BFC2 Preference Shares that were held by that ex-BFC2 Preference Shareholder becomes apparent which was not apparent while such ex-BFC2 Preference Shareholder held such BFC2 Preference Shares, or if any ex-BFC2 Preference Shareholder only becomes aware of the effects of any such BFC2 Adjustment Event during its applicable Indemnity Period (each such event a **"Post-Redemption Event"** and collectively **"the Post Redemption Events"**), the Company shall and hereby does indemnify and holds such ex-BFC2 Preference Shareholder harmless against the effect of such Post Redemption Event and, accordingly, shall pay to such ex-BFC2 Preference Shareholder, forthwith on demand therefor, such amount as may be necessary to put such ex-BFC2 Preference Shareholder in the same after Tax position it would have been in had such Post Redemption Event not occurred or the effects thereof not only become apparent during its applicable Indemnity Period (including such amount as may be necessary to fully compensate such ex-BFC2 Preference Shareholder for the loss of any Dividends Tax Credit). The provisions of this clause 14.7 constitute an irrevocable stipulation for the benefit of each ex-BFC2 Preference Shareholder, which shall be capable of acceptance by any ex-BFC2 Preference Shareholder at any time during its applicable Indemnity Period on written notice to the Company.
- 14.8 **Redemption of BFC2 Preference Shares in full on the BIC2 Scheduled Redemption Date**
- 14.8.1 Not later than 180 (one hundred and eighty) days prior to the BIC2 Scheduled Redemption Date (or such earlier period as the Preference Share Agent, the Company and MTN may agree in writing), the Company shall deliver a draft Redemption Notice to the Preference Share Agent (the date on which the Company gives such notice to the Preference Share Agent referred to herein as the **"Company Notification Date"**) and provide the Preference Share Agent with (i) certified copies of each resolution of the board of directors of the Company and each resolution of the board of directors of BFC2 resolving to declare dividends or such other amounts on account of the BIC2 Preference Shares and the BFC2 Preference Shares respectively which has been passed from the Issue Date until the Company Notification Date; (ii) the draft resolutions of the board of directors of the Company and the draft resolutions of the board of directors of BFC2 in respect of each Priority of Payments Date to occur between the Company Notification Date and the BIC2 Scheduled Redemption Date, if any; (iii) the draft resolution of the board of directors of the Company and the draft resolution of the board of directors of BFC2 resolving to redeem the BIC2 Preference Shares and the BFC2 Preference Shares on the BIC2 Scheduled Redemption Date; (iv) the up-to-date BIC2 Memorandum of Incorporation and the BFC2 MOI and (v) all and any other documents as may be reasonably required by or relevant to Senior Counsel for the purpose of providing his opinion as contemplated in this clause 14, as at the Company Notification Date (the **"Required Documents"**).
- 14.8.2 Within a reasonable period of time after the Company Notification Date or such other date as may be agreed between the Parties, the Company and the Preference Share Agent shall agree on the appointment of a senior counsel at the Johannesburg Bar well versed in matters relating to Tax and events similar in nature to the Post Redemption

Events to determine whether or not there is a reasonable prospect that a Determination Issue has occurred during the period from the Issue Date to the BIC2 Scheduled Redemption Date; (the "**Senior Counsel Determination**"). If the Company and the Preference Share Agent are unable to agree on the appointment of a senior counsel within the aforesaid reasonable period of time, the Preference Share Agent shall apply to the Chairman (or equivalent) for the time being of the Johannesburg Bar Council to appoint to a senior counsel (which senior counsel shall act as an expert and not as an arbitrator) (the "**Senior Counsel**").

- 14.8.3 Immediately following the appointment of the Senior Counsel, the Preference Share Agent shall arrange a consultation with the Senior Counsel for a date as soon as reasonably possible when the Senior Counsel is available (the date on which the consultation with the Senior Counsel is arranged, hereinafter referred to as the "**Senior Counsel Consultation Date**"). The Preference Share Agent shall notify MTN and the Company of the Senior Counsel Consultation Date and MTN and the Company shall be entitled to attend such consultation.
- 14.8.4 Prior to the Senior Counsel Consultation Date, the Preference Share Agent (or its professional advisers, on its behalf) shall have: (i) procured that a brief to the Senior Counsel (which brief shall include the Required Documents) has been prepared; (ii) provided such brief to the Company and MTN for comment; and (iii) sent the brief to the Senior Counsel. The Senior Counsel shall be requested to make the Senior Counsel Determination as speedily as possible. The Senior Counsel shall be requested to issue a preliminary opinion (the "**Initial Senior Counsel Opinion**") setting out the Senior Counsel Determination (the date of such preliminary opinion, hereinafter referred to as the "**Initial Senior Counsel Determination Date**").
- 14.8.5 If the Initial Senior Counsel Opinion is that there is a reasonable prospect that a Determination Issue has occurred or will occur, the Company and the Preference Share Agent shall determine:
 - 14.8.5.1 the amount that would put the BIC2 Preference Shareholder and/or the BFC2 Preference Shareholders in the same financial and net after Tax position they would have been in had such Post-Redemption Event not occurred in respect of the BFC2 Preference Shares and/or the BIC2 Preference Shares (the "**Indemnified Amount**"); and/or
 - 14.8.5.2 the SARS Amount required to be paid to SARS.
- 14.8.6 If the Company and the Preference Share Agent are unable to agree on the quantum of the Indemnified Amount and/or the SARS Amount, then the Preference Share Agent and the Company shall, within a reasonable period of time following the Initial Senior Counsel Determination Date, agree on the appointment of a senior partner of not less than 15 (fifteen) years' standing at one of the four largest auditing firm in South Africa to determine the quantum of the Indemnified Amount and/or the SARS Amount. If the Preference Share Agent and the Company are unable to appoint a senior partner within the aforesaid reasonable period, the Preference Share Agent shall apply to the President (or the equivalent) for the time being of the South African Institute of Chartered Accountants (or the successor body thereto) to appoint an independent accountant (which independent accountant shall act as an expert and not as an arbitrator). The amount so determined by such senior partner or independent accountant shall be the Indemnified Amount and/or the SARS Amount, as the case may be. The senior partner or independent accountant shall be required to make his determination as soon as

possible after his appointment but in any event not later than the BIC2 Scheduled Redemption Date.

- 14.8.7 Unless otherwise agreed between the Preference Share Agent, MTN and the Company (in which case the Initial Senior Counsel Opinion shall be final and binding on the Parties), within 1 (one) Business Day of the BIC2 Scheduled Redemption Date, the Preference Share Agent shall request the Senior Counsel to issue a final opinion (the "**Final Senior Counsel Opinion**") setting out the Senior Counsel Determination (the date of the Final Senior Counsel Opinion, hereinafter referred to as the "**Final Senior Counsel Determination Date**"). The Final Senior Counsel Opinion shall be final and binding on the Parties. The Parties intend that (and undertake to use their respective reasonable endeavor's to ensure that) the Senior Counsel shall issue the Final Senior Counsel Opinion no later than 5 (five) Business Days after the BIC2 Scheduled Redemption Date.
- 14.8.8 If the Senior Counsel determines in the Final Senior Counsel Opinion or the Initial Senior Counsel Opinion (if applicable) that there is a reasonable prospect that a Determination Issue has occurred or will occur, then by no later than (i) if any such determination is made in the Initial Senior Counsel Opinion, the BIC2 Scheduled Redemption Date; or (ii) if any such determination is only made in the Final Senior Counsel Opinion, by no later than the date which is 10 (ten) Business Days following the date of issue of the Final Senior Counsel Opinion, the Company shall provide security to the BFC2 Preference Shareholders by placing cash, in an amount equal to the Indemnified Amount and/or the SARS Amount, on deposit in the BIC2 Security Account.
- 14.8.9 In the event that the Senior Counsel Determination is that there is no reasonable prospect that a Determination Issue has occurred or will occur, no Indemnified Amount or SARS Amount shall be payable by the Company into the BIC2 Security Account.
- 14.9 **BFC2 Preference Shares redeemed prior to the BFC2 Scheduled Redemption Date or an MTN Call Option Acceded Nominee exercises the Trigger Event Call Option**
- 14.9.1 If:
- 14.9.1.1 the BIC2 Preference Shares are redeemed in full prior to the BIC2 Scheduled Redemption Date for any reason; or
 - 14.9.1.2 MTN or a Call Option MTN Acceded Nominee exercises the Trigger Event Call Option (as such term is defined in the Call Option Agreement) and pays the applicable Call Option Strike Price in respect of all the BFC2 Unredeemed Preference Shares to the Holders under in terms of clause 4 of the Call Option Agreement; or
 - 14.9.1.3 MTN or a Call Option MTN Acceded Nominee exercises the Illegality Event Call Option (as such term is defined in the Call Option Agreement) and pays the applicable Call Option Strike Price in respect of the BFC2 Illegality Affected Preference Shares to the applicable Affected Holder under in terms of clause 5 of the provisions of the Call Option Agreement; or
 - 14.9.1.4 MTN or a Call Option MTN Acceded Nominee exercises the Adjustment Event Call Option (as such term is defined in the Call Option Agreement) and pays the applicable Call Option Strike Price in respect of the BFC2

Adjustment Affected Preference Shares to the applicable Affected Holder under in terms of clause 6 of the provisions of the Call Option Agreement,

then, within 10 (ten) Business Days (or such other period as the Preference Share Agent, the Company and MTN may agree in writing), of the earlier of:

- 14.9.1.5 the date on which all the BIC2 Preference Shares are redeemed in full as contemplated in clause 14.9.1.1 above; or
- 14.9.1.6 the date on which the applicable Call Option Strike Price in respect of the applicable BFC2 Preference Shares is paid in full to the Holders (in the case of clause 14.9.1.2) or the Affected Holder (in the case of clauses 14.9.1.3 or 14.9.1.4) in terms of the Call Option Agreement,

(being, in each case, the "**Relevant Exit Date**"), the Company shall provide the Preference Share Agent with (i) certified copies of each resolution passed by the board of directors of the Company and each resolution passed by the board of directors of BFC2 resolving to declare dividends and/or redeem any or all BIC2 Preference Shares or BFC2 Preference Shares, as the case may be, or pay any other amounts on account of the BIC2 Preference Shares and the BFC2 Preference Shares respectively, and/or Dispose of any Subject Shares, which has been passed from the Issue Date until the Relevant Exit Date; (ii) copies of the up-to-date BIC2 Memorandum of Incorporation and BFC2 Memorandum of Incorporation, as the Relevant Exit Date, (iii) copies of each amendment to each such document filed with CIPC from the Issue Date until the Relevant Exit Date and (iv) all and any other documents as may be reasonably required by or relevant to the Exit Senior Counsel for the purpose of providing his opinion as contemplated in this clause 14 (the "**Required Exit Documents**").

- 14.9.2 Within a reasonable period of time after the Relevant Exit Date or such other date as may be agreed between the Parties (or, in the case of clauses 14.9.1.3 or 14.9.1.4 above, as agreed between the Affected Holder, BFC2 and BIC2), the Company and the Preference Share Agent shall agree on the appointment of a senior counsel at the Johannesburg Bar well versed in matters relating to Tax and events similar in nature to the Post Redemption Events to determine whether or not there is a reasonable prospect that a Determination Issue has occurred during the period from the Issue Date until the Relevant Exit Date (the "**Senior Counsel Exit Determination**"). If the Company and the Preference Share Agent are unable to agree on the appointment of a senior counsel within the aforesaid reasonable period of time, the Preference Share Agent shall apply to the Chairman (or equivalent) for the time being of the Johannesburg Bar Counsel to appoint to a senior counsel (which senior counsel shall act as an expert and not as an arbitrator) (the "**Exit Senior Counsel**").
- 14.9.3 Immediately following the appointment of the Exit Senior Counsel, the Preference Share Agent shall arrange a consultation with the Exit Senior Counsel for a date as soon as reasonably possible when the Exit Senior Counsel is available (the date on which the consultation with the Exit Senior Counsel is arranged, hereinafter referred to as the "**Exit Senior Counsel Consultation Date**"). The Preference Share Agent shall notify MTN and the Company of the Exit Senior Counsel Consultation Date and MTN and the Company shall be entitled to attend such consultation.
- 14.9.4 Prior to the Exit Senior Counsel Consultation Date, the Preference Share Agent (or its professional advisers, on its behalf) shall have: (i) procured that a brief to the Exit Senior Counsel (which brief shall include the Required Documents) has been prepared; (ii) provided such brief to the Company and MTN for comment; and (iii) sent the brief

to the Exit Senior Counsel. The Exit Senior Counsel shall be requested to make the Exit Senior Counsel Determination as speedily as possible. The Exit Senior Counsel shall be requested to issue an opinion (the "**Exit Senior Counsel Opinion**") setting out the Exit Senior Counsel Determination (the date of such preliminary opinion, hereinafter referred to as the "**Exit Senior Counsel Determination Date**"). The Exit Senior Counsel Opinion shall be final and binding on the Parties.

14.9.5 If the Exit Senior Counsel Opinion is that there is a reasonable prospect that a Determination Issue has occurred, then the Company and the Preference Share Agent shall as soon as reasonably possible determine the applicable Indemnified Amount and/or SARS Amount. If the Company and the Preference Share Agent are unable to agree on the quantum of the applicable Indemnified Amount and/or SARS Amount, then the Preference Share Agent and the Company shall, within a reasonable period of time following the Exit Senior Counsel Determination Date, agree on the appointment of a senior partner of not less than 15 (fifteen) years' standing at one of the four largest auditing firm in South Africa to determine the quantum of the applicable Indemnified Amount. If the Preference Share Agent and the Company are unable to appoint a senior partner within the aforesaid reasonable period, the Preference Share Agent shall apply to the President (or the equivalent) for the time being of the South African Institute of Chartered Accountants (or the successor body thereto) to appoint an independent accountant (which independent accountant shall act as an expert and not as an arbitrator). The amount so determined by such senior partner or independent accountant shall be the applicable Indemnified Amount and/or SARS Amount, as the case may be. The senior partner or independent accountant shall be required to make his determination as soon as possible after his appointment.

14.9.6 If the Exit Senior Counsel determines in the Exit Senior Counsel Opinion that there is a reasonable prospect that a Determination Issue has occurred, then by no later than the date which is 10 (ten) Business Days following the date on which the applicable Indemnified Amount and/or SARS Amount is agreed or determined, the Company shall provide security, in the circumstances contemplated in clauses 14.9.1.1 or 14.9.1.2 above, in favour of all ex-BFC2 Preference Shareholders, and in the circumstances contemplated in clauses 14.9.1.3 or 14.9.1.4, in favour of the Affected Holder, by placing cash, in an amount equal to the Indemnified Amount and/or SARS Amount on deposit in the BIC2 Security Account.

14.10 Payment of Indemnified Amount and/or SARS Amount and Release of Security

14.10.1 If the Senior Counsel Opinion or Exit Senior Counsel Opinion, as the case may be, provides that that there is no reasonable prospect that a Determination Issue has occurred or will occur in respect of the applicable BFC2 Preference Shares, then:

14.10.1.1 with respect to the Security Interests and Indemnity Period Security held in respect of the applicable BFC2 Preference Shares:

14.10.1.1.1 in the circumstances contemplated in clause 14.8 above, the applicable ex-BFC2 Preference Shareholders shall release their rights (including their Indemnity Period Security rights) under and in terms of the First Ranking Guarantee, the BIC2 Account Cession and the BIC2 Pledge and Cession on and with effect from the later of:

(1) the BFC2 Discharge Date; and

(2) the Final Senior Counsel Determination Date; or

14.10.1.1.2 in the circumstances contemplated in clause 14.9.1.1 above, the applicable ex-BFC2 Preference Shareholders shall release their rights (including their Indemnity Period Security rights) under the First Ranking Guarantee, the BIC2 Account Cession and the BIC2 Pledge and Cession on and with effect from the later of:

(1) the BFC2 Discharge Date; and

(2) the Relevant Exit Date; or

14.10.1.1.3 in the circumstances contemplated in clause 14.9.1.2 above, the ex-BFC2 Preference Shareholders shall be deemed to have transferred their rights under the Indemnity Period Security to MTN or the applicable Call Option MTN Acceded Nominee (in its capacity as BFC2 Preference Shareholder) on and with effect from the Relevant Exit Date; or

14.10.1.1.4 in the circumstances contemplated in clauses 14.9.1.3 or 14.9.1.4 above, the Affected Holder shall be deemed to have transferred its rights under its Indemnity Period Security to MTN or the applicable Call Option MTN Acceded Nominee (in its capacity as BFC2 Preference Shareholder) on and with effect from the Relevant Exit Date; and

14.10.1.2 the Indemnity Period Claims of the applicable ex-BFC2 Preference Shareholders in respect of such BFC2 Preference Shares shall continue in full force and effect, and shall remain enforceable by, the applicable ex-BFC2 Preference Shareholder/s until the expiry of their applicable Indemnity Period.

14.10.2 In the circumstances contemplated in:

14.10.2.1 clauses 14.8, 14.9.1.1, and 14.9.1.2; and

14.10.2.2 to the extent that pursuant to clauses 14.9.1.3 or 14.9.1.4 above the Illegality Event Call Option or the Adjustment Event Call Option, as the case may be, is exercised in relation to all the BFC2 Unredeemed Preference Shares, clauses 14.9.1.3 or 14.9.1.4,

if the Senior Counsel Opinion or the Exit Senior Counsel Opinion, as the case may be, provides that there is a reasonable prospect that a Determination Issue has occurred or will occur in respect of the BFC2 Preference Shares, then:

14.10.2.3 the Company's obligations and BFC2's obligations in respect of Indemnity Period Claims owing to each ex-BFC2 Preference Shareholder shall endure and be of full force and effect until the expiry of the Indemnity Period of each ex-BFC2 Preference Shareholder;

14.10.2.4 on and from:

- 14.10.2.4.1 in the circumstances contemplated in clauses 14.8 and 14.9.1.1, the BIC2 Discharge Date; and
 - 14.10.2.4.2 in the circumstances contemplated in clause 14.9.1.2, 14.9.1.3 or 14.9.1.4, the date on which the Indemnified Amount and SARS Amount, as the case may be, is paid into the BIC2 Security Account,
- each ex-BFC2 Preference Shareholder shall release and terminate all its rights to the Indemnity Period Security, save for the Indemnity Period Security held by such ex-BFC2 Preference Shareholder in and to the BIC2 Security Account arising under and in terms of the BIC2 Account Cession (and as secured in terms of, and pursuant to, the First Ranking Guarantee), which shall endure and be of full force and effect until the expiry of the Indemnity Period of each ex-BFC2 Preference Shareholder; and
- 14.10.2.5 all other Security Interests created by the Company in favour of the BFC2 Preference Shareholders shall be released and terminated on the BFC2 Discharge Date.
- 14.10.3 In the circumstances contemplated in clauses 14.9.1.3 or 14.9.1.4 above to the extent that the Illegality Event Call Option or the Adjustment Event Call Option, as the case may be, is exercised in relation to some but not all the BFC2 Unredeemed Preference Shares, if the Exit Senior Counsel Opinion provides that there is a reasonable prospect that a Determination Issue has occurred or will occur in respect of the affected BFC2 Preference Shares, then, in respect of such BFC2 Preference Shares in relation to the applicable ex-BFC2 Preference Shareholder:
- 14.10.3.1 the Company's obligations and BFC2's obligations in respect of the Indemnity Period Claims owing to such ex-BFC2 Preference Shareholder shall endure and be of full force and effect until the expiry of the Indemnity Period of such applicable ex-BFC2 Preference Shareholder; and
 - 14.10.3.2 on and from the date on which the Indemnified Amount and SARS Amount, as the case may be, is paid into the BIC2 Security Account, such applicable ex-BFC2 Preference Shareholder shall release and terminate all its rights to the Indemnity Period Security, save for the Indemnity Period Security held by such applicable ex-BFC2 Preference Shareholder in and to the BIC2 Security Account arising under and in terms of the BIC2 Account Cession (and as secured in terms of, and pursuant to, the First Ranking Guarantee) which shall endure and be of full force and effect until the expiry of the Indemnity Period of such applicable ex-BFC2 Preference Shareholder.
- 14.10.4 The Company shall be entitled to invest the proceeds of the amounts which stand to the credit of the BIC2 Security Account for the purposes of securing the Indemnified Amounts in cash or near cash investments held with the Account Bank or any other investment agreed to in writing by the Preference Share Agent, provided that in all cases the Company cedes *in securitatem debiti* all its rights, title and interest and to such investment to the ex-BFC2 Preference Shareholders or Affected Holder/s, as the case may be, on terms and conditions acceptable to them .

15. PREFERENCE SHARE AGENT

- 15.1 The Company acknowledges that the subscribers for, and holders of, the BFC2 Preference Shares have appointed the Preference Share Agent as their agent in terms of the Interfunder Agreement and are entitled, from time to time, to remove the Preference Share Agent, provided that they replace the Preference Share Agent in accordance with the provisions of the Interfunder Agreement.
- 15.2 Where this Agreement:
- 15.2.1 makes reference to the Preference Share Agent exercising any discretion or election, performing any function, exercising or enforcing any right, requiring the performance of any obligation or in any other manner whatsoever, such reference shall be to the Preference Share Agent acting on behalf of the relevant BFC2 Preference Shareholders in accordance with the provisions of the Interfunder Agreement;
- 15.2.2 requires that the waiver, consent, instruction, approval or permission of the Preference Share Agent is to be obtained, such waiver, consent, instruction, approval or permission shall at all times be required to be obtained from the relevant BFC2 Preference Shareholders directly and the granting or withholding of such waiver, consent, instruction, approval or permission shall be issued by the Preference Share Agent and not by the relevant BFC2 Preference Shareholders.
- 15.3 The Company shall be entitled to rely on any written instructions received from the Preference Share Agent and on any written waivers, consents and approvals given by the Preference Share Agent as being that of the subscribers for the BFC2 Preference Shares (in respect of the period up to the Issue Date) or of the relevant BFC2 Preference Shareholders (in respect of the period after the Issue Date). Any action taken by the Company in fulfilment of or pursuant to any such written instructions, waivers, consents and/or approvals shall constitute a valid discharge of its obligations (including payment) in terms of this Agreement.

16. PAYMENTS

- 16.1 All payments to be made by the Company to the BIC2 Preference Shareholder in terms of this Agreement and in terms of the applicable Priority of Payments contained in the BIC2 Preference Share Terms shall be made:
- 16.1.1 without set-off or deduction of any nature;
- 16.1.2 free and clear of and without deduction for or on account of Tax unless the Company is required to make such payment subject to the deduction or withholding of Tax, in which case the sum payable by the Company (in respect of which such deduction or withholding is required to be made) shall, other than as provided for in clause 10 above, be increased to the extent necessary to ensure that the BIC2 Preference Shareholder receives a sum net of any deduction or withholding such that it is in the same after Tax net economic position it would have been in had no such deduction or withholding been made or required to be made; and
- 16.1.3 in respect of the BIC2 Preference Shares by electronic funds transfer into the BFC2 Collection Account.
- 16.2 The BIC2 Preference Shareholder may not change the bank account set out in clause 16.1.3, without the prior written consent of the Preference Share Agent.

- 16.3 Notwithstanding anything to the contrary contained herein or in any other Finance Document, no payment obligations of the Company under any Finance Document shall become due or payable prior to the Issue Date.

17. BREACH

- 17.1 Subject to clause 17.2 hereof, without limiting any rights the BIC2 Preference Shareholder may have under the Finance Documents or the BIC2 Preference Shares, should the Company breach any provision of any Finance Document to which it is a party and such breach has not been remedied or waived for a period of 3 (three) Business Days after receiving written notice thereof from the Preference Share Agent (which written notice shall specify the breach in question and shall demand remedy of such breach within a period of 3 (three) Business Days after receipt of such written notice), the Preference Share Agent shall be entitled, without prejudice to its/their other rights in law including without limitation any right to claim damages, to claim immediate specific performance of all of the Company's obligations then due for performance in terms of this Agreement and the other Finance Documents; provided that, notwithstanding anything to the contrary contained in this Agreement, a Party shall not be entitled to unilaterally cancel this Agreement for any reason whatsoever, it being recorded that cancellation is not an appropriate remedy for purposes of this Agreement.
- 17.2 Notwithstanding the provisions of clause 17.1 hereof, if the BIC2 Preference Share Terms prescribe a particular period to remedy any BIC2 Potential Trigger Event (the "**Required Period**"), the Preference Share Agent shall provide the Company with such Required Period to remedy such BIC2 Potential Trigger Event before such BIC2 Potential Trigger Event becomes a BIC2 Trigger Event.

18. CONFLICTS AND TERMINATION

- 18.1 Any clause hereof which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect and shall be enforceable by either Party, its successors, assignees and cessionaries.
- 18.2 Save as otherwise provided for in the Companies Act, should there be any conflict between the provisions of this Agreement and the provisions of the Constitutional Documents of the Company, as between the Parties hereto, the provisions of this Agreement shall prevail. In such event the Company shall forthwith upon receipt of written request from the BIC2 Preference Shareholder, at the Company's own cost, alter such Constitutional Documents so as to conform to the terms of this Agreement.

19. DOMICILIUM CITANDI ET EXECUTANDI

- 19.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

19.1.1 the BIC2 Investor:

Physical: 135 Rivonia Road
Sandown
Sandton
2196
South Africa

E-mail: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration;

19.1.2 the Company:

Physical: 135 Rivonia Road
Sandown
Sandton
2196
South Africa

E-mail: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration

with a copy to:

MTN:

Physical: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

E-mail: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba; and

19.1.3 the Preference Share Agent:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

E-mail: Catriona.Robertson@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Preference Share Agent: MTN Zakhele Futhi.

- 19.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by email.

- 19.3 Any Party may by notice to the other Parties change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in South Africa or its email address, provided that the change shall become effective on the 5th (fifth) Business Day from the deemed receipt of the notice by the other Party.
- 19.4 Any notice to a Party:
- 19.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the date of delivery or if such delivery is not during normal business hours or such date is not a Business Day, on the immediately succeeding Business Day; or
- 19.4.2 sent by email to its chosen email address stipulated in clause 19.1 during ordinary business hours, shall be deemed to have been received on the date of despatch or if such delivery is not during normal business hours or such date is not a Business Day, on the immediately succeeding Business Day.
- 19.5 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 it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

20. ENGLISH LANGUAGE

All correspondence issued and all information provided hereunder and in relation to the BIC2 Preference Shares shall be in the English language.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This Agreement shall in all respects be governed by the laws of South Africa.
- 21.2 The Parties agree that any legal action or proceedings arising out of or in connection with the Finance Documents to which they are party may be brought against such Party in the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) and irrevocably submits to the non-exclusive jurisdiction of such court. The Parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. Nothing herein shall affect the any Party's right to serve process in any manner permitted by law. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of any Party to take proceedings against any other Party in whatever other jurisdiction the Party taking such proceedings considers appropriate nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.
- 21.3 The Company irrevocably and unconditionally:
- 21.3.1 agrees that if the BIC2 Investor and/or the Preference Share Agent brings legal proceedings against it or its assets in relation to the Finance Documents no immunity from such legal proceedings (which will be deemed to include without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) will be claimed by or on behalf of itself or with respect to its assets;

- 21.3.2 waives any such right of immunity from suit which it or its assets now has or may in the future acquire in connection with any action against it based on the Finance Documents; and
- 21.3.3 consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

22. WHOLE AGREEMENT, NO AMENDMENT

- 22.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.
- 22.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 22.3 No oral *pactum de non petendo* shall be of any force or effect.
- 22.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 22.5 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

23. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction shall, with respect to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

24. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, all of which shall together constitute one and the same instrument. A scanned and emailed counterpart shall constitute a valid counterpart for all purposes hereunder.

25. STIPULATIO ALTERI

- 25.1 The obligations of the Company in this Agreement expressed to be in favour of MTN and/or the BFC2 Preference Shareholders each constitute a *stipulatio alteri* in favour of MTN and/or the BFC2 Preference Shareholders and are capable of acceptance by MTN and/or the BFC2 Preference Shareholders at any time and in any manner, it being recorded that the execution by MTN and/or the BFC2 Preference Shareholders of the first of the Finance Documents to which they are party shall constitute an acceptance by MTN and/or the BFC2 Preference Shareholders (as the case may be) of each such *stipulatio alteri*.
- 25.2 Subject to clause 25.1 hereof, no part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a party to this Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

26. COSTS

The Company shall on redemption of the BIC2 Preference Shares pay all Securities Transfer Tax (if any) in connection with the redemption of the BIC2 Preference Shares.

27. INDEPENDENT ADVICE

The Company acknowledges in favour of the BIC2 Preference Shareholder that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Company acknowledges that all of the provisions of this Agreement have been negotiated as between it and the BIC2 Investor and are part of the overall intention of the Parties in connection with this Agreement.

28. CONFIDENTIALITY

- 28.1 Save to the extent required to be disclosed for the purposes of implementing the Transaction or with the prior written consent of MTN to the contrary, each Party will keep confidential and will not disclose to any person:
- 28.1.1 the details of this Agreement, the details of the negotiations leading to this Agreement, and the information handed over to such Party during the course of negotiations, as well as the details of all the transactions or agreements contemplated in this Agreement; and
- 28.1.2 all information relating to the business or the operations and affairs of the other Parties (together "**Confidential Information**"),
- save that the BIC2 Preference Shareholder will be entitled to disclose Confidential Information to the members of its group and to any person to whom the BIC2 Preference Shareholder may wish to transfer any BIC2 Preference Shares, and their officers, directors, employees and professional advisers, subject to:
- 28.1.3 any such member of its group, potential financier or their officers, directors, employees granting a confidentiality undertaking in favour of the BIC2 Preference Shareholder in writing, substantially in a form approved by the Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or

- 28.1.4 in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the BIC2 Preference Shareholder, any such professional adviser granting a confidentiality undertaking in favour of the BIC2 Preference Shareholder in writing in a form, and in substance reasonably satisfactory to the Preference Share Agent.
- 28.2 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:
 - 28.2.1 is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality; or
 - 28.2.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who received such Confidential Information; or
 - 28.2.3 is disclosed to any professional adviser or potential financier of the Company or MTN subject to:
 - 28.2.3.1 any such potential financier granting a confidentiality undertaking in favour of the BIC2 Preference Shareholder in writing, substantially in a form approved by the Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or
 - 28.2.3.2 in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the BIC2 Preference Shareholder, any such professional adviser granting a confidentiality undertaking in favour of the BIC2 Preference Shareholder in writing in a form, and in substance reasonably satisfactory to the Preference Share Agent; or
 - 28.2.4 is required by the provisions of any Applicable Laws, statute or regulation or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed.
- 28.3 The provisions of clauses 28.1 and 28.2 will not apply to the BIC2 Preference Shareholder to the extent that disclosure of Confidential Information is made by (or on behalf of) the BIC2 Preference Shareholder pursuant to any enforcement of their rights under any Finance Document in accordance with its terms.

[SIGNATURE PAGES INTENTIONALLY OMITTED]

**SCHEDULE 8: AMENDED AND RESTATED ACCOUNT BANK AND AGENCY
AGREEMENT**



(1) MTN GROUP LIMITED

(2) MTN ZAKHELE FUTHI (RF) LIMITED

(3) JABISAN 04 (RF) PROPRIETARY LIMITED

(4) FIRSTRAND BANK LIMITED

(acting through its Rand Merchant Bank division)

(in its capacity as Preference Share Agent, Calculation Agent, Account Bank and Preference Share Custodian)

(5) FIRSTRAND BANK LIMITED (acting through its RMB Custody and Trustees Services division)

(as Security Custodian)

(6) THE HOLDERS OF CUMULATIVE REDEEMABLE PREFERENCE SHARES ISSUED BY JABISAN 04 (RF) PROPRIETARY LIMITED

- and -

(7) NEDBANK LIMITED

(acting through its Share Scheme Administration division)

(in its capacity as BIC2 Administrator and BFC2 Administrator)

**AMENDED AND RESTATED
ACCOUNT BANK AND
AGENCY AGREEMENT**

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THIS AMENDED AND RESTATED ACCOUNT BANK AND AGENCY AGREEMENT is made **BETWEEN:**

- (1) **MTN GROUP LIMITED**, (registration number 1994/009584/06) a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- (2) **MTN ZAKHELE FUTHI (RF) LIMITED**, (registration number 2016/268837/06) a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- (3) **JABISAN 04 (RF) PROPRIETARY LIMITED**, (registration number 2014/021122/07) a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- (4) **FIRSTRAND BANK LIMITED**, (acting through its Rand Merchant Bank division) (registration number 1929/001225/06) a limited liability company duly registered and incorporated in accordance with the laws of South Africa (in its capacity as **Preference Share Agent, Calculation Agent, Account Bank, Preference Share Custodian and BFC2 Preference Shareholder**);
- (5) **FIRSTRAND BANK LIMITED** (acting through its RMB Custody and Trustees Services division), a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1929/001225/06) (as **Security Custodian**);
- (6) **THE HOLDERS OF CUMULATIVE REDEEMABLE PREFERENCE SHARES ISSUED BY JABISAN 04 (RF) PROPRIETARY LIMITED**; and
- (7) **NEDBANK LIMITED**, (acting through its Share Scheme Administration division) (registration number 1951/000009/06) a limited liability company duly registered and incorporated in accordance with the laws of South Africa (in its capacity as **BIC2 Administrator and BFC2 Administrator**).

WHEREBY IT IS AGREED AS FOLLOWS:

1 INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

- 1.1 words importing:
 - 1.1.1 any one gender include the other two genders;
 - 1.1.2 the singular include the plural and vice versa; and
 - 1.1.3 natural persons include created entities (corporate or unincorporate) and the state and vice versa;
- 1.2 words and expressions defined or incorporated by reference in the BIC2 Preference Share Terms (as defined below) shall, unless the context dictates otherwise, bear the same meanings where used in this Agreement. In addition, unless the context dictates

otherwise, words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

- 1.2.1 **"Accession Undertaking"** means:
 - 1.2.1.1 in respect of a replacement Account Bank, an undertaking substantially in the form attached as **Annexure A** hereto;
 - 1.2.1.2 in respect of a replacement Calculation Agent, an undertaking substantially in the form attached as **Annexure B** hereto;
 - 1.2.1.3 in respect of a replacement BIC2 Administrator, an undertaking substantially in the form of Annexure C hereto;
 - 1.2.1.4 in respect of a replacement BFC2 Administrator, an undertaking substantially in the form of **Annexure D** hereto;
 - 1.2.1.5 in respect of a replacement Security Custodian, an undertaking substantially in the form of **Annexure E** hereto;
 - 1.2.1.6 in respect of a replacement Preference Share Custodian, an undertaking substantially in the form of **Annexure F** hereto;
- 1.2.2 **"Account Bank"** means the entity appointed as such from time to time pursuant to the terms of this Agreement and/or the Refinancing Agreement;
- 1.2.3 **"Account Cessions"** means collectively the BIC2 Account Cession and the BIC2 Reversionary Account Cession;
- 1.2.4 **"Accounts"** means collectively the BIC2 Bank Accounts, the BFC2 Collection Account, the Closing Date Accounts, the BIC2 Unclaimed Funds Account, and if opened, the BFC2 Top Up Loan Account and **"Account"** shall be a reference to any of them;
- 1.2.5 **"Administration Contingency Amount"** means an amount not exceeding the aggregate of the Initial Administration Contingency Amount and R5 000 000,00 (five million Rand) in the aggregate over the term of the Transaction, which R5 000 000,00 (five million Rand) is limited to R2 000 000 (two million Rand) per annum, in respect of the fees, expenses, costs and disbursements (plus VAT thereon) incurred in relation to BIC2's ongoing operations, including without limitation, in respect of any professional advisers as may be reasonably and properly incurred by BIC2 or BFC2 as a result of any change or proposed change in, or any change or proposed change in the application or interpretation of, any Applicable Laws or in relation to the implementation of the Transaction Documents (or such higher amounts as may be approved in writing by the Preference Share Agent and MTN);
- 1.2.6 **"Administration Costs"** shall bear the meaning ascribed thereto in the BIC2 Preference Share Terms;
- 1.2.7 **"Administrators"** means the BFC2 Administrator and the BIC2 Administrator and **"Administrator"** means, as the context requires, either of them;

- 1.2.8 **"Agreement"** means this amended and restated account bank and agency agreement and including the schedules hereto (being the Original Account Bank and Agency Agreement as amended and restated on or about the Refinancing Date by the Parties in accordance with the provisions of, and subject to the conditions set out in, the Refinancing Agreement);
- 1.2.9 **"Auditors"** means SizweNtsalubaGobodo in its capacity as the auditors of BIC2, BFC2 or the BFC2 Owner Trust, as applicable or such other auditors from time to time appointed by BIC2, BFC2 and/or the BFC2 Owner Trust;
- 1.2.10 **"BFC2"** means Jabisan 04 (RF) Proprietary Limited (registration number 2014/021122/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.11 **"BFC2 Administrator"** means the entity appointed as such from time to time pursuant to the terms of this Agreement;
- 1.2.12 **"BFC2 Collection Account"** has the meaning ascribed thereto in the BFC2 MOI;
- 1.2.13 **"BFC2 Discharge Date"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.14 **"BFC2 Implementation Account"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.15 **"BFC2 Information Provision Date"** has the meaning ascribed thereto in clause 16.4.1;
- 1.2.16 **"BFC2 Initial Investors"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.17 **"BFC2 Investors"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.18 **"BFC2 Issue Price"** shall bear the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.19 **"BFC2 Mandatory Redemption Amount"** has the meaning ascribed thereto in clause 16.4.3.2;
- 1.2.20 **"BFC2 Owner Trust"** means the trustees for the time being of the BFC2 Owner Trust, a trust established in accordance with the laws of South Africa;
- 1.2.21 **"BFC2 Preference Dividends"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.22 **"BFC2 Preference Share Notice"** has the meaning ascribed thereto in clause 16.4.3;
- 1.2.23 **"BFC2 Preference Shareholders"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;

- 1.2.24 **"BFC2 Preference Share Terms"** means the preferences, rights, limitations and other terms attaching to the BFC2 Preference Shares as set out in the BFC2 MOI from time to time;
- 1.2.25 **"BFC2 Priority of Payments"** means the priority of payments contemplated in clause 33.3 of the BFC2 Preference Share Terms;
- 1.2.26 **"BFC2 Priority of Payments Date"** means any date on which funds are to be applied in accordance with the BFC2 Priority of Payments set out in clause 33.3 of the BFC2 Preference Share Terms;
- 1.2.27 **"BFC2 Received Amounts"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.28 **"BFC2 Redemption Amount"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.29 **"BFC2 Scheduled Redemption Date"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.30 **"BFC2 Subordinated Loan"** means a **"BFC2 Subordinated Loan"** as defined in the MTN Subordination and Undertaking Agreement;
- 1.2.31 **"BFC2 Subordinated Loan Amount"** has the meaning ascribed thereto in clause 16.4.6;
- 1.2.32 **"BFC2 Top Up Loan Account"** means an account to be opened by BFC2 for the purpose of receiving any subordinated loans advanced to it by MTN or by an MTN Acceded Nominee, which account shall be operated on its behalf by the Account Bank mutatis mutandis on the terms set out in this Agreement in relation to the BIC2 Top Up Loan Account;
- 1.2.33 **"BFC2 Tranche 1 Preference Shares"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.34 **"BFC2 Unredeemed Preference Shares"** has the meaning ascribed thereto in the BFC2 Preference Share Terms;
- 1.2.35 **"BFC2 Voluntary Redemption Amount"** has the meaning ascribed thereto in clause 16.4.3.1;
- 1.2.36 **"BIC2"** means MTN Zakhele Futhi (RF) Limited (registration number 2016/268837/06), a limited liability public company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.37 **"BIC2 Account Rights"** bears the meaning assigned thereto in each of the Account Cessions;
- 1.2.38 **"BIC2 Administration Costs Loan"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.39 **"BIC2 Administration Costs Loan Balance"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;

- 1.2.40 **"BIC2 Administration Costs Loan Top-Up Amount"** shall bear the meaning ascribed **thereto** in the MTN Subordination and Undertaking Agreement;
- 1.2.41 **"BIC2 Administration Costs Loan Repayment Amount"** shall bear the meaning ascribed **thereto** in the MTN Subordination and Undertaking Agreement;
- 1.2.42 **"BIC2 Administrator"** means the entity appointed as such from time to time pursuant to the terms of this Agreement;
- 1.2.43 **"BIC2 Bank Accounts"** means collectively the BIC2 Collection Account, the BIC2 Provisions Account, the BIC2 Tax Provisions Account, the BIC2 Security Account, the BIC2 Top-Up Loan Account, and any other account held by BIC2 from time to time in terms of the Finance Documents, but excluding the Closing Date Accounts and the BIC2 Unclaimed Funds Account;
- 1.2.44 **"BIC2 Costs and Indemnity Amounts"** has the meaning ascribed thereto in clause 16.1.1.5 hereof;
- 1.2.45 **"BIC2 Deposit Amount"** has the meaning ascribed thereto in the BIC2 Preference Share Terms;
- 1.2.46 **"BIC2 Disposal Amount"** has the meaning ascribed thereto in of the BIC2 Preference Share Terms;
- 1.2.47 **"BIC2 Margin Dividend"** means a further BIC2 Preference Dividend payable to the BIC2 Preference Shareholders in terms of clause 2.13 of the BIC2 Preference Share Terms;
- 1.2.48 **"BIC2 Offer"** has the meaning ascribed thereto in the BIC2 Preference Share Terms;
- 1.2.49 **"BIC2 POP Taxes"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.50 **"BIC2 Preference Share Subscription Agreement"** means the preference share subscription agreement entered into on or about the Original Signature Date between BFC2 (as subscriber), BIC2 (as issuer) and Nedbank (in its capacity as the Preference Share Agent) in terms of which BFC2 subscribed for and BIC2 issued the BIC2 Preference Shares to BFC2, all on the terms and conditions contained therein;
- 1.2.51 **"BIC2 Preference Share Terms"** means the preferences, rights, limitations and other terms attaching to the BIC2 Preference Shares as set out in Annex A to the BIC2 Memorandum of Incorporation from time to time;
- 1.2.52 **"BIC2 Priority of Payments Date"** means any date on which funds are to be applied in accordance with the Priority of Payments set out in clause 3 of the BIC2 Preference Share Terms;
- 1.2.53 **"BIC2 Proposed Payment"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;

- 1.2.54 **"BIC2 Public Offer Amount"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.55 **"BIC2 Scheduled Preference Dividend Shortfall Loan"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.56 **"BIC2 Subordinated Loan Amount"** has the meaning ascribed thereto in clause 16.1.1.11;
- 1.2.57 **"BIC2 Subscriptions Account"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.58 **"BIC2 Taxes Shortfall Loan"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.59 **"BIC2 Taxes Shortfall Loan Balance"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.60 **"BIC2 Taxes Shortfall Loan Repayment Amount"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.61 **"BIC2 Taxes Shortfall Loan Top-Up Amount"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.62 **"BIC2 Tax Provisions Account"** has the meaning ascribed thereto in the BIC2 MOI;
- 1.2.63 **"BIC2 Tax Provisions Amount"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.64 **"BIC2 Total Proceeds"** has the meaning ascribed thereto in the BIC2 Preference Share Terms;
- 1.2.65 **"BIC2 Total Share Cover Ratio Loan"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.66 **"BIC2 Unclaimed Funds Account"** means the bank account held by BIC2 with Nedbank Limited having the following account details:
- | | |
|-----------------|-------------------------|
| Account Name: | BEECO Unclaimed Account |
| Bank: | Nedbank Limited |
| Branch Code: | 198 765 |
| Account Number: | 1119 098 165; |
- 1.2.67 **"BIC2 Underwrite Amount"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.68 **"BIC2 Unredeemed Preference Shares"** has the meaning ascribed thereto in the BIC2 Preference Share Terms;
- 1.2.69 **"BIC2 Volatility Protection Share Cover Loan"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;

- 1.2.70 **"Calculation Agent"** means the entity appointed as such from time to time pursuant to the terms of this Agreement and the Refinancing Agreement;
- 1.2.71 **"Call Option Strike Price"** has the meaning ascribed thereto in the Call Option Agreement;
- 1.2.72 **"Cession Documents"** means collectively the Account Cessions, the BIC2 Pledge and Cession and the BIC2 Reversionary Pledge and Cession and a reference to **"Cession Document"** shall be a reference to any of them, as may be appropriate in the context;
- 1.2.73 **"Closing Date"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.74 **"Closing Date Accounts"** means collectively, the MTN Implementation Account, the BFC2 Implementation Account, the BIC2 Public Offer Account, the BIC2 Subscriptions Account and each BFC2 Subscription Account, which accounts have subsequently been closed;
- 1.2.75 **"Confidential Information"** has the meaning ascribed thereto in clause 65.1.2;
- 1.2.76 **"Discussion Event"** means the occurrence of an event contemplated in clause 2.4 of the BIC2 Preference Share Terms;
- 1.2.77 **"Disposal Payment Amounts"** has the meaning ascribed thereto in the BIC2 Preference Share Terms;
- 1.2.78 **"Engagement Letter"** means that administration agreement entered into on or about the Original Signature Date between BIC2 and Nedbank Share Scheme Administration in relation to the appointment of the Administrators;
- 1.2.79 **"Expert"** means an auditor of not less than 15 (fifteen) years' standing appointed, at the instance of any Relevant Party, by the Chairman of SAICA;
- 1.2.80 **"Final Capital Structure Documents"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.81 **"Final Ordinary BIC2 Priority of Payment Notice"** has the meaning ascribed thereto in clause 16.1.6;
- 1.2.82 **"Final Special BIC2 Priority of Payments Notice"** has the meaning ascribed thereto in clause 16.2.6;
- 1.2.83 **"Initial Administration Contingency Amount"** means an amount equal to the aggregate of the Public Offer Interest Amount and all other amounts transferred to the BIC2 Provisions Account in accordance with the provisions of the Implementation Agreement which were not required for payment or provision for payment in accordance with the provisions of the Implementation Agreement and in relation to the transactions set out in the Implementation Agreement, or such lesser amount determined in the discretion of the MTN Board and included in the Final Capital Structure Documents;

- 1.2.84 **"Initial Ordinary BIC2 Priority of Payments Notice"** has the meaning ascribed thereto in clause 16.1.1;
- 1.2.85 **"Initial Special BIC2 Priority of Payments Notice"** has the meaning ascribed thereto in clause 16.2.1;
- 1.2.86 **"Initial Subordinated Loan"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.87 **"Interest"** means interest earned by BIC2 on the funds (other than the Public Offer proceeds) standing to the credit of the BIC2 Collection Account, the BIC2 Tax Provisions Account and the BIC2 Provisions Account from time to time;
- 1.2.88 **"MTN Acceded Nominee"** shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.89 **"MTN Additional Shares"** has the meaning ascribed to the term **"Additional Shares"** in the BIC2 Preference Share Terms;
- 1.2.90 **"MTN Board"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.91 **"MTN Shares Acquisition Price"** has the meaning ascribed thereto in clause 16.1.1.11;
- 1.2.92 **"MTN Tranche 1 Subscription Price"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.93 **"MTN Tranche 2 Subscription Price"** has the meaning ascribed thereto in the Implementation Agreement;
- 1.2.94 **"Nedbank"** means Nedbank Limited (acting through its Corporate and Investment Banking Division);
- 1.2.95 **"Nedbank Corporate Finance"** means Nedbank Limited (acting through its Corporate and Investment Banking Division (Corporate Finance));
- 1.2.96 **"Nedbank Limited"** means Nedbank Limited (registration number 1951/000009/06), a limited liability company registered and incorporated in accordance with the laws of South Africa;
- 1.2.97 **"Nedbank Share Scheme Administration"** means Nedbank Limited, acting through its Share Scheme Administration division;
- 1.2.98 **"Ordinary Dispute Notice"** has the meaning ascribed thereto in clause 16.1.2;
- 1.2.99 **"Original Account Bank and Agency Agreement"** means the account bank and agency agreement entered into on or about the Original Signature Date between *inter alios* Nedbank (in its capacity as Account Bank, Calculation Agent, Preference Share Custodian and Preference Share Agent), the Administrators, MTN, BIC2, BFC2 and the BFC2 Initial Investors, all on the terms and conditions contained therein;

- 1.2.100 **"Original Signature Date"** means 21 August 2016;
- 1.2.101 **"Parties"** means the Account Bank, the Administrators, the Calculation Agent, the Security Custodian, the Preference Share Custodian, MTN, BIC2, BFC2, the BFC2 Preference Shareholders and the Preference Share Agent and **"Party"** means, as the context requires, any one of them;
- 1.2.102 **"Preference Share Agent"** means the entity appointed as such from time to time in accordance with the provisions of the Interfunder Agreement and the Refinancing Agreement;
- 1.2.103 **"Preference Share Custodian"** means the entity appointed as such from time to time pursuant to the terms of this Agreement and the Refinancing Agreement;
- 1.2.104 **"Preference Share Custody Agreement"** means the custody agreement entered into or to be entered into between RMB (in its capacity as Preference Share Custodian), BFC2 and the Preference Share Agent;
- 1.2.105 **"Provided Amounts"** has the meaning ascribed thereto in clause 12.1.1;
- 1.2.106 **"Public Offer Interest Amount"** means the amount of all interest earned on the portion of the aggregate amount standing to the credit of the BIC2 Public Offer Account from time to time that constitutes the BIC2 Public Offer Amount, as confirmed by the Account Bank;
- 1.2.107 **"Ratio"** has the meaning ascribed thereto in clause 24.4;
- 1.2.108 **"Received Amounts"** has the meaning ascribed thereto in the BIC2 Preference Share Terms;
- 1.2.109 **"Relevant Parties"** has the meaning ascribed thereto in clause 16.1.1;
- 1.2.110 **"RMB"** means FirstRand Bank Limited (acting through its Rand Merchant Bank division) (Registration No. 1929/001225/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.111 **"RMB Custody and Trustees Services"** means FirstRand Bank Limited (acting through its RMB Custody and Trustees Services division), a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1929/001225/06);
- 1.2.112 **"SAICA"** means the South African Institute of Chartered Accountants or its successor body;
- 1.2.113 **"Security Custodian"** means the entity appointed as such from time to time pursuant to the terms of this Agreement or the Refinancing Agreement;
- 1.2.114 **"Special BIC2 Offer"** has the meaning ascribed thereto in the BIC2 Preference Share Terms;
- 1.2.115 **"Special Dispute Notice"** has the meaning ascribed thereto in clause 16.2.2;

1.2.116 **"Special Information Provisions Date"** has the meaning ascribed thereto in clause 16.2.1;

1.2.117 **"STRATE"** means the settlement and clearing system managed by Strate Limited and utilised by the JSE for transactions concluded on the stock exchange operated by it;

1.2.118 **"Subject Share Custody Agreement"** means the custody agreement entered into or to be entered into between RMB Custody and Trustees Services (in its capacity as the Security Custodian), BIC2 and a nominee;

1.2.119 **"Trickle Dividend Amount"** means, on each date on which amounts are calculated in accordance with clause 16.1.1, an amount calculated as follows:

$$TD = 20\%(A) - B$$

Where

TD = the Trickle Dividend Amount which may be declared and paid in accordance with clause 16.1.1.9;

A = the Received Amounts; and

B = the aggregate of amounts of Taxes and Administration Costs payable by BIC2 in accordance with the provisions of clauses 16.1.1.2 and 16.1.1.3 on such date; and

1.2.120 **"Trigger Event Call Option"** has the meaning ascribed thereto in the Call Option Agreement;

- 1.3 any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted or replaced from time to time;
- 1.4 any reference in this Agreement to any other agreement or document copy shall be construed as a reference to such other agreement as same may have been, or may from time to time be, amended, restated, varied, novated or supplemented;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.6 where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;
- 1.7 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day;
- 1.8 any reference to a Party includes that Party's successors-in-title and permitted assigns;

- 1.9 expressions defined in this Agreement shall bear the same meanings in schedules or schedules to this Agreement which do not themselves contain their own definitions;
- 1.10 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.11 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.12 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.13 the Finance Documents and the Implementation Agreement shall to the extent permitted by Applicable Laws be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents and the Implementation Agreement in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted assigns or liquidators, as the case may be;
- 1.14 the use of any expression in any Finance Document or in the Implementation Agreement covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the parties to the Finance Documents and/or Implementation Agreement, as applicable, is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2 INTRODUCTION

In order to facilitate the implementation of the Transaction and the various cashflows contemplated by the Finance Documents and the Implementation Agreement, the relevant Parties entered into the Original Account Bank and Agency Agreement. The Parties to this Agreement have agreed to amend and restate the Original Account Bank and Agency Agreement pursuant to and in accordance with the provisions of the Refinancing Agreement to be in the form of this Agreement, which sets out *inter alia* the terms and conditions upon which:

- 2.1 the Account Bank is appointed *inter alia* to manage cashflows to and from the BIC2 Bank Accounts and the BFC2 Collection Account;
- 2.2 the Calculation Agent is appointed in order to perform certain calculations relevant to the Finance Documents as contemplated in clause 24 (*Functions of Calculation Agent*) hereof and to provide certain of the Parties with information relating to such calculations;
- 2.3 Nedbank Share Scheme Administration is appointed as the BIC2 Administrator for the purposes described in clause 29 (*Appointment as BIC2 Administrator*) hereof;

- 2.4 Nedbank Share Scheme Administration is appointed as the BFC2 Administrator for the purposes described in clause 35 (*Appointment as BFC2 Administrator*) hereof;
- 2.5 the Security Custodian is appointed in order to perform the security custodian services described in clauses 41 (*Appointment as Security Custodian*) and 42 (*Duties of Security Custodian*); and
- 2.6 the Preference Share Custodian is appointed in order to perform the security custodian services described in clauses 47 (*Appointment as Preference Share Custodian*) and 48 (*Duties of Preference Share Custodian*) hereof.

3 COMMENCEMENT OF AGREEMENT

This Agreement and the rights and obligations of the Parties thereunder became effective on the Original Signature Date and shall endure until the BIC2 Discharge Date, except for:

- 3.1 the rights and obligations of the Parties in respect of the BIC2 Security Account, which shall endure until:
 - 3.1.1 the expiry of each Indemnity Period; or
 - 3.1.2 such earlier date after the BIC2 Discharge Date on which the Preference Share Agent advises that the balance standing to the credit of the BIC2 Security Account has been reduced to zero; and
- 3.2 the rights and obligations of the BFC2 Administrator, which shall endure until the BFC2 Discharge Date.

4 APPOINTMENT AS ACCOUNT BANK

- 4.1 RMB is appointed as Account Bank on and with effect from the Refinancing Date on the terms and conditions set out in this Agreement in order to fulfil the functions set out therein and herein which appointment RMB accepts.
- 4.2 The Account Bank opened the BFC2 Collection Account and the BIC2 Bank Accounts, and is hereby irrevocably authorised and instructed:
 - 4.2.1 to carry out its functions in terms of this Agreement acting on all instructions furnished to it as contemplated in this Agreement, the Refinancing Agreement and the MTN Subordination and Undertaking Agreement;
 - 4.2.2 to maintain the BFC2 Collection Account in the name of BFC2;
 - 4.2.3 if so instructed by the Preference Share Agent, to open and maintain the BFC2 Top-Up Loan Account in the name of BFC2; and
 - 4.2.4 to maintain the BIC2 Bank Accounts in the name of BIC2.
- 4.3 The BFC2 Preference Shareholders acknowledge and agree that the Account Bank shall not be entitled or obliged to effect any transactions in respect of the BFC2 Collection Account or the BIC2 Bank Accounts until it has received all of the documentation required by it in respect of BFC2, BIC2, MTN and, to the extent applicable, the BFC2 Preference Shareholders in order to comply with the provisions of the Financial Intelligence Centre Act, 2001 ("**FICA**").

5 PURPOSE OF BIC2 PUBLIC OFFER ACCOUNT AND THE BIC2 UNCLAIMED FUNDS ACCOUNT

5.1 BIC2 Public Offer Account

- 5.1.1 The Parties hereby agree that the purpose of the BIC2 Public Offer Account was to receive payment of and, subject to the terms and conditions of the Original Account Bank and Agency Agreement, this Agreement and the Implementation Agreement, hold the BIC2 Public Offer Amount transferred into the BIC2 Public Offer Account from time to time by Nedbank.
- 5.1.2 Pursuant to the provisions of clauses 5.2.1 and 5.3.1 of the Original Account Bank and Agency Agreement, the Account Bank, acting in reliance on and subject to the provisions of clause 18.5 thereof and clause 9.4.4 of the Implementation Agreement was authorised and instructed to transfer the BIC2 Public Offer Amount and the Public Offer Interest Amount to the BIC2 Subscriptions Account, on behalf of BIC2, on the Closing Date.
- 5.1.3 Pursuant to the provisions of clauses 5.2.2 and 5.3.2 of the Original Account Bank and Agency Agreement and on MTN's written instructions given in terms of clause 9.5.1 of the Implementation Agreement, the Account Bank, transferred, on behalf of all the unsuccessful applicants under the BIC2 Public Offer, an amount equal to the aggregate of their corresponding subscription monies plus interest earned thereon, into the BIC2 Unclaimed Funds Account.
- 5.1.4 The Parties record that, acting on the instructions of MTN in terms of clause 19.4 of the Original Account Bank and Agency Agreement, the BIC2 Public Offer Account has been closed.

5.2 BIC2 Unclaimed Funds Account

- 5.2.1 The Parties hereby agree that the purpose of the BIC2 Unclaimed Funds Account is to hold monies on behalf of unsuccessful applicants under the BIC2 Public Offer and for such monies to be returned to such unsuccessful applicants.
- 5.2.2 As at 30 April 2021, the amount standing to the credit of the BIC2 Unclaimed Funds Account is an amount of approximately R3.28 million.
- 5.2.3 The BIC2 Administrator is hereby authorised and entitled to make payments from the BIC2 Unclaimed Funds Account in order to return monies (including, if applicable, accrued interest) to unsuccessful applicants. The BIC2 Administrator shall not allow any other payments from or to the BIC2 Unclaimed Funds Account whatsoever without the prior written consent of BIC2, MTN and the Preference Share Agent.
- 5.2.4 The Parties agree that the BIC2 Administrator shall be the signatory to the BIC2 Unclaimed Funds Account.
- 5.2.5 When there are no funds remaining in the BIC2 Unclaimed Funds Account, then the BIC2 Administrator is hereby authorised and instructed to close the BIC2 Unclaimed Funds Account.

6 PURPOSE OF BIC2 SUBSCRIPTIONS ACCOUNT

6.1 The Parties hereby agree that the purpose of the BIC2 Subscriptions Account was to receive payment of and, subject to the terms and conditions of the Original Account Bank and Agency Agreement, this Agreement, the Implementation Agreement and the Cession Documents, to hold:

6.1.1 the BIC2 Public Offer Amount and the BIC2 Public Offer Interest Amount;

6.1.2 the Initial Administration Contingency Amount;

6.1.3 the BIC2 Underwrite Amount, if any; and

6.1.4 the aggregate BIC2 Issue Price in relation to the aggregate BIC2 Preference Shares.

6.2 Nedbank, in its capacity as Account Bank at the time, subject to clause 6.3 below, transferred:

6.2.1 the BIC2 Tax Provisions Amount;

6.2.2 the Initial Administration Contingency Amount; and

6.2.3 such amounts as are required under and subject to the provisions of clause 9.4.10 of the Implementation Agreement,

from the BIC2 Subscriptions Account on the Closing Date and Nedbank, in its capacity as Account Bank at the time, was not permitted to allow any other disbursements from the BIC2 Subscriptions Account whatsoever without the prior written consent of BIC2, MTN and the Preference Share Agent.

6.3 Nedbank, in its capacity as Account Bank at the time, for the purposes of making the payments referred to in clause 6.2 above, acted in reliance on and subject to the provisions of clause 18.5 thereof and clause 9.4.5 of the Implementation Agreement.

6.4 The Parties record that, acting on the instructions of BIC2, BFC2, the Preference Share Agent and MTN in terms of clause 19.3 of the Original Account Bank and Agency Agreement, the BIC2 Subscriptions Account has been closed.

7 PURPOSE OF MTN IMPLEMENTATION ACCOUNT

7.1 The Parties hereby agree that the purpose of the MTN Implementation Account was to receive payment of and, subject to the terms and conditions of the Original Account Bank and Agency Agreement, this Agreement and the Implementation Agreement, to hold:

7.1.1 the amount advanced by MTN or a MTN Acceded Nominee under the Initial Subordinated Loan, if any;

7.1.2 the BIC2 Underwrite Amount, if any;

7.1.3 the MTN Tranche 1 Subscription Price from the BIC2 Subscriptions Account; and

- 7.1.4 the MTN Tranche 2 Subscription Price from the BIC2 Subscriptions Account.
- 7.2 Nedbank, in its capacity as Account Bank at the time, subject to clause 7.3 below, transferred, from the MTN Implementation Account:
 - 7.2.1 the BIC2 Underwrite Amount, if any, into the BIC2 Subscriptions Account on the Closing Date in accordance with the provisions of the Implementation Agreement;
 - 7.2.2 an amount equal to the Initial Subordinated Loan, if any, to the BIC2 Top Up Loan Account on the Closing Date in accordance with the provisions of the Implementation Agreement; and
 - 7.2.3 such other amounts as are required permitted under and subject to the Implementation Agreement,

and, up to and including the Closing Date, Nedbank, in its capacity as Account Bank at the time, was not permitted to allow any other disbursements from the MTN Implementation Account whatsoever without the prior written consent of MTN.
- 7.3 Nedbank, in its capacity as Account Bank at the time, for the purposes of making the payments referred to in clause 7.2, acted in reliance on and subject to the provisions of clause 18.5 thereof and clause 9.4.5 of the Implementation Agreement.
- 7.4 The Parties record that, acting on the instructions of BIC2, BFC2, the Preference Share Agent and MTN in terms of clause 19.3 of the Original Account Bank and Agency Agreement, the MTN Implementation Account has been closed.

8 PURPOSE OF THE BFC2 IMPLEMENTATION ACCOUNT

- 8.1 The Parties hereby agree that the purpose of the BFC2 Implementation Account was to receive payment of and, subject to the terms and conditions of the Original Account Bank and Agency Agreement, this Agreement and the Implementation Agreement, to each hold an amount equal to a BFC2 Investor's portion of the BFC2 Issue Price.
- 8.2 Nedbank, in its capacity as Account Bank at the time, subject to clause 8.3 below, transferred the aggregate BFC2 Issue Price payable by each BFC2 Investor from the relevant BFC2 Investor's BFC2 Implementation Account to the relevant BFC2 Subscription Account on the Closing Date in accordance with the provisions of the Implementation Agreement and the Account Bank was not permitted to allow any other disbursements from any BFC2 Implementation Account whatsoever without the prior written consent of the Preference Share Agent.
- 8.3 Nedbank, in its capacity as Account Bank at the time, for the purposes of making the payments referred to in clause 8.2, acted in reliance on and subject to the provisions of clause 18.5 thereof and clause 9.4.4 of the Implementation Agreement.
- 8.4 The Parties record that, acting on the instructions of BIC2, BFC2, the Preference Share Agent and MTN in terms of clause 19.3 of the Original Account Bank and Agency Agreement, the BFC2 Implementation Account has been closed.

9 PURPOSE OF BFC2 SUBSCRIPTION ACCOUNTS

- 9.1 The Parties hereby agree that the purpose of the BFC2 Subscription Accounts was to receive payment of, and subject to the terms and conditions of the Original Account Bank and Agency Agreement, this Agreement and the Implementation Agreement, to hold the aggregate of the BFC2 Issue Price on account of the BFC2 Tranche 1 Preference Shares.
- 9.2 Nedbank, in its capacity as Account Bank at the time, subject to clause 9.3 below, transferred from the BFC2 Subscription Accounts the aggregate BIC2 Issue Price in relation to the aggregate BIC2 Tranche 1 Preference Shares to the BIC2 Subscriptions Account on the Closing Date in accordance with the provisions of the Implementation Agreement.
- 9.3 Nedbank, in its capacity as Account Bank at the time, for the purposes of making the payments referred to in clause 9.2, acted in reliance on and subject to the provisions of clause 18.5 thereof and clause 9.4.4 of the Implementation Agreement.
- 9.4 The Parties record that, acting on the instructions of BIC2, BFC2, the Preference Share Agent and MTN in terms of clause 19.3 of the Original Account Bank and Agency Agreement, the BFC2 Subscriptions Accounts have been closed.

10 PURPOSE OF THE BIC2 COLLECTION ACCOUNT

- 10.1 The Parties agree that the purpose of the BIC2 Collection Account is to receive payment of and, subject to the terms and conditions of this Agreement, the BIC2 Preference Share Subscription Agreement, the BFC2 Preference Share Subscription Agreement and the BIC2 Preference Share Terms, to hold:
 - 10.1.1 all cash Distributions or other payments of whatsoever nature received by BIC2 in relation to the Subject Shares (including, without limitation, Special Distributions), which shall be paid by the Security Custodian into the BIC2 Collection Account within one Business Day of receipt of written instructions from the BIC2 Administrator instructing and authorising the Security Custodian to pay all such amounts from the Subject Shares Securities Account into the BIC2 Collection Account;
 - 10.1.2 the proceeds of any Permitted Disposal;
 - 10.1.3 the proceeds of any Refinancing;
 - 10.1.4 the proceeds of the BIC2 Preference Shares;
 - 10.1.5 all Interest received by BIC2 from time to time;
 - 10.1.6 the proceeds of any BIC2 Taxes Shortfall Loan;
 - 10.1.7 the proceeds of any BIC2 Administration Costs Loan;
 - 10.1.8 the proceeds of any BIC2 Scheduled Preference Dividend Shortfall Loan; and
 - 10.1.9 any other amounts required to be paid into the BIC2 Collection Account in accordance with the Transaction Documents and the BIC2 Priority of Payments from time to time.

- 10.2 The Account Bank is hereby irrevocably authorised and instructed by BIC2, out of the BIC2 Collection Account and on BIC2's behalf on each applicable BIC2 Priority of Payment Date, to apply the monies standing to the credit of the BIC2 Collection Account on such date to the relevant parties and/or accounts strictly in the priority, manner and for the purposes set out in clause 16 and the Account Bank shall not allow any other disbursements from the BIC2 Collection Account without the prior written consent of the Preference Share Agent and MTN.
- 10.3 The Account Bank expressly acknowledges that, as security for its obligations under the First Ranking Guarantee, BIC2 has ceded *in securitatem debiti* all its right, title and interest in and to the BIC2 Account Rights in respect of the BIC2 Collection Account to the BFC2 Preference Shareholders under and in terms of the BIC2 Account Cession and BIC2 has ceded *in securitatem debiti* all its reversionary right, title and interest in and to the BIC2 Account Rights in respect of the BIC2 Collection Account to MTN, MTN Holdings and/or each MTN Acceded Nominee under and in terms of the BIC2 Reversionary Account Cession. The Account Bank agrees that it shall, in respect of the BIC2 Collection Account, act solely on the written instructions of:
- 10.3.1 for so long as the BIC2 Account Rights in respect of the BIC2 Collection Account have been ceded in security to the BFC2 Preference Shareholders under the BIC2 Account Cession (and until the Preference Share Agent advises the Account Bank in writing that the BIC2 Account Rights in respect of the BIC2 Collections Account are no longer ceded in security to the BFC2 Preference Shareholders under the BIC2 Account Cession, which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN):
- 10.3.1.1 for so long as the Preference Share Agent has not advised the Account Bank in writing that MTN or an MTN Call Option Acceded Nominee has exercised the Trigger Event Call Option and paid the applicable Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement (which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), the Preference Share Agent, in circumstances where the BFC2 Preference Shareholders have become entitled to enforce their rights in respect of the BIC2 Collection Account under the BIC2 Account Cession, unless and until otherwise notified in writing by the Preference Share Agent; or
- 10.3.1.2 after the Preference Share Agent has advised the Account Bank in writing that MTN or an MTN Call Option Acceded Nominee has exercised the Trigger Event Call Option and paid the Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement (which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), MTN or the applicable MTN Call Option Acceded Nominee (in their capacity as BFC2 Preference Shareholder), in circumstances where they have become entitled to enforce their rights in respect of the BIC2 Collection Account under the BIC2 Account Cession, unless and until otherwise notified in writing by MTN; and

- 10.3.1.3 after the release of the BIC2 Account Rights in respect of the BIC2 Collection Account from the provisions of the BIC2 Account Cession (as confirmed in writing by the Preference Share Agent, which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), and for so long as the BIC2 Reversionary Account Cession is in full force and effect, MTN and MTN Holdings in circumstances where the MTN, MTN Holdings and/or any MTN Acceded Nominee has become entitled to enforce its rights in respect of the BIC2 Collection Account under the BIC2 Reversionary Account Cession.
- 10.4 BIC2 hereby acknowledges and agrees that notwithstanding that the BIC2 Collection Account was opened in its name and that it is the account holder, it shall, except pursuant to provisions of the Refinancing Agreement and/or the resignation or removal of the Account Bank, in compliance with the provisions of clause 20 (*Replacement of Account Bank*) hereof, under no circumstances instruct the Account Bank to close the BIC2 Collection Account and in the event BIC2, or any person on its behalf purports to give such instructions, the Account Bank shall not carry out such instructions.
- 10.5 The Account Bank has and shall have no lien or right of retention over, or right of set-off against, or Encumbrance in, any right or claim of BIC2 in respect of the BIC2 Collection Account or any income relating thereto or any amounts credited or to be credited thereto from time to time. The Account Bank hereby waives any such lien, right of retention, right of set-off and Encumbrance which has accrued or may accrue to the Account Bank.

11 PURPOSE OF BIC2 SECURITY ACCOUNT

- 11.1 The Parties agreed that the purpose of the BIC2 Security Account is to receive payment of and, subject to the terms and conditions of this Agreement and the Cession Documents, to hold:
 - 11.1.1 from the BIC2 Collection Account:
 - 11.1.1.1 each BIC2 Deposit Amount if the BIC2 Offer corresponding to such BIC2 Deposit Amount is accepted by the Preference Share Agent;
 - 11.1.1.2 each BIC2 Disposal Amount if the BIC2 Offer corresponding to such BIC2 Disposal Amount is accepted by the Preference Share Agent;
 - 11.1.1.3 the Indemnified Amount, if any; and
 - 11.1.1.4 the SARS Amount, if any.
- 11.2 The Account Bank is hereby irrevocably authorised to:
 - 11.2.1 up to the BIC2 Discharge Date, apply the proceeds of any BIC2 Deposit Amount and/or BIC2 Disposal Amount towards:
 - 11.2.1.1 voluntary redemption of all or some of the BIC2 Preference Shares in accordance with, and subject to the terms of, the BIC2

Preference Share Terms, on receipt of joint written instructions from the Preference Share Agent and BIC2; or

- 11.2.1.2 mandatory redemption of all or some of the BIC2 Preference Shares in accordance with, and subject to the terms of, the BIC2 Preference Share Terms, on receipt of joint written instructions from the Preference Share Agent and BIC2 unless the Preference Share Agent has notified the Account Bank that a BIC2 Potential Trigger Event has occurred and is Continuing, in which event the Account Bank shall act on the written instructions of the Preference Share Agent;
- 11.2.2 on each date on which the BIC2 Post Trigger Event Priority of Payments is required to be applied and until the BIC2 Discharge Date, to apply the monies standing to the credit of the BIC2 Security Account from time to time in the manner provided for the BIC2 Post Trigger Event Priority of Payments in accordance with the written instructions from the Preference Share Agent;
- 11.2.3 if after the BIC2 Discharge Date:
 - 11.2.3.1 any SARS Amount becomes due and payable by BIC2 to SARS, to apply funds standing to the credit of the BIC2 Security Account (up to an amount equal to the SARS Amount paid by BIC2 into the BIC2 Security Account) in order to discharge such amount, on the instructions of the Preference Share Agent; and
 - 11.2.3.2 any Indemnified Amount becomes due and payable by BIC2 and which is not paid, to apply funds standing to the credit of the BIC2 Security Account (up to an amount equal to the Indemnified Amount paid by BIC2 into the BIC2 Security Account) in order to discharge such amount, on the instructions of the Preference Share Agent.
- 11.3 The Account Bank expressly acknowledges that, as security for its obligations under the First Ranking Guarantee, BIC2 has ceded *in securitatem debiti* all its right, title and interest in and to the BIC2 Account Rights in respect of the BIC2 Security Account to the BFC2 Preference Shareholders (and ex-BFC2 Preference Shareholders during the Indemnity Period) under the BIC2 Account Cession and BIC2 has ceded *in securitatem debiti* all its reversionary rights, title and interests in and to the BIC2 Account Rights in respect of the BIC2 Security Account to MTN, MTN Holdings and/or each MTN Acceded Nominee under the BIC2 Reversionary Account Cession. The Account Bank agrees that it shall, in respect of the BIC2 Security Account, act solely on the written instructions of:
 - 11.3.1 for so long as the BIC2 Account Rights in respect of the BIC2 Security Account have been ceded in security to the BFC2 Preference Shareholders or ex-BFC2 Preference Shareholders under the BIC2 Account Cession (being until the expiry of each applicable Indemnity Period) and until otherwise notified in writing by the Preference Share Agent, the Preference Share Agent, in circumstances where the BFC2 Preference Shareholders (or ex-BFC2 Preference Shareholders during the applicable Indemnity Period, as applicable) have become entitled to enforce their rights in respect of the BIC2 Security Account under and in terms of the BIC2 Account Cession; and

- 11.3.2 after the release of the BIC2 Account Rights in respect of the BIC2 Security Account from the provisions of the BIC2 Account Cession (as confirmed in writing by the Preference Share Agent, which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), and for so long as the BIC2 Reversionary Account Cession is in full force and effect, MTN and MTN Holdings in circumstances where the MTN, MTN Holdings and/or any MTN Acceded Nominee has become entitled to enforce its rights in respect of the BIC2 Security Account under the BIC2 Reversionary Account Cession.
- 11.4 BIC2 hereby acknowledges and agrees that notwithstanding that the BIC2 Security Account was opened in its name and that it is the account holder, it shall, except pursuant to provisions of the Refinancing Agreement and/or the resignation or removal of the Account Bank, in compliance with the provisions of clause 20 (*Replacement of Account Bank*) hereof, under no circumstances instruct the Account Bank to close the BIC2 Security Account and in the event BIC2, or any person on its behalf purports to give such instructions, the Account Bank shall not carry out such instructions.
- 11.5 The Account Bank has and shall have no lien or right of retention over, or right of set-off against, or Encumbrance in, any right or claim of BIC2 in respect of the BIC2 Security Account or any income relating thereto or any amounts credited or to be credited thereto from time to time. The Account Bank hereby waives any such lien, right of retention, right of set-off and Encumbrance which has accrued or may accrue to the Account Bank.

12 PURPOSE OF BIC2 PROVISIONS ACCOUNT

- 12.1 The Parties agreed that the purpose of the BIC2 Provisions Account is to receive payment of and, subject to the terms and conditions of this Agreement, the Implementation Agreement, the MTN Subordination and Undertaking Agreement and the Cession Documents, to hold:

12.1.1 from the BIC2 Collection Account:

- 12.1.1.1 and in accordance with and subject to the applicable BIC2 Priority of Payments, any Administration Cost and/or Transaction Cost for which BIC2 is liable in terms of the Transaction Documents but which is not yet due and payable by BIC2 (each a "**Provided Amount**");
- 12.1.1.2 any BIC2 Administration Costs Loan Balance;
- 12.1.1.3 any BIC2 Administration Costs Loan Top-Up Amount; and
- 12.1.1.4 any BIC2 Scheduled Preference Dividend Shortfall Loan Balance;
- 12.1.1.5 the BIC2 Tax Provisions Amount or any part thereof not held in the BIC2 Tax Provisions Account;
- 12.1.1.6 the Initial Administration Contingency Amount; and
- 12.1.1.7 all further amounts transferred on account of the Administration Contingency Amount.

- 12.2 The BIC2 Administrator is hereby irrevocably authorised and instructed to:
- 12.2.1 make payment to the relevant party of any Provided Amount on the date on which such Provided Amount is due and payable by BIC2;
 - 12.2.2 make payment to MTN of the amount of Administration Costs in respect of any Provided Amount which has been paid by MTN on behalf of BIC2 and in respect of which MTN has presented a corresponding invoice to BIC2 and to the Preference Share Agent;
 - 12.2.3 to make payment to the BIC2 Collection Account of any Provided Amount (other than Administration Contingency Amounts) in respect of which an over-provision has been made;
 - 12.2.4 to pay any BIC2 Administration Costs Loan Repayment Amount from the amount standing to the credit of the BIC2 Provisions Account in the circumstances provided for, and subject to the satisfaction of the conditions set out in, in clause 4.5(k) of the MTN Subordination and Undertaking Agreement; and
 - 12.2.5 make payments from the amount standing to the credit of the BIC2 Provisions Account on account of the Administration Contingency Amount in respect of the fees, expenses, costs and disbursements (plus VAT thereon) incurred in relation to BIC2's ongoing operations, including without limitation, in respect of any professional advisers as may be reasonably and properly incurred by the Company BIC2 or BFC2 as a result of any change or proposed change in, or any change or proposed change in the application or interpretation of, any Applicable Laws or in relation to the implementation of the Transaction Documents,
- on receipt of a written instruction from BIC2 or, in the case of clause 12.2.5, on receipt of joint written instructions from BIC2 and MTN.
- 12.3 The Account Bank expressly acknowledges that, as security for its obligations under the First Ranking Guarantee, BIC2 has ceded *in securitatem debiti* all its right, title and interest in and to the BIC2 Account Rights in respect of the BIC2 Provisions Account to the BFC2 Preference Shareholders under and in terms of the BIC2 Account Cession and BIC2 has ceded *in securitatem debiti* all its reversionary right, title and interest in and to the BIC2 Account Rights in respect of the BIC2 Provisions Account to MTN, MTN Holdings and/or each MTN Acceded Nominee under and in terms of the BIC2 Reversionary Account Cession. The Account Bank agrees that it shall, in respect of the BIC2 Provisions Account, act solely on the written instructions of:
- 12.3.1 for so long as the BIC2 Account Rights in respect of the BIC2 Provisions Account have been ceded in security to the BFC2 Preference Shareholders under the BIC2 Account Cession (and until the Preference Share Agent advises the Account Bank in writing that the BIC2 Account Rights in respect of the BIC2 Tax Provisions Account are no longer ceded in security to the BFC2 Preference Shareholders under the BIC2 Account Cession, which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN):
 - 12.3.1.1 for so long as the Preference Share Agent has not advised the

Account Bank in writing that MTN or an MTN Call Option Acceded Nominee has exercised the Trigger Event Call Option and paid the applicable Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement (which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), the Preference Share Agent, in circumstances where the BFC2 Preference Shareholders have become entitled to enforce their rights in respect of the BIC2 Provisions Account under the BIC2 Account Cession, unless and until otherwise notified in writing by the Preference Share Agent; or

12.3.1.2 after the Preference Share Agent has advised the Account Bank in writing that MTN or an MTN Call Option Acceded Nominee has exercised the Trigger Event Call Option and paid the Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement (which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), MTN or the applicable MTN Call Option Acceded Nominee (in their capacity as BFC2 Preference Shareholder), in circumstances where they have become entitled to enforce their rights in respect of the BIC2 Provisions Account under the BIC2 Account Cession, unless and until otherwise notified in writing by MTN; and

12.3.2 after the release of the BIC2 Account Rights in respect of the BIC2 Provisions Account from the provisions of the BIC2 Account Cession (as confirmed in writing by the Preference Share Agent, which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), for so long as the BIC2 Reversionary Account Cession is in full force and effect, MTN and MTN Holdings in circumstances where the MTN, MTN Holdings and/or any MTN Acceded Nominee has become entitled to enforce its rights in respect of the BIC2 Provisions Account under the BIC2 Account Cession.

12.4 BIC2 hereby acknowledges and agrees that notwithstanding that the BIC2 Provisions Account was opened in its name and that it is the account holder, it shall, except pursuant to the provisions of the Refinancing Agreement and/or resignation or removal of the Account Bank, in compliance with the provisions of clause 20 (*Replacement of Account Bank*) hereof, under no circumstances instruct the Account Bank to close the BIC2 Provisions Account and in the event BIC2, or any person on its behalf purports to give such instructions, the Account Bank shall not carry out such instructions.

12.5 The Account Bank has and shall have no lien or right of retention over, or right of set-off against, or Encumbrance in, any right or claim of BIC2 in respect of the BIC2 Provisions Account or any income relating thereto or any amounts credited or to be credited thereto from time to time. The Account Bank hereby waives any such lien, right of retention, right of set-off and Encumbrance which has accrued or may accrue to the Account Bank.

12.6 The Parties agree that the Preference Share Agent will not be a joint signatory to the BIC2 Provisions Account unless a BIC2 Potential Trigger Event has occurred and is Continuing and the Preference Share Agent has delivered a notice to the Account

Bank informing the Account Bank that the Preference Share Agent shall be, until further notice, the sole signatory to the BIC2 Provisions Account; or (ii) a BIC2 Trigger Event has occurred and is Continuing, and the Preference Share Agent has delivered a notice to the Account Bank informing the Account Bank accordingly, in which case the Preference Share Agent shall be the sole signatory to the BIC2 Provisions Account.

13 PURPOSE OF BIC2 TAX PROVISIONS ACCOUNT

13.1 The Parties agreed that the purpose of the BIC2 Tax Provisions Account is to receive payment of and, subject to the terms and conditions of this Agreement, the Implementation Agreement, the MTN Subordination and Undertaking Agreement and the Cession Documents, to hold:

13.1.1 all or any part of the BIC2 Tax Provisions Amount, the Securities Transfer Tax and/or any amounts to be paid or provided for by BIC2 on account of Tax (the "**Relevant Tax Amounts**");

13.1.2 any BIC2 Taxes Shortfall Loan Balance; and

13.1.3 any BIC2 Taxes Shortfall Loan Top-Up Amount.

13.2 The Account Bank is hereby irrevocably authorised and instructed to link the BIC2 Tax Provisions Account to the South African Revenue Services' e-filing system to facilitate payment of the Relevant Tax Amounts.

13.3 The BIC2 Administrator shall be required to :

13.3.1 timeously instruct the Account Bank to make payment to SARS of the Relevant Tax Amounts from the BIC2 Tax Provisions Account on each date on which such Relevant Tax Amounts are due and payable to SARS; and

13.3.2 pay any BIC2 Taxes Shortfall Loan Repayment Amount from the amount standing to the credit of the BIC2 Tax Provisions Account in the circumstances provided for, and subject to the satisfaction of the conditions set out in, in clause 4.4(j) of the MTN Subordination and Undertaking Agreement.

13.4 The Account Bank expressly acknowledges that, as security for its obligations under the First Ranking Guarantee, BIC2 has ceded *in securitatem debiti* all its right, title and interest in and to the BIC2 Account Rights in respect of the BIC2 Tax Provisions Account to the BFC2 Preference Shareholders under and in terms of the BIC2 Account Cession and BIC2 has ceded *in securitatem debiti* all its reversionary right, title and interest in and to the BIC2 Account Rights in respect of the BIC2 Tax Provisions Account to MTN, MTN Holdings and/or each MTN Acceded Nominee under and in terms of the BIC2 Reversionary Account Cession. The Account Bank agrees that it shall, in respect of the BIC2 Tax Provisions Account, act solely on the written instructions of:

13.4.1 for so long as the BIC2 Account Rights in respect of the BIC2 Tax Provisions Account have been ceded in security to the BFC2 Preference Shareholders under the BIC2 Account Cession (and until the Preference Share Agent advises the Account Bank in writing that the BIC2 Account Rights in respect of the BIC2 Tax Provisions Account are no longer ceded in security to the

BFC2 Preference Shareholders under the BIC2 Account Cession, which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN):

- 13.4.1.1 for so long as the Preference Share Agent has not advised the Account Bank in writing that MTN or an MTN Call Option Acceded Nominee has exercised the Trigger Event Call Option and paid the applicable Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement (which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), the Preference Share Agent, in circumstances where the BFC2 Preference Shareholders have become entitled to enforce their rights in respect of the BIC2 Tax Provisions Account under the BIC2 Account Cession, unless and until otherwise notified in writing by the Preference Share Agent; or
- 13.4.1.2 after the Preference Share Agent has advised the Account Bank in writing that MTN or an MTN Call Option Acceded Nominee has exercised the Trigger Event Call Option and paid the Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement (which the Preference Share Agent shall be obliged to do, promptly upon written request from MTNs), MTN or the applicable MTN Call Option Acceded Nominee (in their capacity as BFC2 Preference Shareholder), in circumstances where they have become entitled to enforce their rights in respect of the BIC2 Tax Provisions Account under the BIC2 Account Cession, unless and until otherwise notified in writing by MTN; and
- 13.4.2 after the release of the BIC2 Account Rights in respect of the BIC2 Provisions Account from the provisions of the BIC2 Account Cession (as confirmed in writing by the Preference Share Agent, which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), for so long as the BIC2 Reversionary Account Cession is in full force and effect, MTN and MTN Holdings in circumstances where the MTN, MTN Holdings and/or any MTN Acceded Nominee has become entitled to enforce its rights in respect of the BIC2 Provisions Account under the BIC2 Account Cession.
- 13.5 BIC2 hereby acknowledges and agrees that notwithstanding that the BIC2 Tax Provisions Account was opened in its name and that it is the account holder, it shall, except pursuant to provisions of the Refinancing Agreement and/or the resignation or removal of the Account Bank, in compliance with the provisions of clause 20 (*Replacement of Account Bank*) hereof, under no circumstances instruct the Account Bank to close the BIC2 Tax Provisions Account and in the event BIC2, or any person on its behalf purports to give such instructions, the Account Bank shall not carry out such instructions.
- 13.6 The Account Bank has and shall have no lien or right of retention over, or right of set-off against, or Encumbrance in, any right or claim of BIC2 in respect of the BIC2 Tax Provisions Account or any income relating thereto or any amounts credited or to be credited thereto from time to time. The Account Bank hereby waives any such lien, right of retention, right of set-off and Encumbrance which has accrued or may accrue

to the Account Bank.

- 13.7 The Parties agree that the Preference Share Agent will not be a joint signatory to the BIC2 Tax Provisions Account unless (i) a BIC2 Potential Trigger Event has occurred and is Continuing and the Preference Share Agent has delivered a notice to the Account Bank informing the Account Bank that the Preference Share Agent shall be, until further notice, the sole signatory to the BIC2 Tax Provisions Account; or (ii) a BIC2 Trigger Event has occurred and is Continuing, and the Preference Share Agent has delivered a notice to the Account Bank informing the Account Bank accordingly (which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), in which case the Preference Share Agent shall be the sole signatory to the BIC2 Tax Provisions Account.

14 PURPOSE OF THE BIC2 TOP-UP LOAN ACCOUNT

- 14.1 The Parties agreed that the purpose of the BIC2 Top-Up Loan Account is to receive payment of and, subject to the terms and conditions of this Agreement, the Implementation Agreement, the MTN Subordination and Undertaking Agreement and the Cession Documents, to hold the proceeds of any and all BIC2 Total Share Cover Ratio Loans, BIC2 Volatility Protection Share Cover Loans and all and any BIC2 Scheduled Preference Dividend Shortfall Loan Balance.
- 14.2 The Account Bank is hereby irrevocably authorised:
- 14.2.1 on each applicable BIC2 Priority of Payments Date, to apply the monies standing to the credit of the BIC2 Top-Up Loan Account from time to time (other than the amount of the Permanent Initial Subordinated Loan and all accrued interest thereon) to the relevant parties under the Transaction Documents strictly in the priority, manner and for the purposes as contemplated in the applicable BIC2 Priority of Payments; and
- 14.2.2 to make a BIC2 Proposed Payment from the funds standing to the credit of the BIC2 Top-Up Loan Account in accordance with the relevant provisions of the MTN Subordination and Undertaking Agreement, on receipt of joint written instructions from the Preference Share Agent and BIC2.
- 14.3 The Account Bank expressly acknowledges that, as security for its obligations under the First Ranking Guarantee, BIC2 has ceded in *securitatem debiti* all its right, title and interest in and to the BIC2 Account Rights in respect of the BIC2 Top-Up Loan Account to the BFC2 Preference Shareholders under and in terms of the BIC2 Account Cession and BIC2 has ceded in *securitatem debiti* all its reversionary right, title and interest in and to the BIC2 Account Rights in respect of the BIC2 Top-Up Loan Account to MTN, MTN Holdings and/or each MTN Acceded Nominee under and in terms of the BIC2 Reversionary Account Cession. The Account Bank agrees that it shall, in respect of the BIC2 Top-Up Loan Account, act solely on the written instructions of:
- 14.3.1 for so long as the BIC2 Account Rights in respect of the BIC2 Top-Up Loan Account have been ceded in security to the BFC2 Preference Shareholders under the BIC2 Account Cession (and until the Preference Share Agent advises the Account Bank in writing that the BIC2 Account Rights in respect of the BIC2 Top-Up Loan Account are no longer ceded in security to the BFC2 Preference Shareholders under the BIC2 Account Cession, which the

Preference Share Agent shall be obliged to do, promptly upon written request from MTN):

- 14.3.1.1 for so long as the Preference Share Agent has not advised the Account Bank in writing that MTN or an MTN Call Option Acceded Nominee has exercised the Trigger Event Call Option and paid the applicable Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement (which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), the Preference Share Agent, in circumstances where the BFC2 Preference Shareholders have become entitled to enforce their rights in respect of the BIC2 Top-Up Loan Account under the BIC2 Account Cession, unless and until otherwise notified in writing by the Preference Share Agent; or
- 14.3.1.2 after the Preference Share Agent has advised the Account Bank in writing that MTN or an MTN Call Option Acceded Nominee has exercised the Trigger Event Call Option and paid the Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement (which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), MTN or the applicable MTN Call Option Acceded Nominee (in their capacity as BFC2 Preference Shareholder), in circumstances where they have become entitled to enforce their rights in respect of the BIC2 Top-Up Loan Account under the BIC2 Account Cession, unless and until otherwise notified in writing by MTN; and
- 14.3.2 after the release of the BIC2 Account Rights in respect of the BIC2 Top-Up Loan Account from the provisions of the BIC2 Account Cession (as confirmed in writing by the Preference Share Agent, which the Preference Share Agent shall be obliged to do, promptly upon written request from MTN), for so long as the BIC2 Reversionary Account Cession is in full force and effect, MTN and MTN Holdings in circumstances where the MTN, MTN Holdings and/or any MTN Acceded Nominee has become entitled to enforce its rights in respect of the BIC2 Top-Up Loan Account under the BIC2 Account Cession.
- 14.4 BIC2 hereby acknowledges and agrees that notwithstanding that the BIC2 Top-Up Loan Account was opened in its name and that it is the account holder, it shall, except pursuant to provisions of the Refinancing Agreement and/or the resignation or removal of the Account Bank, in compliance with the provisions of clause 20 (*Replacement of Account Bank*) hereof, under no circumstances instruct the Account Bank to close the BIC2 Top-Up Loan Account and in the event BIC2, or any person on its behalf purports to give such instructions, the Account Bank shall not carry out such instructions.
- 14.5 The Account Bank has and shall have no lien or right of retention over, or right of set-off against, or Encumbrance in, any right or claim of BIC2 in respect of the BIC2 Top-Up Loan Account or any income relating thereto or any amounts credited or to be credited thereto from time to time. The Account Bank hereby waives any such lien, right of retention, right of set-off and Encumbrance which has accrued or may accrue to the Account Bank.

15 PURPOSE OF BFC2 COLLECTION ACCOUNT

- 15.1 The Parties agreed that the purpose of the BFC2 Collection Account is to receive payment of, and subject to the terms and conditions of this Agreement, to hold any amounts to be paid into the BFC2 Collection Account in accordance with the BFC2 Priority of Payments from time to time.
- 15.2 The Account Bank is hereby irrevocably authorised to:
- 15.2.1 sweep any interest accrued on the monies standing to the credit of the BFC2 Collection Account from time to time on account of the subscription proceeds received by BFC2 in consideration for the issue of ordinary issued shares to the BFC2 Owner Trust, to the BIC2 Collection Account, as a partial reimbursement by BFC2 to BIC2 for costs and expenses paid by BIC2 for and on behalf of BFC2 from time to time; and
- 15.2.2 apply all other monies standing to the credit of the BFC2 Collection Account from time to time to the parties entitled thereto on each applicable BFC2 Priority of Payments Date strictly in the priority, manner and for the purposes as contemplated in the applicable BFC2 Priority of Payments and as set out in clause 16 (*Determination of amounts payable by Account Bank*) hereof.
- 15.3 BFC2 hereby acknowledges and agrees that notwithstanding that the BFC2 Collection Account was opened in its name and that it is the account holder, it shall, except pursuant to provisions of the Refinancing Agreement and/or the resignation or removal of the Account Bank, in compliance with the provisions of clause 20 (*Replacement of Account Bank*) hereof, under no circumstances instruct the Account Bank to close the BFC2 Collection Account and in the event BFC2, or any person on its behalf purports to give such instructions, the Account Bank shall not carry out such instructions.
- 15.4 The Account Bank has and shall have no lien or right of retention over, or right of set-off against, or Encumbrance in, any right or claim of BFC2 in respect of the BFC2 Collection Account or any income relating thereto or any amounts credited or to be credited thereto from time to time. The Account Bank hereby waives any such lien, right of retention, right of set-off and Encumbrance which has accrued or may accrue to the Account Bank.

16 DETERMINATION OF AMOUNTS PAYABLE BY ACCOUNT BANK

16.1 Pre BIC2 Trigger Event Priority of Payments

- 16.1.1 By no later than 10 Business Days prior to any BIC2 Priority of Payments Date contemplated in clause 3.1 of the BIC2 Preference Share Terms the BIC2 Administrator shall calculate and prepare a schedule that specifies, subject to the future changes in the BIC2 Dividend Rate:
- 16.1.1.1 the Received Amounts as at the applicable BIC2 Priority of Payments Date;
- 16.1.1.2 the amount of any BIC2 POP Taxes to be paid or provided for as at the applicable BIC2 Priority of Payments Date and:
- 16.1.1.2.1 if the Received Amounts are insufficient, the amount

- of any BIC2 Taxes Shortfall Loan that is required by BIC2 as at the applicable BIC2 Priority of Payments Date;
 - 16.1.1.2.2 the amount of any proposed BIC2 Taxes Shortfall Loan Top-Up Amount; and
 - 16.1.1.2.3 the amount of any proposed BIC2 Taxes Shortfall Loan Repayment Amount;
 - 16.1.1.3 the Administration Costs and other amounts to be paid or provided for in accordance with clause 3.1.2 of the BIC2 Preference Share Terms as at the applicable BIC2 Priority of Payments Date, including all amounts requested by BIC2 and approved in writing by MTN on account of the Administration Contingency Amount, and
 - 16.1.1.3.1 if the Received Amounts are insufficient, the amount of any BIC2 Administration Costs Loan that is required by BIC2 as at the applicable BIC2 Priority of Payments Date;
 - 16.1.1.3.2 the amount of any proposed BIC2 Administration Costs Loan Top-Up Amount; and
 - 16.1.1.3.3 the amount of any proposed BIC2 Administration Costs Loan Repayment Amount;
 - 16.1.1.4 as at any BIC2 Priority of Payments Date that falls on 30 April of any year, that portion of the Operational Expenses Amount that is to be paid into the BIC2 Provisions Account pursuant to clause 3.1.2 of the BIC2 Preference Share Terms; or (ii) as at any BIC2 Priority of Payments Date that falls on 30 September of any year, that portion of Available Operational Expenses Amount that is to be paid into the BIC2 Provisions Account pursuant to clause 3.1.2 of the BIC2 Preference Share Terms;
 - 16.1.1.5 any amount required to be paid by BIC2 in terms of clause 13 and clause 14 of the BIC2 Preference Share Subscription Agreement other than the Indemnified Amount and/or the SARS Amount (the "**BIC2 Costs and Indemnity Amounts**") as at the applicable BIC2 Priority of Payments Date in accordance with clause 3.1.3 of the BIC2 Preference Share Terms and. if the Received Amounts are insufficient to pay such BIC2 Costs and Indemnity Amounts in full, the amount of any BIC2 Scheduled Preference Dividend Shortfall Loan that is required by BIC2 as at the applicable BIC2 Priority of Payments Date in order to ensure that such BIC2 Costs and Indemnity Amounts will be paid in full;
 - 16.1.1.6 in respect of BIC2 Preference Dividends and based on the BIC2 Preference Share Dividend calculation received from the Preference Share Agent: (i) the amount of the BIC2 Preference Dividends that are, as at the applicable BIC2 Priority of Payments Date, scheduled, accumulated or otherwise required to be declared

and/or paid in accordance with clause 3.1.4 of the BIC2 Preference Share Terms; (ii) if BIC2 has elected to accumulate any BIC2 Scheduled Preference Dividends, such information as is required for the BFC2 Preference Shareholders to be reasonably satisfied that a Maximum Roll-Up Event will not occur on that BIC2 Priority of Payments Date and/or before the immediately succeeding BIC2 Priority of Payments Date, on the assumptions contemplated in clause 2.1.1.3 of Annex A of the BIC2 MOI; and (iii) if the Received Amounts are insufficient, the amount of any BIC2 Scheduled Preference Dividend Shortfall Loan that is required by BIC2 as at the applicable BIC2 Priority of Payments Date;

- 16.1.1.7 the BIC2 Redemption Amount as at the applicable BIC2 Priority of Payments Date;
- 16.1.1.8 the amount payable in accordance with clause 3.1.7 of the BIC2 Preference Share Terms to the BIC2 Security Account should (i) the Preference Share Agent accept the offer contemplated in clause 3.1.7 of the BIC2 Preference Share Terms; and (ii) there be funds available after making the payments referred to in clauses 16.1.1.2, 16.1.1.3, 16.1.1.4, 16.1.1.5 and 16.1.1.6;
- 16.1.1.9 unless otherwise consented to by the Preference Share Agent in writing, provided that no BIC2 Potential Trigger Event has occurred and is continuing as at the relevant BIC2 Priority of Payments Date, the amount, if any, payable at BIC2's election and in its discretion (but provided that MTN has provided its prior written consent) in accordance with clause 3.1.6 of the BIC2 Preference Share Terms to the Ordinary Shareholders should there be funds available after making the payments referred to in clauses 16.1.1.2, 16.1.1.3, 16.1.1.4, 16.1.1.5 and 16.1.1.6 above and/or the recipient of the offer referred to in clause 16.1.1.8 does not accept such offer, which such amount shall not exceed the Trickle Dividend Amount;
- 16.1.1.10 the amount payable in accordance with clause 3.1.7 of the BIC2 Preference Share Terms to the BIC2 Security Account should (i) the Preference Share Agent accept the offer contemplated in clause 3.1.7 of the BIC2 Preference Share Terms; and (ii) there be funds available after making the payments referred to in clauses 16.1.1.2, 16.1.1.3, 16.1.1.4, 16.1.1.5, 16.1.1.6 and 16.1.1.9 above and/or the recipient of the offer referred to in clause 16.1.1.8 does not accept such offer;
- 16.1.1.11 the amount, if any, payable to MTN or an applicable MTN Acceded Nominee in respect of the offer for the subscription and/or acquisition of MTN Additional Shares (the "MTN Shares Acquisition Price") and/or the amount available to be applied in relation to BIC2's obligations under the MTN Tranche 1 Subscription Agreement and/or any BIC2 Subordinated Loan (the "BIC2 Subordinated Loan Amount") if such MTN Shares Acquisition Price and/or BIC2 Subordinated Loan Amount were to be accepted and should there be funds available after making

the payments referred to in clauses 16.1.1.2, 16.1.1.3, 16.1.1.4, 16.1.1.5, 16.1.1.6, 16.1.1.9 and 16.1.1.10 above and/or the recipient of the offer referred to in clause 16.1.1.8 does not accept such offer; and

16.1.1.12 unless otherwise consented to by the Preference Share Agent in writing, provided that no BIC2 Potential Trigger Event has occurred and is continuing as at the relevant BIC2 Priority of Payments Date, the amount, if any, payable at BIC2's election and in its discretion (but provided that MTN has provided its prior written consent) in accordance with clause 3.1.9 of the BIC2 Preference Share Terms to the Ordinary Shareholders should there be funds available after making the payments referred to in clauses 16.1.1.2, 16.1.1.3, 16.1.1.4, 16.1.1.5 and 16.1.1.6, 16.1.1.9 and 16.1.1.10 above and/or the recipients of the offers referred to in clause 16.1.1.8 and 16.1.1.11 do not accept such offer;

16.1.1.13 the amount, if any, payable into the BIC2 Security Account in accordance with clause 3.1.10 of the BIC2 Preference Share Terms, should there be funds available after making the payments referred to in clauses 16.1.1.2, 16.1.1.3, 16.1.1.4, 16.1.1.5, 16.1.1.6, 16.1.1.9 and 16.1.1.10 above and/or the recipients of the offers referred to in clauses 16.1.1.8, 16.1.1.11 and 16.1.1.12 do not accept such offers and not all of the balance of the Received Amounts are Distributed to the Ordinary Shareholders as contemplated in clause 3.1.9 of the BIC2 Preference Share Terms,

(the "**Initial Ordinary BIC2 Priority of Payments Notice**") and shall deliver the Initial Ordinary BIC2 Priority Payments Notice to the Preference Share Agent, BIC2, BFC2, the Account Bank and MTN (the "**Relevant Parties**").

16.1.2 In the event that any Relevant Party wishes to dispute the calculation of any amount set out in the Initial Ordinary BIC2 Priority of Payments Notice, such Relevant Party shall be obliged to advise the other Relevant Parties in writing by no later than 12.00pm on the date of receipt of the Initial Ordinary BIC2 Priority of Payments Notice setting out the reasons why such Relevant Party disputes the Initial Ordinary BIC2 Priority of Payments Notice (the "**Ordinary Dispute Notice**"). The Relevant Parties shall be required to resolve the dispute within one Business Day after delivery of the Ordinary Dispute Notice and, if such dispute is not resolved by the Relevant Parties in writing within one Business Day of the Relevant Parties having received such Ordinary Dispute Notice, then the dispute shall be referred, at the instance of any of the Relevant Parties, to an auditor of not less than 15 years' standing practising at one of the three largest auditing firms in South Africa or if agreement is not reached on such referral, then to the Expert for determination as soon as possible but in any event by no later than two Business Days after delivery of the Ordinary Dispute Notice. The Expert shall act as an expert and not as an arbitrator and his decision shall be final and binding and his costs shall be borne in the manner determined by the Expert. The BIC2 Administrator shall advise the Relevant Parties of the Expert's determination by no later than 4.00pm on the date falling six Business Days prior to the relevant BIC2 Priority of Payments Date and the

BIC2 Administrator shall, if so required pursuant to the Expert's determination or the resolution reached by the Relevant Parties, issue a revised Initial Ordinary BIC2 Priority of Payments Notice setting out the amounts so resolved or determined and deliver it to the Relevant Parties.

- 16.1.3 BIC2 shall, if applicable, make an offer to the BIC2 Preference Shareholder and conditional offers to MTN or the applicable MTN Acceded Nominee, in the amounts, if any, set out in the Initial Ordinary BIC2 Priority of Payments Notice or the revised Initial Ordinary BIC2 Priority of Payments Notice, as the case may be, no later than 5 (five) Business Days prior to any BIC2 Priority of Payments Date.
- 16.1.4 The BIC2 Preference Shareholder and MTN or the applicable MTN Acceded Nominee shall be obliged to advise BIC2 in writing whether or not they accept such offers within a period of 2 (two) Business Days after the date of the offer made by BIC2 in terms of clause 16.1.3.
- 16.1.5 BIC2 shall be obliged, if applicable, to notify the BIC2 Administrator and the Preference Share Agent in writing of the acceptance and/or non-acceptance of all offers made by BIC2 in terms of clause 16.1.3, and such notice shall set out the amounts in respect of such acceptance/s, if any, no later than 3 (three) Business Days prior to the applicable BIC2 Priority of Payments Date.
- 16.1.6 The BIC2 Administrator shall prepare a schedule that specifies the following, taking into account whether or not there has been any change in the BIC2 Dividend Rate, as confirmed by the Preference Share Agent, from when the BIC2 Administrator issued the Initial Ordinary BIC2 Priority of Payments Notice or the revised Initial Ordinary BIC2 Priority of Payments Notice or any BIC2 Subordinated Loan made to BIC2, as the case may be:
 - 16.1.6.1 the amount of any BIC2 Taxes Shortfall Loan made by MTN or an MTN Acceded Nominee to BIC2 immediately prior to the applicable BIC2 Priority of Payments Date as well as the aggregate amount of any BIC2 Taxes Shortfall Loans made by MTN or an MTN Acceded Nominee to BIC2 prior to such BIC2 Priority of Payments Date;
 - 16.1.6.2 the amount of any BIC2 Administration Costs Loan made by MTN or an MTN Acceded Nominee to BIC2 immediately prior to the applicable BIC2 Priority of Payments Date as well as the aggregate amount of any BIC2 Administration Costs Loans made by MTN or an MTN Acceded Nominee to BIC2 prior to such BIC2 Priority of Payments Date;
 - 16.1.6.3 the amount of any BIC2 Scheduled Preference Dividend Loan made by MTN or an MTN Acceded Nominee to BIC2 immediately prior to the applicable BIC2 Priority of Payments Date as well as the aggregate amount of any BIC2 Scheduled Preference Dividend Loans made by MTN or an MTN Acceded Nominee to BIC2 prior to such BIC2 Priority of Payments Date;
 - 16.1.6.4 the amount of any Provided Amounts and other amounts that must or may be paid into the BIC2 Provisions Account or the BIC2 Tax

Provisions Account as contemplated in clauses 16.1.1.2, 16.1.1.3 and 16.1.1.4;

- 16.1.6.5 the amount of any BIC2 Taxes Shortfall Loan Repayment Amount;
- 16.1.6.6 the amount of any BIC2 Administration Costs Loan Repayment Amount;
- 16.1.6.7 the amounts, if any that must be paid as contemplated in terms of clause 16.1.1.6;
- 16.1.6.8 the BIC2 Costs and Indemnity Amounts, if any, that must be paid as contemplated in terms of clause 16.1.1.5;
- 16.1.6.9 the amount, if any and if accepted, payable to the BIC2 Security Account in respect of an A BIC2 Offer in accordance with clause 3.1.5 of the BIC2 Preference Share Terms;
- 16.1.6.10 the MTN Share Acquisition Price and/or the BIC2 Subordinated Loan Amount, if any and if accepted by MTN or an applicable MTN Acceded Nominee in respect of the offer for the subscription and/or acquisition of MTN Additional Shares and/or the repayment of a BIC2 Subordinated Loan, respectively, payable in accordance with clause 3.1.8 of the BIC2 Preference Share Terms;
- 16.1.6.11 the amount, if any, payable to the Ordinary Shareholders in accordance with clause 3.1.9 of the BIC2 Preference Share Terms; and
- 16.1.6.12 the amount, if any, payable to the BIC2 Security Account in accordance with clause 3.1.10 of the BIC2 Preference Share Terms,

in each case, on the applicable BIC2 Priority of Payments Date, taking into account any amendment in the BIC2 Dividend Rate in terms of clause 16.1.6, if applicable, and BIC2 Subordinated Loan/s which have been advanced by MTN or an MTN Acceded Nominee under and in terms of the MTN Subordination and Undertaking Agreement (the "**Final Ordinary BIC2 Priority of Payments Notice**") and shall deliver the Final Ordinary BIC2 Priority Payments Notice to the Relevant Parties no later than 2 (two) Business Days prior to the applicable BIC2 Priority of Payments Date.

- 16.1.7 The delivery of the Final Ordinary BIC2 Priority of Payments Notice by the BIC2 Administrator to the Relevant Parties shall (save in the case of manifest error) constitute an irrevocable payment instruction by each of them to the Account Bank to make the payments set out in such Final Ordinary BIC2 Priority of Payments Notice on the applicable BIC2 Priority of Payments Date in accordance with the applicable BIC2 Priority of Payments.
- 16.1.8 The Account Bank shall pay the amounts set out in the Final Ordinary BIC2 Priority of Payments Notice from the BIC2 Collection Account in accordance with the Final Ordinary BIC2 Priority of Payments Notice on the BIC2

Priority of Payments Date and notify the BIC2 Administrator of the amounts so paid in terms of the Final Ordinary BIC2 Priority of Payments Notice within three Business Days after the applicable BIC2 Priority of Payments Date.

16.1.9 The BIC2 Administrator shall be obliged to advise the Account Bank in writing (the "**Preference Share Notice**"), if:

- 16.1.9.1 any BIC2 Trigger Event occurs;
- 16.1.9.2 BIC2 voluntarily resolves to redeem all or some of the BIC2 Unredeemed Preference Shares and the amount payable in respect of such voluntary redemption/s (the "**Voluntary Redemption Amount**"); and/or
- 16.1.9.3 following the occurrence of a BIC2 Trigger Event, BIC2 resolves to mandatorily redeem all or some of the BIC2 Unredeemed Preference Shares and the amount payable in respect of such mandatory redemption/s (the "**Mandatory Redemption Amount**").

16.1.10 On the Business Day immediately succeeding receipt of the Preference Share Notice, the Account Bank shall:

- 16.1.10.1 pay the Voluntary Redemption Amount in accordance with the Preference Share Notice; or
- 16.1.10.2 pay the Mandatory Redemption Amount in accordance with the Preference Share Notice,

as applicable.

16.2 Special Priority of Payments

16.2.1 By no later than 10 (ten) Business Days prior to any BIC2 Priority of Payments Date contemplated in clause 3.2 of the BIC2 Preference Share Terms (being the "**Special Information Provisions Date**") the BIC2 Administrator shall calculate and prepare a schedule that specifies, subject to the future changes in the BIC2 Dividend Rate:

- 16.2.1.1 the Disposal Payment Amounts and the amount standing to the credit of the BIC2 Top-Up Loan Account which is equal to the amount of the applicable BIC2 Proposed Payments in the circumstances contemplated in clauses 4.2(b)(ii), 4.3(b)(ii) and/or 4.7(i) of the MTN Subordination and Undertaking Agreement, as at the applicable BIC2 Priority of Payments Date;
- 16.2.1.2 the amount standing to the credit of the BIC2 Security Account, if any, as at the applicable BIC2 Priority of Payments Date;
- 16.2.1.3 the amount of any Tax that must be paid or provided for in accordance with clause 3.2.1 of the BIC2 Preference Share Terms as at the applicable BIC2 Priority of Payments Date and which is required to be paid into the BIC2 Provisions Account and/or the

BIC2 Tax Provisions Account, as applicable, on such BIC2 Priority of Payments Date;

- 16.2.1.4 the amount of the Indemnified Amount and/or the SARS Amount that are as at the applicable BIC2 Priority of Payments Date, required to be paid into the BIC2 Security Account in accordance with clause 3.2.2 of the BIC2 Preference Share Terms;
- 16.2.1.5 the amount of the BIC2 Preference Dividends, as calculated by the Preference Share Agent, that would be payable as at the applicable BIC2 Priority of Payments Date, scheduled, accumulated or otherwise required to be declared and/or paid in accordance with clause 3.2.3 of the BIC2 Preference Share Terms;
- 16.2.1.6 the BIC2 Redemption Amount as at the applicable BIC2 Priority of Payments Date;
- 16.2.1.7 the amount, if any, that would be payable to the BIC2 Security Account in respect of a Special BIC2 Offer, if such Special BIC2 Offer were to be accepted and should there be funds available to make such Special BIC2 Offer after making the payments referred to in clauses 16.2.1.3, 16.2.1.4 and 16.2.1.5 above;
- 16.2.1.8 the MTN Share Acquisition Price and/or the BIC2 Subordinated Loan Amount, if any, payable to MTN or an applicable MTN Acceded Nominee in respect of the offer for the subscription and/or acquisition of MTN Additional if such MTN Shares Acquisition Price were to be accepted and should there be funds available after making the payments referred to in clauses 16.2.1.3, 16.2.1.4 and 16.2.1.5 above and/or the recipient of the offer referred to in clause 16.2.1.7 does not accept such offer;
- 16.2.1.9 the amount, if any, payable at BIC2's election and in its sole discretion in accordance with clause 3.2.6 of the BIC2 Preference Share Terms to the Ordinary Shareholders should there be funds available after making the payments referred to in clauses 16.2.1.3, 16.2.1.4 and 16.2.1.5 above and/or the recipients of the offers referred to in clauses 16.2.1.7 and 16.2.1.8 do not accept such offers; and
- 16.2.1.10 the amount, if any, payable to the BIC2 Security Account in accordance with clause 3.2.7 of the BIC2 Preference Share Terms, should there be funds available after making the payments referred to in clauses 16.2.1.3, 16.2.1.4 and 16.2.1.5 and 16.2.1.9 above and/or the recipients of the offers referred to in clauses 16.2.1.7 and 16.2.1.8 do not accept such offers and not all of the balance of the Received Amounts are Distributed to the Ordinary Shareholders as contemplated in clause 3.2.6 of the BIC2 Preference Share Terms,

(the "**Initial Special BIC2 Priority of Payments Notice**") and shall deliver the Initial Special BIC2 Priority Payments Notice to the Relevant Parties.

- 16.2.2 In the event that any Relevant Party wishes to dispute the calculation of any amount set out in the Initial Special BIC2 Priority of Payments Notice, such Relevant Party shall be obliged to advise the other Relevant Parties in writing by no later than 12.00pm on the date of receipt of the Initial Special BIC2 Priority of Payments Notice setting out the reasons why such Relevant Party disputes the Initial Special BIC2 Priority of Payments Notice (the "**Special Dispute Notice**"). The Relevant Parties shall be required to resolve the dispute within one Business Day after delivery of the Special Dispute Notice and, if such dispute is not resolved by the Relevant Parties in writing within one Business Day of the Relevant Parties having received such Special Dispute Notice, then the dispute shall be referred, at the instance of any of the Relevant Parties, to an auditor of not less than 15 years' standing practising at one of the three largest auditing firms in South Africa or, if agreement is not reached on such referral, then to the Expert for determination as soon as possible but in any event within two Business Days after delivery of the Special Dispute Notice. The Expert shall act as an expert and not as an arbitrator and his decision shall be final and binding and his costs shall be borne in the manner determined by the Expert. The BIC2 Administrator shall advise the Relevant Parties of the Expert's determination by no later than six Business Days prior to the relevant BIC2 Priority of Payments Date and shall, if so required pursuant to the Expert's determination by no later than 4.00pm on the date falling six Business Days prior to the relevant BIC2 Priority of Payments Date and the BIC2 Administrator shall, if so required pursuant to the Expert's determination, issue a revised Initial Special BIC2 Priority of Payments Notice setting out the amounts so resolved or determined and deliver it to the Relevant Parties.
- 16.2.3 BIC2 shall, if applicable, make an offer to the BIC2 Preference Shareholder and make conditional offers to MTN or the applicable MTN Acceded Nominee, in amounts set out in the Initial Special BIC2 Priority of Payments Notice or the revised Initial Special BIC2 Priority of Payments Notice, as the case may be, no later than five Business Days prior to any BIC2 Priority of Payments Date.
- 16.2.4 The BIC2 Preference Shareholder and MTN or the applicable MTN Acceded Nominee shall be obliged to advise BIC2 in writing whether or not they accept such offers within a period of two Business Days after the date of the offers made by BIC2 in terms of clause 16.2.3 above.
- 16.2.5 Thereafter, BIC2 shall be obliged to notify the BIC2 Administrator and the Preference Share Agent in writing of the acceptance and/or non-acceptance of the offers, if any, made by BIC2 in terms of clause 16.2.3 above, setting out the amounts in respect of such acceptance/s no later than three Business Days prior to the applicable BIC2 Priority of Payments Date.
- 16.2.6 The BIC2 Administrator shall prepare a schedule that specifies the following, taking into account whether or not there has been any change in the BIC2 Dividend Rate, as confirmed by the Preference Share Agent, from when the Preference Share Agent and/or the BIC2 Administrator issued the Initial Special BIC2 Priority of Payments Notice or the revised Initial Special BIC2 Priority of Payments Notice, as the case may be:
- 16.2.6.1 the Provided Amounts that must be paid to the BIC2 Provisions Account and/or the BIC2 Tax Provisions Account on the

applicable BIC2 Priority of Payments Date as contemplated in clause 16.2.1.3, in accordance with clause 3.2.1 of the BIC2 Preference Share Terms;

- 16.2.6.2 the amounts that must be paid into the BIC2 Security Account as contemplated in clause 16.2.1.4 in accordance with clause 3.2.2 of the BIC2 Preference Share Terms;
- 16.2.6.3 the amounts, which are payable, as contemplated in clause 16.2.1.5 in respect of the BIC2 Preference Dividends in accordance with clause 3.2.3 of the BIC2 Preference Share Terms;
- 16.2.6.4 the amount, if any and if accepted, payable to the BIC2 Security Account in respect of a Special BIC2 Offer in accordance with clause 3.2.4 of the BIC2 Preference Share Terms;
- 16.2.6.5 the MTN Shares Acquisition Price and/or the BIC2 Subordinated Loan Amount, if any and if accepted by MTN or an applicable MTN Acceded Nominee, in respect of the offer for the subscription and/or acquisition of MTN Additional Shares and/or the repayment of a BIC2 Subordinated Loan, respectively, in accordance with clause 3.2.5 of the BIC2 Preference Share Terms;
- 16.2.6.6 the amount, if any, payable to the Ordinary Shareholders in accordance with clause 3.2.6 of the BIC2 Preference Share Terms;
- 16.2.6.7 the amount, if any, payable to the BIC2 Security Account in accordance with clause 3.2.7 of the BIC2 Preference Share Terms,

in each case on the applicable BIC2 Priority of Payments Date, taking into account any amendment to the BIC2 Dividend Rate, in terms of clause 16.2.6, if applicable (the "**Final Special BIC2 Priority of Payments Notice**") and shall deliver the Final Special BIC2 Priority Payments Notice to the Relevant Parties no later than two Business Days prior to any BIC2 Priority of Payments Date.

- 16.2.7 The delivery of the Final Special BIC2 Priority of Payments Notice by the BIC2 Administrator to the Relevant Parties shall (save in the case of manifest error) constitute an irrevocable payment instruction by each of them to the Account Bank to make the payments set out in such Final Special BIC2 Priority of Payments Notice on the applicable BIC2 Priority of Payments Date in accordance with the applicable BIC2 Priority of Payments.
- 16.2.8 The Account Bank shall pay the amounts set out in the Final Special BIC2 Priority of Payments Notice from the BIC2 Collection Account in accordance with the Final Special BIC2 Priority of Payments Notice on the BIC2 Priority of Payments Date and notify the BIC2 Administrator of the amounts so paid in terms of the Final Special BIC2 Priority of Payments Notice within three Business Days after the applicable Priority of Payments Date.

16.3 **Post Trigger Event Priority of Payments**

- 16.3.1 Upon each receipt of any BIC2 Total Proceeds, the BIC2 Administrator shall calculate the amount of the BIC2 Total Proceeds and advise the Relevant

Parties in writing of the BIC2 Total Proceeds (the "**Post Trigger Event Information Provision Date**").

- 16.3.2 The Preference Share Agent and/or the BIC2 Administrator shall as soon as reasonably possible after the Post Trigger Event Information Provision Date, advise the Account Bank in writing:
 - 16.3.2.1 of the amounts, if any, owing and payable to each holder of BIC2 Unredeemed Preference Shares;
 - 16.3.2.2 of the Indemnified Amount and/or the SARS Amount, if any; and
 - 16.3.2.3 of any amounts due and payable in terms of clauses 13 and 14 of the BIC2 Preference Share Subscription Agreement, if any.
- 16.3.3 On the Business Day immediately succeeding the receipt of the notice referred to in clause 16.3.2, the Account Bank shall:
 - 16.3.3.1 from the BIC2 Total Proceeds, pay to each holder of BIC2 Unredeemed Preference Shares in accordance with clause 3.3.1 of the BIC2 Preference Share Terms;
 - 16.3.3.2 thereafter, from the balance of the BIC2 Total Proceeds, pay the Indemnified Amount and/or the SARS Amount into the BIC2 Security Account in accordance with clause 3.3.2 of the BIC2 Preference Share Terms;
 - 16.3.3.3 thereafter, from the balance of the BIC2 Total Proceeds, pay any amount due and payable in terms of clauses 13 and 14 of the BIC2 Preference Share Subscription Agreement in accordance with clause 3.3.3 of the BIC2 Preference Share Terms;
 - 16.3.3.4 after making the payments referred to in clauses 16.3.3.1, 16.3.3.2 and 16.3.3.3 above, calculate the balance of the BIC2 Total Disposal Proceeds, if any; and
 - 16.3.3.5 advise the Relevant Parties in writing, of the amount standing to the credit of the Total Disposal Proceeds, if any.
- 16.3.4 Thereafter, if the BIC2 Discharge Date occurs, the Preference Share Agent shall advise the Account Bank in writing of the occurrence of the BIC2 Discharge Date.
- 16.3.5 Thereafter, MTN shall advise the Account Bank in writing of:
 - 16.3.5.1 the amount owing under any BIC2 Subordinated Loan, if any; and
 - 16.3.5.2 any other amounts owing by BIC2 to MTN or any MTN Acceded Nominee under the Transaction Documents to which they are a party.

16.3.6 On the Business Day immediately succeeding the date of receipt of the notice referred to in clause 16.3.5, the Account Bank shall pay the balance remaining of the Total Disposal Proceeds, if any, to the repayment of:

16.3.6.1 such BIC2 Subordinated Loans in accordance with the instructions of MTN given in the notice referred to in clause 16.3.5; and

16.3.6.2 after the settlement of the BIC2 Subordinated Loans in full, to the settlement of all other amounts owing by BIC2 to MTN or any MTN Acceded Nominee under the Transaction Documents to which they are a party.

16.4 **BFC2 Priority of Payments**

16.4.1 By no later than 10 (ten) Business Days prior to any BFC2 Priority of Payments Date (such date being the "**BFC2 Information Provision Date**"), the BFC2 Administrator shall calculate and prepare a schedule that specifies, subject to the future changes in the BFC2 Dividend Rate:

16.4.1.1 the amounts standing to the credit of the BFC2 Collection Account (the "**BFC2 Received Amounts**") as at the applicable BFC2 Priority of Payments Date;

16.4.1.2 the amount of any Tax that must be paid or provided for in accordance with clause 33.3.1.1 of the BFC2 Preference Share Terms as at the applicable BFC2 Priority of Payments Date;

16.4.1.3 all and any amounts required to be paid by BFC2 in terms of clause 13 and 14 of the BFC2 Preference Share Subscription Agreement as at the applicable BFC2 Priority of Payments Date in accordance with clause 33.3.1.2 of the BFC2 Preference Share Terms;

16.4.1.4 the amount of the BFC2 Preference Dividends, as calculated by the Preference Share Agent, that are, as at the applicable BFC2 Priority of Payments Date, scheduled, accumulated or otherwise required to be declared and/or paid in accordance with clause 33.3.1.3 of the BFC2 Preference Share Terms and if BIC2 has elected to accumulate any BIC2 Scheduled Preference Dividends, such information as is required for the BFC2 Preference Shareholders to be reasonably satisfied that a Maximum Roll-Up Event will not occur in respect of the BFC2 Preference Shares on that BFC2 Priority of Payments Date nor the immediately succeeding BIC2 Priority of Payments Date, on the assumptions contemplated in clause 33.2.1.1.3 of the BFC2 MOI; and;

16.4.1.5 the BFC2 Redemption Amount as at the applicable BFC2 Priority of Payments Date;

- 16.4.1.6 the balance of the BFC2 Received Amounts, if any, after the payment of the amounts referred to in clauses 16.4.1.2, 16.4.1.3 and 16.4.1.4,
- and shall deliver it to the Account Bank and MTN.
- 16.4.2 On the applicable BFC2 Priority of Payments Date, the Account Bank shall in respect of the BFC2 Received Amounts, pay the amounts referred to in clauses 16.4.1.2, 16.4.1.3 and 16.4.1.4 and retain the applicable BFC2 Provided Amounts in the BFC2 Collection Account.
- 16.4.3 In respect of any BFC2 Received Amounts, BFC2 Administrator shall be obliged to advise the Account Bank in writing (the "**BFC2 Preference Share Notice**"), if:
- 16.4.3.1 prior to the occurrence of a BFC2 Trigger Event BFC2 resolves to voluntarily redeem all or some of the BFC2 Preference Shares and the amount payable in respect of such voluntary redemption, at least 1 (one) Business Day prior to the date on which BFC2 proposes to voluntarily redeem all or some of the BFC2 Preference Shares (the "**BFC2 Voluntary Redemption Amount**");
- 16.4.3.2 any BFC2 Trigger Event occurs; and
- 16.4.3.3 following the occurrence of a BFC2 Trigger Event, BFC2 resolves to mandatorily redeem all or some of the BFC2 Unredeemed Preference Shares, as soon as reasonably possible on or prior to the date on which BFC2 is required to mandatorily redeem all or some of the BFC2 Preference Shares (the "**BFC2 Mandatory Redemption Amount**").
- 16.4.4 On the applicable Business Day recorded in the BFC2 Preference Share Notice, the Account Bank shall:
- 16.4.4.1 pay the BFC2 Voluntary Redemption Amount in accordance with the BFC2 Preference Share Notice; or
- 16.4.4.2 pay the BFC2 Mandatory Redemption Amount in accordance with the BFC2 Preference Share Notice.
- 16.4.5 The Preference Share Agent shall be obliged within a reasonable period of time but, in any event no later than 5 (five) Business Days after receipt of a written request, to advise the Account Bank and MTN in writing of the occurrence of the BFC2 Discharge Date.
- 16.4.6 The Preference Share Agent and/or the BFC2 Administrator shall be obliged within a reasonable period of time but, in any event no later than 5 (five) Business Days after receipt of a written request, to advise the Account Bank and MTN in writing the balance of the BFC2 Received Amounts.
- 16.4.7 MTN shall be obliged to advise the Account Bank whether there is any amount payable in respect of a BFC2 Subordinated Loan and, if so, the amount owing in respect of such BFC2 Subordinated Loan (the "**BFC2**

Subordinated Loan Amount"). On the Business Day immediately succeeding the date of such notice from MTN, the Account Bank shall apply the balance of the BFC2 Received Amounts, if any to paying the BFC2 Subordinated Loan Amount.

17 INFORMATION

17.1 The Account Bank shall:

- 17.1.1 by no later than 5 (five) Business Days after the end of each calendar month, provide monthly statements relating to the BIC2 Bank Accounts and the BFC2 Collection Account to BIC2, BFC2, the Preference Share Agent and MTN respectively;
- 17.1.2 as soon as reasonably possible provide any statements or information required under the Income Tax Act, 1962 or under any other legislation in relation to any of the BIC2 Bank Accounts, the BFC2 Collection Account to MTN, BIC2 and BFC2 respectively;
- 17.1.3 simultaneously upon providing BIC2 with any other statement or notice in respect of any of the BIC2 Bank Accounts, provide the Preference Share Agent and MTN with a copy thereof;
- 17.1.4 simultaneously upon providing BFC2 with any other statement or notice in respect of the BFC2 Collection Account, provide the Preference Share Agent, BIC2 and MTN with a copy thereof;
- 17.1.5 as soon as reasonably possible upon being called upon to do so by BIC2, the Preference Share Agent and/or MTN, provide BIC2, the Preference Share Agent and/or MTN, as the case may be, with such information concerning the BIC2 Bank Accounts (including, without limitation, debits and credits thereto) as BIC2 the Preference Share Agent and/or MTN, as the case may be, may from time to time require;
- 17.1.6 as soon as reasonably possible upon being called upon to do so by the Preference Share Agent, provide the Preference Share Agent with such information concerning the BIC2 Subordinated Loans as BIC2 the Preference Share Agent may from time to time require;
- 17.1.7 as soon as reasonably possible upon being called upon to do so by BFC2, the Preference Share Agent, BIC2 and/or MTN, provide BFC2, the Preference Share Agent, BIC2 and/or MTN, as the case may be, with such information concerning the BFC2 Collection Account (including, without limitation, debits and credits thereto) as BFC2 and/or the Preference Share Agent, as the case may be, may from time to time require;
- 17.1.8 as soon as reasonably possible inform BIC2, the Preference Share Agent and MTN if BIC2 or any person on its behalf attempts to close any of the BIC2 Bank Accounts or if the Account Bank becomes aware of any irregularity in the operation of any of the BIC2 Bank Accounts;
- 17.1.9 as soon as reasonably possible, inform BFC2, BIC2, MTN and the Preference Share Agent if BFC2 or any person on its behalf attempts to close the BFC2 Collection Account or if the Account Bank becomes aware of any irregularity

in the operation of the BFC2 Collection Account;

17.1.10 as soon as reasonably possible, inform BIC2, the Preference Share Agent and MTN if any person purports to exercise any Encumbrance or attachment in respect of any of the BIC2 Bank Accounts (other than in accordance with the provisions of the Key Transaction Documents);

17.1.11 as soon as reasonably possible, inform BFC2 and/or, the Preference Share Agent if any person purports to exercise any Encumbrance or attachment in respect of the BFC2 Collection Account;

17.1.12 as soon as reasonably possible, inform BIC2, BFC2, the Preference Share Agent and MTN if any person purports to exercise any Encumbrance or attachment in respect of any of the Accounts and/or the BIC2 Unclaimed Funds Account; and

17.1.13 on request, quoting the relevant provisions of the relevant Finance Document, timeously provide any other information or instructions which it is required to provide to any Party in accordance with the provisions of such Finance Document from time to time, including, but not limited to, the instructions required to be given by it to the Preference Share Agent as contemplated by the provisions of this Agreement.

17.2 For the purposes of clause 17.1, each of BIC2, BFC2, the BFC2 Investors and MTN hereby waives any rights of confidentiality to which it would otherwise have been entitled in respect of the disclosure of any such statement, notice or information to BIC2, BFC2 and MTN, or in the circumstances contemplated in clause 17.1.1 to the relevant Party, as applicable.

18 INSTRUCTIONS TO ACCOUNT BANK AND/OR THE BIC2 ADMINISTRATOR

18.1 The BIC2 board of directors shall notify the BIC2 Administrator and the Account Bank from time to time in writing of the identity of each person who is authorised by them to instruct the Account Bank and/or the BIC2 Administrator, as applicable, concerning this Agreement. Each such person shall continue to have authority to act for the BIC2 board of directors, until the BIC2 board of directors give the Account Bank and/or the BIC2 Administrator contrary notice in writing.

18.2 Save as expressly otherwise provided for in this Agreement, BIC2 and the Preference Share Agent shall be joint signatories to each of the BIC2 Bank Accounts unless (i) a BIC2 Potential Trigger Event has occurred and is Continuing and the Preference Share Agent has delivered a notice to the Account Bank informing the Account Bank that the Preference Share Agent shall be, until further notice, the sole signatory to each of the BIC2 Bank Accounts; or (ii) a BIC2 Trigger Event has occurred and is Continuing, and the Preference Share Agent has delivered a notice to the Account Bank informing the Account Bank accordingly, in which case the Preference Share Agent shall be the sole signatory to the BIC2 Bank Accounts.

18.3 BFC2 and the Preference Share Agent shall be the sole joint signatories to the BFC2 Collection Account unless (i) a BFC2 Potential Trigger Event has occurred and is Continuing and the Preference Share Agent has delivered a notice to the Account Bank informing the Account Bank that the Preference Share Agent shall be, until further notice, the sole signatory to the BFC2 Collection Account; or (ii) a BFC2 Trigger Event has occurred and is Continuing, and the Preference Share Agent has

delivered a notice to the Account Bank informing the Account Bank accordingly, in which case the Preference Share Agent shall be the sole signatory to the BFC2 Collection Account.

- 18.4 MTN was the sole signatory to the MTN Implementation Account.
- 18.5 Notwithstanding that the Preference Share Agent is a signatory to all the BIC2 Bank Accounts (other than, until a BIC2 Trigger Event has occurred and is Continuing, the BIC2 Tax Provisions Account and the BIC2 Provisions Account), it shall not refuse to counter-sign any instruction from BIC2 to the Account Bank requesting a transfer from a relevant BIC2 Bank Account if such transfer is specifically permitted under any Finance Document and the Preference Share Agent undertakes to provide such counter-signature promptly on receipt of a written request from BIC2 (and in any event on the same Business Day if such request is received on or before 12.00pm and, if the request is received after 12.00pm, then by no later than 12.00pm on the following Business Day).
- 18.6 Delivery of the Final Ordinary BIC2 Priority of Payments Notice or the Final Special BIC2 Priority of Payments Notice, as applicable, shall constitute an irrevocable payment instruction to the Account Bank to make the payments set out in such Final Ordinary BIC2 Priority of Payments Notice or the Final Special BIC2 Priority of Payments Notice, as applicable in accordance with the relevant BIC2 Priority of Payments.
- 18.7 Nothing herein shall derogate from the right of any Party to dispute, in accordance with the provisions of the relevant Key Transaction Documents, any payment made by the Account Bank in terms hereof.
- 18.8 Each of the Parties (other than the Account Bank and the BIC2 Administrator) agrees and undertakes in favour of each of the Account Bank and the BIC2 Administrator to give any written instructions to the Account Bank and/or the BIC2 Administrator in terms of this Agreement and/or the Cession Documents only in accordance with the relevant provisions of this Agreement and/or the Cession Documents, as the case may be.
- 18.9 Save as otherwise required or contemplated in terms of this Agreement, the Account Bank and/or the BIC2 Administrator shall only take any action in relation to the deposit, payment and/or transfer of all and any amounts into and from the Accounts and the BIC2 Unclaimed Funds Account in reliance on and strictly in accordance with written instructions given in accordance with the provisions of this Agreement and/or the Cession Documents, as the case may be, and shall be obliged to comply with such instructions. The relevant Parties shall notify the Account Bank and/or the BIC2 Administrator from time to time in writing of the identity of each person who is authorised by each of them to instruct the Account Bank and/or the BIC2 Administrator concerning this Agreement and/or the Cession Documents, as the case may be. Each such person shall continue to have authority to act until the relevant Party gives the Account Bank and/or the BIC2 Administrator contrary notice in writing.
- 18.10 All instructions by the Preference Share Agent to the Account Bank and/or the BIC2 Administrator pursuant to this Agreement and/or the Cession Documents, as the case may be, shall be given in writing which shall include email. The Account Bank and/or the BIC2 Administrator may rely on instructions given in writing which are given, or appear from such instructions to have been given, by an authorised person referred to

in clause 18.9, in accordance with the provisions of this Agreement and the Cession Documents, as the case may be.

19 MISCELLANEOUS PROVISIONS RELATING TO APPOINTMENT OF ACCOUNT BANK

- 19.1 Nothing in this Agreement constitutes the Account Bank as a trustee or fiduciary of any other Party or any other person.
- 19.2 The Account Bank shall not link the BIC2 Bank Accounts nor the BFC2 Collection Account to any electronic platform (other than (i) any internal electronic platform of the Account Bank; and (ii) in respect of the BIC2 Tax Provisions Account, the South African Revenue Services' e-filing system in accordance with clause 13.2 hereof) without the prior written consent of the Preference Share Agent, MTN and BIC2, nor shall it issue any cheques on the BIC2 Bank Accounts or the BFC2 Collection Account.
- 19.3 It is recorded that on the earlier of the date falling 5 (five) Business Days after:
- 19.3.1 the date on which all amounts specified in the Funds Flow Statement have been duly paid;
- 19.3.2 the cancellation of the Implementation Agreement in accordance with its terms; or
- 19.3.3 24 November 2016 or any later date that has been designated the Closing Date under the Implementation Agreement by BIC2, MTN and the Preference Share Agent,
- BIC2, BFC2, the Preference Share Agent and MTN notified the Account Bank in writing to close the Closing Date Accounts.
- 19.4 The Account Bank is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of any duty of confidentiality.
- 19.5 The Account Bank shall not be liable for any act or omission where it acts or refrains from taking any action, as the case may be, in either case in accordance with an instruction given (or which appears upon reasonable inspection to have been given) to it in accordance with the provisions of this Agreement and/or the Cession Documents, as the case may be.
- 19.6 Unless caused directly by its wilful misconduct, fraud or gross negligence, the Account Bank shall not accept responsibility or be liable for any breach of its duties as Account Bank as set out in the Finance Documents or any losses to any person or any liability resulting from action taken by it or any failure to take action under the Finance Documents.
- 19.7 No Party (other than the Account Bank) may take any proceedings against any director, officer or employee of the Account Bank (in their personal capacity) in respect of any claim it might have against the Account Bank or in respect of any act or omission of any kind of that director, officer or employee in relation to this Agreement except in relation to any fraudulent activity of any director, officer or employee of the Account Bank and the provisions of this clause 19.7 constitute

stipulations for the benefit of such directors, officers and/or employees.

- 19.8 The Account Bank shall not be liable for any delay (or any related consequences) in crediting an account with an amount required under this Agreement read with the other Key Transaction Documents to be paid by the Account Bank if the Account Bank has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing, settlement or payment system used by the Account Bank for that purpose.
- 19.9 The Parties acknowledge and agree that the Account Bank shall be entitled to process (collect, use, store or otherwise deal with) personal information (as defined in the Protection of Personal Information Act No. 4 of 2013) for the purposes of providing the Account Bank services set out in this Agreement and the other Finance Documents to which the Account Bank is a party. The Account Bank shall do so in terms of its privacy notice which may be accessed through <https://www.rmb.co.za/page/firststrand-limited-privacy-statement>.

20 REPLACEMENT OF ACCOUNT BANK

- 20.1 The Account Bank may, acting in its sole discretion or if so instructed by the Preference Share Agent and MTN (subject to 30 Business Days prior written notice), resign by giving not less than 30 Business Days' written notice to the other Parties, provided that no such resignation shall be effective until its successor Account Bank is appointed in accordance with the succeeding provisions of this clause; and provided further that the Account Bank shall not be entitled to resign if a BIC2 Potential Trigger Event has occurred and is Continuing.
- 20.2 If the Account Bank gives notice of its resignation pursuant to clause 20.1, then the Preference Share Agent and MTN shall appoint any reputable and experienced bank or other financial institution in Johannesburg as a successor to the Account Bank but, if the Preference Share Agent and MTN fail to appoint a successor Account Bank by agreement between them within 30 Business Days after the notice of resignation having been given, then the Account Bank may appoint such successor itself on terms agreed between it and the successor Account Bank with notice of such appointment to the other Parties and provided such successor is a reputable and experienced bank or other financial institution in Johannesburg. In each case the Account Bank shall procure that the successor Account Bank signs an Accession Undertaking and the appointment of the successor Account Bank shall take effect on the date referred to in the Accession Undertaking executed by the successor Account Bank.
- 20.3 If a successor to the Account Bank is appointed or substituted under the provisions of clause 20.2, then:
- 20.3.1 the retiring Account Bank shall be discharged from any further obligation hereunder (excluding any liabilities in respect of obligations arising during the period preceding the effective date of its resignation which have not been discharged by the retiring Account Bank at the effective date of its resignation); and
- 20.3.2 its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been a Party hereto as at the Original Signature Date.

21 TERMINATION

The undertakings of the Account Bank set forth herein are irrevocable and shall, subject to the provisions of clause 20 (*Replacement of Account Bank*), not be capable of being terminated by the Account Bank prior to the BIC2 Discharge Date.

22 REMUNERATION OF ACCOUNT BANK

22.1 For so long as RMB remains the Account Bank it shall be entitled to the fees set out in the RMB Agency Fees Letter (which are expressed exclusive of VAT) which relate to the services to be performed by the Account Bank.

22.2 BIC2 shall be liable to make payment of such fees relating to the BIC2 Bank Accounts and the BFC2 Collection Account as invoiced by the Account Bank via the BIC2 Administrator from time to time strictly in accordance with the applicable BIC2 Priority of Payments.

23 APPOINTMENT AS CALCULATION AGENT

RMB is with effect from the Refinancing Date appointed as Calculation Agent to BIC2, BFC2, the BFC2 Preference Shareholders and MTN on the terms and conditions set out in this Agreement in order to fulfil the functions set out herein, which appointment RMB accepts.

24 FUNCTIONS OF CALCULATION AGENT

24.1 The functions of the Calculation Agent are limited to those functions set out below and the Calculation Agent in its capacity as such shall have no further responsibilities or duties towards BIC2, BFC2, the BFC2 Preference Shareholders and MTN or any other Parties or other person.

24.2 The Calculation Agent shall:

24.2.1 on each Trading Day from the Issue Date until the BIC2 Discharge Date, calculate (i) the Total Share Cover Ratio; or (ii) where there is one, the most recent Revised Total Share Cover Ratio; and (iii) the Volatility Protection Share Cover Ratio; or (iv) where there is one, the most recent Revised Volatility Protection Share Cover Ratio, and, upon making such determination but in any event by no later than 11.00am on each of the dates referred to in this clause 24.2 until the BIC2 Discharge Date, notify BIC2, BFC2, the Preference Share Agent and MTN in writing of the (i) Total Share Cover Ratio; or (ii) where there is one, the most recent Revised Total Share Cover Ratio; and (iii) the Volatility Protection Share Cover Ratio; or (iv) where there is one, the most recent Revised Volatility Protection Share Cover Ratio:

24.2.1.1 on the Issue Date;

24.2.1.2 on each date upon which a Discussion Event occurs and is Continuing;

24.2.1.3 on each date that a BIC2 Potential Trigger Event has occurred and is Continuing;

- 24.2.1.4 on each date on which a breach of the Volatility Protection Share Cover Ratio occurs; and/or
 - 24.2.1.5 otherwise on written request from any Party.
- 24.3 For the purposes of enabling the Calculation Agent to perform the calculations referred to in:
 - 24.3.1 clause 24.2, the Calculation Agent shall utilise the amounts provided to it by:
 - 24.3.1.1 the Preference Share Agent, which shall be obliged to provide the Calculation Agent in writing by no later than 10.00am on each Trading Day until the BIC2 Discharge Date with the BIC2 Redemption Amount, but excluding the BIC2 Margin Dividend;
 - 24.3.1.2 the Account Bank, which shall be obliged to notify the Calculation Agent in writing by no later than 10.00am on each Trading Day until the BIC2 Discharge Date, of the amounts standing to the credit of the BFC2 Collection Account, the BIC2 Collection Account, the BIC2 Security Account, the BIC2 Top-Up Loan Account and the BFC2 Top Up Loan Account, if any; and
 - 24.3.1.3 the Security Custodian, which shall be obliged to notify the Calculation Agent in writing by no later than 10.00am on each Trading Day until the BIC2 Discharge Date, of the number of MTN Shares reflected in the Subject Shares Securities Account, provided there has been a change to the number of MTN Shares since the previous notice.
- 24.4 The Parties confirm and agree that in the event that any Party disputes the calculation of the Total Share Cover Ratio and/or the Revised Total Share Cover Ratio and/or the Volatility Protection Share Cover Ratio and/or the Revised Volatility Protection Share Cover Ratio (each a "Ratio") by the Calculation Agent under clause 24.2, such Party shall be entitled to refer such dispute to an auditor of not less than 15 years' standing agreed to by the other Parties on the date on which the relevant Ratio is determined, or, if no agreement can be reached on the date on which the relevant Ratio is determined, the Expert by no later than 12.00pm on the Business Day immediately after the date of determination of the Ratio by the Calculation Agent and any such dispute shall be required to be determined by the Expert by no later than 4.00pm on the date falling one Business Day after the date of the referral, provided that if this does not occur, for any reason whatsoever, the applicable Ratio calculated by Calculation Agent shall be deemed to be correct in the absence of manifest error. In the event the Calculation Agent fails to perform the necessary calculations referred to in clause 24.2, any Party may refer the calculation to the Expert on mutatis mutandis the same basis as a dispute as contemplated above. The provisions of this clause 24.4 are without prejudice to the rights of any Party to claim specific performance of the Calculation Agent's obligations under this Agreement, or any other Key Transaction Document, in circumstances in which neither the Calculation Agent nor the Expert have delivered their determination timeously, or to claim damages, or to exercise any other rights or remedies whether granted to it under the Key Transaction Documents or at law and whether against the Calculation Agent or any other person.

- 24.5 Any notification required to be given by the Calculation Agent in accordance with the provisions of this Agreement may be given via email and shall, to the extent that it is not already required, be copied simultaneously with the giving of the notice in question by the Calculation Agent to the Preference Share Agent and MTN.

25 NOTIFICATION TO CALCULATION AGENT

- 25.1 All notifications to be provided by any of the Parties to the Calculation Agent pursuant to this Agreement shall be given in writing which shall include email. The Calculation Agent may rely on instructions or notifications given in writing which are given, or appear from such instructions or notifications to have been given, by an authorised person as identified in accordance with the provisions of clause 25.2 and provided the Calculation Agent acts upon such instructions and/or notifications in good faith, it shall be entitled to act upon such instructions and/or notifications, without making any further enquiries regarding the authorisation or otherwise of the person giving the notifications.
- 25.2 Each of the relevant Parties shall notify the Calculation Agent from time to time in writing of the identity of each person who is authorised by each of them to provide notifications to the Calculation Agent concerning this Agreement. Each such person shall continue to have authority to act for such relevant Parties, until such relevant Parties give the Calculation Agent contrary notice in writing.

26 MISCELLANEOUS PROVISIONS RELATING TO APPOINTMENT OF CALCULATION AGENT

- 26.1 Nothing in this Agreement constitutes the Calculation Agent as a trustee or fiduciary of any other Party or any other person.
- 26.2 The Calculation Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of any duty of confidentiality.
- 26.3 The Calculation Agent shall not be liable for any act or omission where it acts or refrains from taking any action, as the case may be, in either case in accordance with an instruction given to it in accordance with the provisions of this Agreement.
- 26.4 Unless caused directly by its wilful misconduct, fraud or gross negligence, the Calculation Agent shall not accept responsibility or be liable for any breach of its duties as Calculation Agent as set out in the Finance Documents or any losses to any person or any liability resulting from action taken by it or any failure to take action under the Finance Documents.
- 26.5 No Party (other than the Calculation Agent) may take any proceedings against any director, officer or employee of the Calculation Agent (in their personal capacity) in respect of any claim it might have against the Calculation Agent or in respect of any act or omission of any kind of that director, officer or employee in relation to this Agreement except in relation to any fraudulent activity of any director, officer or employee of the Calculation Agent and the provisions of this clause 26.5 constitute stipulations for the benefit of such directors, officers and/or employees.
- 26.6 The Parties acknowledge and agree that the Calculation Agent shall be entitled to process (collect, use, store or otherwise deal with) personal information (as defined in the Protection of Personal Information Act No. 4 of 2013) for the purposes of

providing the Calculation Agent services set out in this Agreement and the other Finance Documents to which the Calculation Agent is a party. The Calculation Agent shall do so in terms of its privacy notice which may be accessed through <https://www.rmb.co.za/page/firststrand-limited-privacy-statement>.

27 REPLACEMENT OF CALCULATION AGENT

- 27.1 The Calculation Agent may, acting in its sole discretion or if so instructed by the Preference Share Agent and MTN (subject to 30 Business Days prior written notice), resign by giving not less than 30 (thirty) Business Days' written notice to the other Parties, provided that no such resignation shall be effective until its successor Calculation Agent is appointed in accordance with the succeeding provisions of this clause; and provided further that the Calculation Agent shall not be entitled to resign if a BIC2 Potential Trigger Event has occurred and is continuing.
- 27.2 If the Calculation Agent gives notice of its resignation pursuant to clause 27.1, then the Preference Share Agent and MTN shall appoint any reputable and experienced bank or other financial institution in Johannesburg as a successor to the Calculation Agent but, if the Preference Share Agent and MTN fail to appoint a successor Calculation Agent by agreement between them within 30 (thirty) Business Days after the notice of resignation having been given, then the Calculation Agent may appoint such successor itself on terms agreed between it and the successor Calculation Agent with notice of such appointment to the other Parties and provided such successor is a reputable and experienced bank or other financial institution in Johannesburg. In each case the Calculation Agent shall procure that the successor Calculation Agent signs an Accession Undertaking and the appointment of the successor Calculation Agent shall take effect on the date referred to in the Accession Undertaking executed by the successor Calculation Agent.
- 27.3 If a successor to the Calculation Agent is appointed or substituted under the provisions of clause 27.2, then:
- 27.3.1 the retiring Calculation Agent shall be discharged from any further obligation hereunder (excluding any liabilities in respect of obligations arising during the period preceding the effective date of its resignation which have not been discharged by the retiring Calculation Agent at the effective date of its resignation); and
- 27.3.2 its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been a Party hereto as at the Original Signature Date.

28 REMUNERATION OF CALCULATION AGENT

- 28.1 For so long as RMB remains the Calculation Agent it shall be entitled to the fees set out in the RMB Agency Fees Letter attached hereto (which are expressed exclusive of VAT) which relate to the services to be performed by the Calculation Agent.
- 28.2 BIC2 shall be liable to make payment of the fees (plus VAT thereon) of the Calculation Agent as invoiced by the Calculation Agent via the BIC2 Administrator from time to time strictly in accordance with the applicable BIC2 Priority of Payments.

29 APPOINTMENT AS BIC2 ADMINISTRATOR

- 29.1 Nedbank Share Scheme Administration was appointed as BIC2 Administrator to BIC2 on the terms and conditions set out in the Original Account Bank and Agency Agreement, this Agreement, the Refinancing Agreement and the Engagement Letter in order to fulfil the functions set out herein and therein and any other functions which are expressed to be performed by the BIC2 Administrator in the Transaction Documents, if any, which appointment Nedbank Share Scheme Administration accepted.
- 29.2 To the extent that there is conflict between the contents of the Engagement Letter and this Agreement in respect of the functions of the BIC2 Administrator, the contents of:
- 29.2.1 this Agreement shall prevail up to and including the BIC2 Discharge Date; and
- 29.2.2 the Engagement Letter shall prevail after the BIC2 Discharge Date.

30 FUNCTIONS OF BIC2 ADMINISTRATOR

- 30.1 The BIC2 Administrator shall:
- 30.1.1 from time to time instruct the Account Bank to make payments from the BIC2 Provisions Account and the BIC2 Tax Provisions Account timeously made in accordance with the provisions of this Agreement;
- 30.1.2 give effect to the on-going administration of BIC2's statutory records (including the books of account and BIC2's accounting records);
- 30.1.3 hold in safe custody BIC2's company secretarial documents and other material documents of BIC2, from time to time;
- 30.1.4 complete and submit annual returns to the Companies and Intellectual Property Commission established in terms of the Companies Act;
- 30.1.5 recommend, and if so required by BIC2 and MTN, up to two suitably qualified persons for appointment as independent directors of BIC2 and for appointment as participants on the audit committee to be established by BIC2;
- 30.1.6 make available (i) prior to the commencement of the BEE Listing Period, at its cost; and (ii) for the duration of the BEE Listing Period, at the cost of BIC2, (but without derogating from BIC2's obligations under the Engagement Letter), a suitably qualified person to perform the role of company secretary in relation to BIC2;
- 30.1.7 make available, (i) prior to the commencement of the BEE Listing Period, at its cost, and (ii) for the duration of the BEE Listing Period, at the cost of BIC2, (but without derogating from BIC2's obligations under the Engagement Letter), a suitably qualified person to perform the role of public officer in relation to BIC2;
- 30.1.8 arrange meetings of the directors of BIC2 from time to time (as required in accordance with the BIC2 Preference Share Terms, as requested by the board

of BIC2 from time to time, and prior to each date upon which any BIC2 Priority of Payments is scheduled to be run), take minutes at such meetings, and ensure that all resolutions passed by the directors of BIC2 are accurately and properly minuted and recorded;

30.1.9 arrange the annual general meeting of BIC2;

30.1.10 prepare annual financial statements for BIC2;

30.1.11 calculate the amount of Taxes payable by BIC2 from time to time, in consultation with the Auditors;

30.1.12 complete all tax returns on behalf of BIC2 and ensure that, once signed by the directors of BIC2, such documents are timeously submitted to the relevant authorities on behalf of BIC2;

30.1.13 procure, at the cost of BIC2, that the Auditors are instructed to complete their annual audit of BIC2;

30.1.14 immediately forward to BIC2, MTN and the Preference Share Agent any and all correspondences, notices or other documentation received by it and which relates to authorisations, approvals, licences and consents required in or under any Applicable Law to enable BIC2 lawfully to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party;

30.1.15 perform the role of Custodian as defined in and in accordance with the provisions of the Relationship Agreement; and

30.1.16 perform such other services set out in the Engagement Letter.

30.2 In addition to the functions set out in clause 30.1 above, the BIC2 Administrator shall fulfil all other functions which are expressed to be performed by the BIC2 Administrator in the Finance Documents.

31 REPLACEMENT OF BIC2 ADMINISTRATOR

31.1 The BIC2 Administrator may, acting in its sole discretion or if so instructed by the Preference Share Agent and MTN (subject to 30 (thirty) Business Days' prior written notice), resign by giving not less than 30 (thirty) Business Days' written notice to the other Parties, provided that no such resignation shall be effective until its successor BIC2 Administrator is appointed in accordance with the succeeding provisions of this clause; and provided further that the BIC2 Administrator shall not be entitled to resign if a BIC2 Potential Trigger Event has occurred and is continuing.

31.2 If the BIC2 Administrator gives notice of its resignation pursuant to clause 31.1, then the Preference Share Agent and MTN shall appoint any reputable and experienced bank or other financial institution in Johannesburg as a successor to the BIC2 Administrator but, if the Preference Share Agent and MTN fail to appoint a successor BIC2 Administrator by agreement between them within 30 (thirty) Business Days after the notice of resignation having been given, then the BIC2 Administrator may appoint such successor itself on terms agreed between it and the successor BIC2 Administrator with notice of such appointment to the other Parties and provided such successor is a reputable and experienced bank or other financial institution in

Johannesburg or a professional trustee services company or other professional provider of services of the type referred to in clause 30 (*Functions of BIC2 Administrator*). In each case the BIC2 Administrator shall procure that the successor BIC2 Administrator signs an Accession Undertaking and the appointment of the successor BIC2 Administrator shall take effect on the date referred to in the Accession Undertaking executed by the successor BIC2 Administrator.

31.3 If a successor to the BIC2 Administrator is appointed or substituted under the provisions of clause 31.2, then:

31.3.1 the retiring BIC2 Administrator shall be discharged from any further obligation hereunder (excluding any liabilities in respect of obligations arising during the period preceding the effective date of its resignation which have not been discharged by the retiring BIC2 Administrator at the effective date of its resignation); and

31.3.2 its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been a Party hereto as at the Original Signature Date.

32 INSTRUCTIONS TO BIC2 ADMINISTRATOR

32.1 All instructions to the BIC2 Administrator by the BIC2 board of directors and/or the Preference Share Agent shall be given in writing which shall include email. The BIC2 Administrator may rely on instructions given in writing which are given or appear from such instructions to have been given, by an authorised person as identified in accordance with the provisions of clause 32.2 and provided the BIC2 Administrator acts upon such instructions in good faith, it shall be entitled to act upon such instructions, without making any further enquiries regarding the authorisation or otherwise of the person giving the instruction.

32.2 The BIC2 board of directors and the Preference Share Agent shall notify the BIC2 Administrator from time to time in writing of the identity of each person who is authorised by them to instruct the BIC2 Administrator concerning this Agreement. Each such person shall continue to have authority to act for the BIC2 board of directors, until the BIC2 board of directors or the Preference Agent give the BIC2 Administrator contrary notice in writing.

32.3 The BIC2 Administrator shall not give any instructions to the Account Bank which are contrary to the instructions received by it from the Preference Share Agent and/or the BIC2 board of directors.

33 MISCELLANEOUS PROVISIONS RELATING TO APPOINTMENT OF BIC2 ADMINISTRATOR

33.1 Nothing in this Agreement constitutes the BIC2 Administrator as a trustee or fiduciary of any other Party or any other person.

33.2 The BIC2 Administrator is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of any duty of confidentiality.

33.3 The BIC2 Administrator shall not be liable for any act or omission where it acts or refrains from taking any action, as the case may be, in either case in accordance with

an instruction given to it in accordance with the provisions of this Agreement.

33.4 Unless caused directly by its wilful misconduct, fraud or gross negligence, Nedbank Share Scheme Administration, its partners, directors, employees and agents (in its capacity as the BIC2 Administrator) shall not be liable to any person or any cessionary or third party claiming through or on behalf of such person in respect of any claim whatsoever, whether in contract, delict or otherwise, for any loss, damages, costs or expenses directly or indirectly incurred as a result of services provided in connection with this Agreement.

33.5 No Party (other than the BIC2 Administrator) may take any proceedings against any director, officer or employee of the BIC2 Administrator (in their personal capacity) in respect of any claim it might have against the BIC2 Administrator or in respect of any act or omission of any kind of that director, officer or employee in relation to this Agreement except in relation to any fraudulent activity of any director, officer or employee of the BIC2 Administrator and the provisions of this clause 33.5 constitute stipulations for the benefit of such directors, officers and/or employees.

34 REMUNERATION OF BIC2 ADMINISTRATOR

34.1 For so long as Nedbank Share Scheme Administration remains the BIC2 Administrator, it shall be entitled to the fees set out in the Engagement Letter (which are expressed exclusive of VAT) which relates to the services to be performed by the BIC2 Administrator.

34.2 BIC2 shall be liable to make payment of the fees (plus VAT thereon) of the BIC2 Administrator together with any other disbursements reasonably incurred by the BIC2 Administrator in the performance of its obligations as BIC2 Administrator as invoiced by the BIC2 Administrator from time to time strictly in accordance with the applicable BIC2 Priority of Payments.

35 APPOINTMENT AS BFC2 ADMINISTRATOR

35.1 Nedbank Share Scheme Administration was appointed as BFC2 Administrator to BFC2 on the terms and conditions set out in the Original Account Bank and Agency Agreement, this Agreement, the Refinancing Agreement and the Engagement Letter in order to fulfil the functions set out herein and therein and any other functions which are expressed to be performed by the BFC2 Administrator in the Finance Documents, if any, which appointment Nedbank Share Scheme Administration accepted.

35.2 To the extent that there is conflict between the contents of the Engagement Letter and this Agreement in respect of the functions of the BFC2 Administrator, the contents of this Agreement shall prevail.

36 FUNCTIONS OF BFC2 ADMINISTRATOR

36.1 The BFC2 Administrator shall:

36.1.1 give effect to the ongoing administration of BFC2's statutory records (including the books of account and BFC2's accounting records);

36.1.2 recommend, at its cost, a suitably qualified person for appointment as a director in relation to BFC2;

- 36.1.3 arrange meetings of the directors of BFC2 from time to time (as required in accordance with the BFC2 Preference Share Terms, as requested by the board of BFC2 from time to time,
 - 36.1.4 prepare annual financial statements for BFC2;
 - 36.1.5 calculate the amount of Taxes payable by BFC2 from time to time;
 - 36.1.6 procure, at the cost of BFC2, that the Auditors are instructed to complete their annual audit of BFC2;
 - 36.1.7 provide notifications and instructions from time to time to the Account Bank in respect of the Taxes payable by BFC2;
 - 36.1.8 immediately forward to BFC2 and the Preference Share Agent any and all correspondences, notices or other documentation received by it and which relates to authorisations, approvals, licences and consents required in or by the laws and regulations of South Africa to enable BFC2, lawfully to enter into and perform its obligations under this Agreement and the other Finance Documents to which it is a party; and
 - 36.1.9 such other services set out in the Engagement Letter.
- 36.2 The Parties record that the following functions are performed by the company secretary of BFC2 (being. at the Refinancing Date, Maitland Group South Africa Limited) and the BFC2 Administrator shall instruct that Maitland Group South Africa Limited) to carry these out, namely:
- 36.2.1 hold in safe custody BFC2's company secretarial documents and other material documents of BFC2, from time to time;
 - 36.2.2 complete and submit annual returns to the Companies and Intellectual Property Commission established in terms of the Companies Act;
 - 36.2.3 subject to BFC2 remaining an unlisted entity, make available, at its cost (but without derogating from BIC2's obligations under the Engagement Letter), a suitably qualified person to perform the role of company secretary in relation to BFC2;
 - 36.2.4 subject to BFC2 remaining an unlisted entity, make available, at its cost (but without derogating from BIC2's obligations under the Engagement Letter), a suitably qualified person to perform the role of public officer in relation to BFC2;
 - 36.2.5 complete all tax returns on behalf of BFC2;
 - 36.2.6 arrange the annual general meeting of BFC2; and
 - 36.2.7 prior to each date upon which any BFC2 Priority of Payments is scheduled to be run), take minutes at such meetings, and ensure that all resolutions passed by the directors of BFC2 are accurately and properly minuted and recorded;.
- 36.3 In addition to the functions set out in clause 36.1 above, the BFC2 Administrator shall fulfil all other functions which are expressed to be performed by the BFC2

Administrator in the Finance Documents, if any.

37 REPLACEMENT OF BFC2 ADMINISTRATOR

- 37.1 The BFC2 Administrator may, acting in its sole discretion or if so instructed by the Preference Share Agent and MTN (subject to 30 (thirty) Business Days' prior written notice), resign by giving not less than 30 (thirty) Business Days' written notice to the other Parties, provided that no such resignation shall be effective until its successor BFC2 Administrator is appointed in accordance with the succeeding provisions of this clause; and provided further that the BFC2 Administrator shall not be entitled to resign if a BIC2 Potential Trigger Event or a BFC2 Potential Trigger Event has occurred and is continuing.
- 37.2 If the BFC2 Administrator gives notice of its resignation pursuant to clause 37.1, then the Preference Share Agent and MTN shall appoint any reputable and experienced bank or other financial institution in Johannesburg as a successor to the BFC2 Administrator but, if the Preference Share Agent and MTN fail to appoint a successor BFC2 Administrator by agreement between them within 30 (thirty) Business Days after the notice of resignation having been given, then the BFC2 Administrator may appoint such successor itself on terms agreed between it and the successor BFC2 Administrator with notice of such appointment to the other Parties and provided such successor is a reputable and experienced bank or other financial institution in Johannesburg or a professional trustee services company or other professional provider of services of the type referred to in clause 36 (*Functions of BFC2 Administrator*). In each case the BFC2 Administrator shall procure that the successor BFC2 Administrator signs an Accession Undertaking and the appointment of the successor BFC2 Administrator shall take effect on the date referred to in the Accession Undertaking executed by the successor BFC2 Administrator.
- 37.3 If a successor to the BFC2 Administrator is appointed or substituted under the provisions of clause 37.2, then:
- 37.3.1 the retiring BFC2 Administrator shall be discharged from any further obligation hereunder (excluding any liabilities in respect of obligations arising during the period preceding the effective date of its resignation which have not been discharged by the retiring BFC2 Administrator at the effective date of its resignation); and
- 37.3.2 its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been a Party hereto as at the Original Signature Date.

38 INSTRUCTIONS TO BFC2 ADMINISTRATOR

- 38.1 All instructions to the BFC2 Administrator by the board of directors of BFC2 and the Preference Share Agent are to be given in writing which shall include email. The BFC2 Administrator may rely on instructions given in writing which are given, or appear from such instructions to have been given, by the board of directors of BFC2 or the Preference Share Agent, as the case may be, in accordance with the provisions of clause 38.2 in accordance with the provisions of the relevant Finance Documents and provided the BFC2 Administrator acts upon such instructions in good faith, it shall be entitled to act upon such instructions, without making any further enquiries regarding the authorisation or otherwise of the person giving the instruction.

- 38.2 The relevant parties shall notify the BFC2 Administrator from time to time in writing of the identity of each person who is authorised by each of them to instruct the BFC2 Administrator concerning this Agreement. Each such person shall continue to have authority to act for the relevant parties until the relevant parties give the BIC2 Administrator contrary notice in writing.
- 38.3 The BFC2 Administrator shall not give any instructions to the Account Bank which are contrary to the instructions received by it from the Preference Share Agent and/or the board of directors of BFC2.

39 MISCELLANEOUS PROVISIONS RELATING TO APPOINTMENT OF BFC2 ADMINISTRATOR

- 39.1 Nothing in this Agreement constitutes the BFC2 Administrator as a trustee or fiduciary of any other Party or any other person.
- 39.2 The BFC2 Administrator is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of any duty of confidentiality.
- 39.3 The BFC2 Administrator shall not be liable for any act or omission where it acts or refrains from taking any action, as the case may be, in either case in accordance with an instruction given to it in accordance with the provisions of this Agreement.
- 39.4 Unless caused directly by its wilful misconduct, fraud or gross negligence, Nedbank Share Scheme Administration, its partners, directors, employees and agents (in its capacity as the BFC2 Administrator) shall not be liable to any person or any cessionary or third party claiming through or on behalf of such person in respect of any claim whatsoever, whether in contract, delict or otherwise, for any loss, damages, costs or expenses directly or indirectly incurred as a result of services provided in connection with this Agreement.
- 39.5 No Party (other than the BFC2 Administrator) may take any proceedings against any director, officer or employee of the BFC2 Administrator (in their personal capacity) in respect of any claim it might have against the BFC2 Administrator or in respect of any act or omission of any kind of that director, officer or employee in relation to this Agreement except in relation to any fraudulent activity of any director, officer or employee of the BFC2 Administrator and the provisions of this clause 39.5 constitute stipulations for the benefit of such directors, officers and/or employees.

40 REMUNERATION OF BFC2 ADMINISTRATOR

- 40.1 For so long as Nedbank Share Scheme Administration remains the BFC2 Administrator, it shall be entitled to the fees set out in the Engagement Letter (which are expressed exclusive of VAT) which relate to the services to be performed by the BFC2 Administrator.
- 40.2 BIC2 shall be liable to make payment of the fees (plus VAT thereon) of the BIC2 Administrator together with any other disbursements reasonably incurred by the BFC2 Administrator in the performance of its obligations as BFC2 Administrator as invoiced by the BFC2 Administrator from time to time strictly in accordance with the applicable BIC2 Priority of Payments.

41 APPOINTMENT AS SECURITY CUSTODIAN

- 41.1 On and with effect from the Refinancing Date, RMB Custody and Trustees Services is appointed as Security Custodian to BIC2, BFC2 and the BFC2 Preference Shareholders on the terms and conditions set out in this Agreement and in the Subject Shares Custody Agreement concluded by it with BIC2 in order to fulfil the functions set out therein and herein and any other functions which are expressed to be performed by the Security Custodian under the Cession Documents, which appointment RMB Custody and Trustees Services accepts.
- 41.2 The Security Custodian is hereby irrevocably authorised and instructed by BIC2, BFC2 and the BFC2 Preference Shareholders:
- 41.2.1 to carry out its functions in terms of this Agreement and the Subject Share Custody Agreement acting on all instructions furnished to it as contemplated in this Agreement or in accordance with the provisions of this Agreement, the Subject Share Custody Agreement and the Cession Documents; and
- 41.2.2 to maintain, until the BIC2 Discharge Date, the Subject Shares Securities Account in the name of BIC2.
- 41.3 The Security Custodian will be entitled to charge BIC2 such fees and charges (plus applicable VAT) as it would ordinarily charge a holder of a securities account.
- 41.4 If there is any conflict between the provisions of this Agreement and the provisions of the Subject Share Custody Agreement, the provisions of this Agreement shall prevail.

42 DUTIES OF SECURITY CUSTODIAN

- 42.1 The Security Custodian shall open and maintain the Subject Shares Securities Account in the name of BIC2 and shall advise MTN and the Preference Share Agent in writing of the details of the Subject Shares Securities Account.
- 42.2 The Security Custodian shall, within 1 (one) Business Day following receipt of written instructions from the BIC2 Administrator, transfer the full amount of any cash Distribution paid into the Subject Shares Securities Account to the BIC2 Collection Account.
- 42.3 The Security Custodian shall immediately upon BIC2 becoming entitled thereto:
- 42.3.1 if the Subject Shares are or at any time become dematerialised, upon instructions from STRATE or any other person given in accordance with the rules of STRATE, record and reflect the Subject Shares in the Subject Shares Securities Account;
- 42.3.2 if the Subject Shares are not dematerialised, receive, deposit and hold the share certificates and share transfer forms in respect of the Subject Shares in safe custody;
- 42.3.3 if the Subject Shares are or at any time become dematerialised, ensure that the MTN Tranche 1 Subscription Shares are separately identified in STRATE;
- 42.3.4 if the Subject Shares are not dematerialised, provide written confirmation to

the Preference Share Agent that the share certificates are held subject to the Encumbrances on the Subject Shares under the BIC2 Account Cession and the BIC2 Reversionary Account Cession;

42.3.5 if the Subject Shares are or at any time become dematerialised, provide written confirmation to the Preference Share Agent that the Encumbrance on the Subject Shares under the BIC2 Account Cession has been recorded in the Subject Shares Securities Account and that such recordal refers to further Encumbrances on the Subject Shares, in the manner envisaged in the BIC2 Reversionary Account Cession;

42.3.6 procure the timeous delivery to MTN, in the performance of BIC2's obligations under the MTN Tranche 1 Subscription and Call Option Agreement in accordance with the provisions of the relevant Key Transaction Documents, of the applicable number of MTN Shares,

without the need for BIC2 or any other person to specifically instruct the Security Custodian in relation thereto.

42.4 The Security Custodian warrants and undertakes in favour of BIC2, MTN, BFC2 and the BFC2 Preference Shareholders that all the Subject Shares reflected in the Subject Shares Securities Account shall be held in BIC2's own name and not in the name of any nominee company.

42.5 The Security Custodian shall convey to the BIC2 Administrator and the Preference Share Agent within a reasonable period of time, but in any event by no later than 9.00pm on the Business Day upon which any such notice is publicised, all notices regarding rights issues, stock splits, capitalisation awards and other benefits or corporate actions accruing to or relating to any of the Subject Shares from time to time.

42.6 The Security Custodian shall give effect to all lawful instructions of BIC2 with regard to voting rights to be exercised by it in relation to the Subject Shares, subject to the provisions of the Finance Documents.

42.7 The Security Custodian undertakes to meet and/or fulfil any statutory requirements which may be applicable to BIC2 in giving effect to the provisions of this Agreement or any other Finance Document which relate to the services to be provided by the Security Custodian and to adhere to all stock exchange and the rules of STRATE insofar as they may be applicable.

42.8 The Security Custodian undertakes to meet and/or fulfil any statutory requirements which may be applicable to it in giving effect to the provisions of this Agreement or any other Finance Document which relate to the services to be provided by the Security Custodian and to adhere to all stock exchange and the rules of STRATE insofar as they may be applicable.

42.9 The Security Custodian shall only release and deliver any of the Subject Shares held in the Subject Shares Securities Account, or any share certificates and share transfer forms in respect of any of the Subject Shares in the circumstances provided for in the Key Transaction Documents and shall not release and/or deliver any such Subject Shares or any of them on the instructions of BIC2 contrary to the provisions of the Key Transaction Documents, notwithstanding that the Subject Shares Securities Account is opened in the name of BIC2. Without prejudice to the generality of the

aforegoing, the Security Custodian shall be obliged to release share certificates and share transfer forms in relation to the Subject Shares to MTN after the release of all Encumbrances over the Subject Shares which have been granted in favour of the BFC2 Preference Shareholders.

42.10 The Security Custodian undertakes that any share certificates and share transfer forms in respect of the Subject Shares shall be stored and held in secure custody and shall be protected by adequate and appropriate security and administrative systems.

42.11 The Security Custodian acknowledges and agrees that:

42.11.1 as security for its obligations under the First Ranking Guarantee, BIC2 has ceded *in securitatem debiti* all its right, title and interest in and to the Subject Shares and the Subject Shares Securities Account to the BFC2 Preference Shareholders under and in terms of the BIC2 Pledge and Cession and BIC2 has ceded *in securitatem debiti* all its reversionary right, title and interest in and to the Subject Shares and the Subject Shares Securities Account to MTN, MTN Holdings and/or each MTN Acceded Nominee under and in terms of the BIC2 Reversionary Pledge and Cession;

42.11.2 it shall, in respect of the Subject Shares and the Subject Shares Securities Account, act solely on the written instructions of:

42.11.2.1 for so long as the Subject Shares and the Subject Shares Securities Account have been ceded in security to the BFC2 Preference Shareholders under the BIC2 Pledge and Cession;

42.11.2.2 and for so long as MTN or an MTN Call Option Acceded Nominee has not exercised the Trigger Event Call Option and paid the Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement, and until otherwise notified in writing by the Preference Share Agent, the Preference Share Agent, in circumstances where the BFC2 Preference Shareholders have become entitled to enforce their rights in respect of the Subject Shares and the Subject Shares Securities Account under the BIC2 Pledge and Cession;

42.11.2.3 after MTN or an MTN Call Option Acceded Nominee has exercised the Trigger Event Call Option and paid the Call Option Strike Price in full to the BFC2 Preference Shareholders under and in terms of the Call Option Agreement (as advised to it by the Preference Share Agent), MTN or the applicable MTN Call Option Acceded Nominee (in their capacity as BFC2 Preference Shareholder), in circumstances where they have become entitled to enforce their rights in respect of the Subject Shares and the Subject Shares Securities Account under the BIC2 Pledge and Cession, unless and until otherwise notified in writing by MTN; and

42.11.2.4 after the release of the Subject Shares and the Subject Shares Securities Account from the provisions of the BIC2 Pledge and Cession, and for so long as the BIC2 Reversionary

Pledge and Cession is in full force and effect, MTN and MTN Holdings in circumstances where the MTN, MTN Holdings and/or any MTN Acceded Nominee has become entitled to enforce its rights in respect of the Subject Shares and the Subject Shares Securities Account under the BIC2 Reversionary Pledge and Cession;

42.11.3 it shall act in respect of the Subject Shares and the Subject Shares Securities Account only in accordance with the terms of this Agreement, the Cession Documents and its Subject Share Custody Agreement.

43 INSTRUCTIONS TO SECURITY CUSTODIAN

- 43.1 All instructions to the Security Custodian pursuant to this Agreement shall be given in writing which shall include email. The Security Custodian may rely on instructions given in writing which are given, or appear from such instructions to have been given, by an authorised person (as identified in accordance with the provisions of clause 43.2) in accordance with the provisions of this Agreement, the Subject Share Custody Agreement and the Cession Documents and provided the Security Custodian acts upon such instructions in good faith, it shall be entitled to act upon such instructions, without making any further enquiries regarding the authorisation or otherwise of the person giving the instruction.
- 43.2 Each relevant Party shall notify the Security Custodian from time to time in writing of the identity of each person who is authorised by it to instruct the Security Custodian concerning this Agreement and the Cession Documents. Each such person shall continue to have authority to act for such relevant Party until such relevant Party gives the Security Custodian contrary notice in writing.

44 REMUNERATION OF SECURITY CUSTODIAN

- 44.1 For so long as RMB Custody and Trustees Services remains the Security Custodian it shall be entitled to the fees set out in its Subject Share Custody Agreement which relate to services to be performed by it in its capacity as Security Custodian.
- 44.2 BIC2 shall be liable to make payment of such fees (plus VAT thereon) of the Security Custodian as invoiced by the Security Custodian to the BIC2 Administrator from time to time strictly in accordance with the applicable BIC2 Priority of Payments.

45 REPLACEMENT OF SECURITY CUSTODIAN

- 45.1 The Security Custodian may, acting in its sole discretion or if so instructed by the Preference Share Agent and MTN (subject to 30 (thirty) Business Days prior written notice), resign by giving not less than 30 (thirty) Business Days' written notice to the other Parties, provided that no such resignation shall be effective until (i) its successor Security Custodian is appointed in accordance with the succeeding provisions of this clause; and (ii) the Security Custodian shall not be entitled to resign if a BIC2 Potential Trigger Event has occurred and is continuing.
- 45.2 If the Security Custodian gives notice of its resignation pursuant to clause 45.1, then the Preference Share Agent and MTN shall appoint any reputable and experienced bank or other financial institution in Johannesburg as a successor to the Security Custodian but, if the Security Custodian and MTN fail to appoint a successor Security Custodian by agreement between them within 30 (thirty) Business Days after the

notice of resignation having been given, then the Preference Share Agent may appoint such successor itself on terms agreed between it and the successor Security Custodian with notice of such appointment to the other Parties and provided such successor is a reputable and experienced bank or other financial institution in Johannesburg. In each case the Security Custodian shall procure that the successor Security Custodian signs an Accession Undertaking and the appointment of the successor Security Custodian shall take effect on the date referred to in the Accession Undertaking executed by the successor Security Custodian.

45.3 If a successor to the Security Custodian is appointed or substituted under the provisions of clause 45.2, then:

45.3.1 the retiring Security Custodian shall be discharged from any further obligation hereunder (excluding any liabilities in respect of obligations arising during the period preceding the effective date of its resignation which have not been discharged by the retiring Security Custodian at the effective date of its resignation); and

45.3.2 its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been a Party hereto as at the Original Signature Date.

46 MISCELLANEOUS PROVISIONS RELATING TO APPOINTMENT OF SECURITY CUSTODIAN

46.1 Nothing in this Agreement constitutes the Security Custodian as a trustee or fiduciary of any other Party or any other person.

46.2 The Security Custodian is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of any duty of confidentiality.

46.3 The Security Custodian shall not be liable for any act or omission where it acts or refrains from taking any action, as the case may be, in either case in accordance with an instruction given (or which appears upon reasonable inspection to have been given) to it in accordance with the provisions of this Agreement.

46.4 Unless caused directly by its wilful misconduct, fraud or gross negligence, the Security Custodian shall not accept responsibility or be liable for any breach of its duties as Security Custodian as set out in the Finance Documents or any losses to any person or any liability resulting from action taken by it or any failure to take action under the Finance Documents.

46.5 No Party (other than the Security Custodian) may take any proceedings against any director, officer or employee of the Security Custodian (in their personal capacity) in respect of any claim it might have against the Security Custodian or in respect of any act or omission of any kind of that director, officer or employee in relation to this Agreement except in relation to any fraudulent activity of any director, officer or employee of the Security Custodian and the provisions of this clause 46.5 constitute stipulations for the benefit of such directors, officers and/or employees.

46.6 The Parties acknowledge and agree that the Security Custodian shall be entitled to process (collect, use, store or otherwise deal with) personal information (as defined in the Protection of Personal Information Act No. 4 of 2013) for the purposes of

providing the Security Custodian services set out in this Agreement and the other Finance Documents to which the Security Custodian is a party. The Security Custodian shall do so in terms of its privacy notice which may be accessed through <https://www.rmb.co.za/page/firststrand-limited-privacy-statement>.

47 APPOINTMENT AS PREFERENCE SHARE CUSTODIAN

- 47.1 RMB is, on and with effect from the Refinancing Date, appointed as Preference Share Custodian to BFC2 and the BFC2 Preference Shareholders on the terms and conditions set out in this Agreement and in the Preference Share Custody Agreement in order to fulfil the functions set out herein, which appointment RMB accepts.
- 47.2 The Preference Share Custodian is hereby irrevocably authorised and instructed by BFC2 and the BFC2 Preference Shareholders to carry out its functions in terms of this Agreement and the Preference Share Custody Agreement acting on all instructions furnished to it as contemplated in this Agreement or in accordance with the provisions of this Agreement and the Preference Share Custody Agreement.
- 47.3 The Preference Share Custodian will perform its functions as Preference Share Custodian at no cost to BIC2.
- 47.4 If there is any conflict between the provisions of this Agreement and the provisions of the Preference Share Custody Agreement, the provisions of this Agreement shall prevail.

48 DUTIES OF PREFERENCE SHARE CUSTODIAN

- 48.1 The Preference Share Custodian shall hold and deposit the BIC2 Preference Shares in its safe custody until the BIC2 Discharge Date on behalf of BFC2.
- 48.2 The Preference Share Custodian shall give effect to all lawful instructions of the Preference Share Agent with regard to voting rights to be exercised by BFC2 in relation to the BIC2 Preference Shares, subject to the provisions of the Finance Documents.
- 48.3 The Preference Share Custodian shall only release and deliver any share certificates and share transfer forms in respect of any of the BIC2 Preference Shares in the circumstances and in the manner provided for in the Finance Documents.
- 48.4 The Preference Share Custodian undertakes that the share certificates in respect of the BIC2 Preference Shares shall be stored and held in secure custody and shall be protected by adequate and appropriate security and administrative systems.

49 INSTRUCTIONS TO PREFERENCE SHARE CUSTODIAN

- 49.1 All instructions to the Preference Share Custodian pursuant to this Agreement shall be given in writing which shall include email. The Preference Share Custodian may rely on instructions given in writing which are given, or appear from such instructions to have been given, by an authorised person (as identified in accordance with the provisions of clause 43.2) in accordance with the provisions of this Agreement and the Preference Share Custody Agreement and provided the Preference Share Custodian acts upon such instructions in good faith, it shall be entitled to act upon such instructions, without making any further enquiries regarding the authorisation or otherwise of the person giving the instruction.

- 49.2 Each relevant Party shall notify the Preference Share Custodian from time to time in writing of the identity of each person who is authorised by it to instruct the Preference Share Custodian concerning this Agreement and the Cession Documents. Each such person shall continue to have authority to act for such relevant Party until such relevant Party gives the Preference Share Custodian contrary notice in writing.

50 REMUNERATION OF PREFERENCE SHARE CUSTODIAN

For so long as RMB remains the Preference Share Custodian it shall perform the services which relate to services to be performed by it in its capacity as Preference Share Custodian at no cost to BIC2.

51 REPLACEMENT OF PREFERENCE SHARE CUSTODIAN

- 51.1 The Preference Share Custodian may, acting in its sole discretion or if so instructed by the Preference Share Agent (subject to 30 (thirty) Business Days prior written notice), resign by giving not less than 30 (thirty) Business Days' written notice to the other Parties, provided that no such resignation shall be effective until its successor Preference Share Custodian is appointed in accordance with the succeeding provisions of this clause; and provided further that the Preference Share Custodian shall not be entitled to resign if a BIC2 Potential Trigger Event has occurred and is continuing.
- 51.2 If the Preference Share Custodian gives notice of its resignation pursuant to clause 51.1, then the Preference Share Agent shall appoint any reputable and experienced bank or other financial institution in Johannesburg as a successor to the Preference Share Custodian but, if the Preference Share Custodian fails to appoint a successor Preference Share Custodian by agreement between them within 30 Business Days after the notice of resignation having been given, then the Preference Share Agent may appoint such successor itself on terms agreed between it and the successor Preference Share Custodian with notice of such appointment to the other Parties and provided such successor is a reputable and experienced bank or other financial institution in Johannesburg. In each case the Preference Share Custodian shall procure that the successor Preference Share Custodian signs an Accession Undertaking and the appointment of the successor Preference Share Custodian shall take effect on the date referred to in the Accession Undertaking executed by the successor Preference Share Custodian.
- 51.3 If a successor to the Preference Share Custodian is appointed or substituted under the provisions of clause 45.2, then:
- 51.3.1 the retiring Preference Share Custodian shall be discharged from any further obligation hereunder (excluding any liabilities in respect of obligations arising during the period preceding the effective date of its resignation which have not been discharged by the retiring Preference Share Custodian at the effective date of its resignation); and
- 51.3.2 its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been a Party hereto as at the Original Signature Date.

52 MISCELLANEOUS PROVISIONS RELATING TO APPOINTMENT OF PREFERENCE SHARE CUSTODIAN

- 52.1 Nothing in this Agreement constitutes the Preference Share Custodian as a trustee or fiduciary of any other Party or any other person.
- 52.2 The Preference Share Custodian is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of any duty of confidentiality.
- 52.3 The Preference Share Custodian shall not be liable for any act or omission where it acts or refrains from taking any action, as the case may be, in either case in accordance with an instruction given (or which appears upon reasonable inspection to have been given) to it in accordance with the provisions of this Agreement.
- 52.4 Unless caused directly by its wilful misconduct, fraud or gross negligence, the Preference Share Custodian shall not accept responsibility or be liable for any breach of its duties as Preference Share Custodian as set out in the Finance Documents or any losses to any person or any liability resulting from action taken by it or any failure to take action under the Finance Documents.
- 52.5 No Party (other than the Preference Share Custodian) may take any proceedings against any director, officer or employee of the Preference Share Custodian (in their personal capacity) in respect of any claim it might have against the Preference Share Custodian or in respect of any act or omission of any kind of that director, officer or employee in relation to this Agreement except in relation to any fraudulent activity of any director, officer or employee of the Preference Share Custodian and the provisions of this clause 52.5 constitute stipulations for the benefit of such directors, officers and/or employees.
- 52.6 The Parties acknowledge and agree that the Preference Share Custodian shall be entitled to process (collect, use, store or otherwise deal with) personal information (as defined in the Protection of Personal Information Act No. 4 of 2013) for the purposes of providing the Preference Share Custodian services set out in this Agreement and the other Finance Documents to which the Preference Share Custodian is a party. The Preference Share Custodian shall do so in terms of its privacy notice which may be accessed through <https://www.rmb.co.za/page/firststrand-limited-privacy-statement>.

53 ACCOUNTING AND AUDITING OF BIC2, BFC2 AND BFC2 OWNER TRUST

- 53.1 BIC2 undertakes to procure, at its cost, until the BIC2 Discharge Date, that the BIC2 Administrator keeps the books of account, prepare financial statements and records of BIC2.
- 53.2 BFC2 undertakes to procure, at the cost of BIC2 (which cost BIC2 accepts), until the BFC2 Discharge Date, that the BFC2 Administrators keep the books of account, prepare financial statements and records, of each of BFC2 and BFC2 Owner Trust.

54 FORCE MAJEURE

- 54.1 If any Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of any matter or occurrence which is something exceptional, extraordinary or unforeseen and which human foresight cannot be expected to anticipate, or, if it can be foreseen, it cannot be

avoided by the exercise of reasonable care or caution, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue, but only to the extent so prevented or restricted, as the case may be, and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages whether general, special or consequential which any other Party may suffer due to or resulting from any such delay or failure, provided always that written notice shall forthwith be given to all of the Parties of any such inability to perform by the affected Party and provided further that the affected Party shall take all reasonable commercial steps within its powers, to overcome any such circumstances and/or to reduce the period during which its obligations to perform hereunder are suspended. The affected Party shall immediately upon termination of the relevant event giving rise to the prevention or restriction of its performance hereunder, give written notice thereof to all the other Parties.

54.2 The Parties agree that no Party shall be entitled to rely on the provisions of clause 54.1 to relieve it of its obligations, where such Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of:

54.2.1 any strikes or other industrial actions involving the workforce, individual employees, agents or contractors of the Party in question in circumstances where but for the participation in such industrial action of the workforce, individual employees, agents or contractors of the Party in question, the Party in question would not have been so restricted or prevented; or

54.2.2 that Party's systems or equipment failure and which affect only that Party.

55 CESSION, ASSIGNMENT AND DELEGATION

55.1 The Account Bank shall not be entitled to cede or assign its rights or delegate its obligations in terms of this Agreement other than in the event such cession, assignment or delegation is required in the event it is replaced, subject to and in accordance with the provisions of this Agreement.

55.2 The Calculation Agent shall not be entitled to cede or assign its rights or delegate its obligations in terms of this Agreement other than in the event such cession, assignment or delegation is required in the event it is replaced, subject to and in accordance with the provisions of this Agreement.

55.3 The BIC2 Administrator and BFC2 Administrator shall not be entitled to cede or assign their rights or delegate their obligations in terms of this Agreement other than in the event such cession, assignment or delegation is required in the event it is replaced, subject to and in accordance with the provisions of this Agreement.

55.4 The Security Custodian shall not be entitled to cede or assign its rights or delegate its obligations in terms of this Agreement other than in the event of such cession, assignment or delegation is required in the event it is replaced, subject to and in accordance with the provisions of this Agreement.

55.5 The Preference Share Custodian shall not be entitled to cede or assign its rights or delegate its obligations in terms of this Agreement other than in the event of such cession, assignment or delegation is required in the event it is replaced, subject to and in accordance with the provisions of this Agreement.

- 55.6 The BFC2 Investors and the BFC2 Preference Shareholders shall be entitled to cede or assign their respective rights and delegate their respective obligations in terms of this Agreement to any person whom they are entitled to cede or assign their respective rights and delegate their respective obligations under the BFC2 Preference Share Subscription Agreement.

56 REMEDIES AND WAIVERS

- 56.1 The rights, powers and remedies provided by this Agreement are cumulative and are not, nor are they to be construed as, exclusive of any right of set-off or other rights, powers and remedies provided by law.
- 56.2 No failure on the part of any Party to exercise, or delay on the part of any Party in exercising, any of the rights, powers and remedies provided by this Agreement or by law shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise thereof or the exercise of any other such right, power or remedy.
- 56.3 Nothing contained in this Agreement shall limit any of the rights of any Party under or pursuant to any other Finance Documents.

57 PREFERENCE SHARE AGENT

- 57.1 The Parties acknowledge that the BFC2 Investors and the BFC2 Preference Shareholders have appointed the Preference Share Agent as their agent in terms of the Interfunder Agreement and shall be entitled, from time to time, to remove the Preference Share Agent, provided that they replaced the Preference Share Agent in accordance with the provisions of the Interfunder Agreement.
- 57.2 Where this Agreement:
- 57.2.1 makes reference to the Preference Share Agent exercising any discretion or election, performing any function, exercising or enforcing any right, requiring the performance of any obligation or in any other manner whatsoever, such reference shall be to the Preference Share Agent acting on behalf of the relevant BFC2 Preference Shareholders in accordance with the provisions of the Interfunder Agreement; and
- 57.2.2 requires that the waiver, consent, instruction, approval or permission of the Preference Share Agent is to be obtained, such waiver, consent, instruction, approval or permission shall at all times be required to be obtained from the relevant BFC2 Preference Shareholders directly and the granting or withholding of such waiver, consent, instruction, approval or permission shall be issued by the Preference Share Agent and not by the relevant BFC2 Preference Shareholders.
- 57.3 Each of the Account Bank, the Calculation Agent, the Security Custodian, the BIC2 Administrator and the BFC2 Administrator shall be entitled to rely on any written instructions received from the Preference Share Agent and on any written waivers, consents and approvals given by the Preference Share Agent as being that of the applicable BFC2 Investors and/or the BFC2 Preference Shareholders, as the case may be. Any action taken by the Account Bank, the Calculation Agent, the Security Custodian, the BIC2 Administrator and the BFC2 Administrator in fulfilment of or pursuant to any such written instructions, waivers, consents and/or approvals shall

constitute a valid discharge of its obligations (including payment) in terms of this Agreement.

- 57.4 The Parties acknowledge and agree that the Preference Share Agent shall be entitled to process (collect, use, store or otherwise deal with) personal information (as defined in the Protection of Personal Information Act No. 4 of 2013) for the purposes of providing the Preference Share Agent services set out in this Agreement and the other Finance Documents to which the Preference Share Agent is a party. The Preference Share Agent shall do so in terms of its privacy notice which may be accessed through <https://www.rmb.co.za/page/firststrand-limited-privacy-statement>.

58 CONFLICTS

- 58.1 If and to the extent there is any conflict between the provisions of this Agreement, and the MTN Subordination and Undertaking Agreement at any time, the provisions of the MTN Subordination and Undertaking Agreement shall prevail.
- 58.2 If and to the extent there is any conflict between the provisions of this Agreement, and the Refinancing Agreement at any time, the provisions of the Refinancing Agreement shall prevail

59 DOMICILIUM CITANDI ET EXECUTANDI

- 59.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

59.1.1 BFC2:

Physical:	135 Rivonia Road Sandown Sandton 2196 South Africa
Email:	ssa-zakhelefuthi@nedbank.co.za
Attention:	Nedbank Share Administration;

59.1.2 BIC2:

Physical:	135 Rivonia Road Sandown Sandton 2196 South Africa
Email:	ssa-zakhelefuthi@nedbank.co.za
Attention:	Nedbank Share Administration;

59.1.3 MTN:

Physical:	216 14th Avenue
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Fairland
Roodepoort
2195
South Africa

Email: Kholekile.ndamase@mtn.com
Thobeka.sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba;

59.1.4 the Preference Share Agent:

Physical: 14th Floor
Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

Email: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management: Investment
Banking;

59.1.5 the Account Bank:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

Email: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Account Bank;

59.1.6 the Calculation Agent:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

Email: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Calculation Agent;

59.1.7 the Security Custodian:

Physical: 2nd Floor
1 Merchant Place
Corner Rivonia Road and Fredman Drive
Sandton
2196

Email: jean.venter@rmb.co.za

Attention: Global Securities Services;

59.1.8 the Preference Share Custodian:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

Email: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Preference Share Custodian;

59.1.9 the BIC2 Administrator:

Physical: Nedbank Limited (acting through its Share Scheme
Administration Division)
Nedbank Sandton
135 Rivonia Road
Sandown

Sandton
2196
South Africa

Email: KeithB@Nedbank.co.za
RosalindF@Nedbank.co.za

MeeraB@Nedbank.co.za

Attention: The Administrator - MTN Zakhele Futhi;

59.1.10 the BFC2 Administrator:

Physical: Nedbank Limited (acting through its Share Scheme
Administration Division)
Nedbank Sandton
135 Rivonia Road
Sandown
Sandton
2196
South Africa

Email: KeithB@Nedbank.co.za
RosalindF@Nedbank.co.za

MeeraB@Nedbank.co.za

Attention: The Administrator - MTN Zakhele Futhi;

59.1.11 United Towers (in its capacity as BFC2 Preference Shareholder):

Physical: c/o Absa Bank Limited
15 Alice Lane
Sandown
Sandton
2196
South Africa

Email: xradocmanvalidations@absa.africa

Attention: Transaction Administration IMPEX;

59.1.12 RMB (in its capacity as BFC2 Preference Shareholder):

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

Email: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za

Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management, Investment
Banking division; and

59.1.13 Momentum Metropolitan Life Limited (in its capacity as BFC2 Preference
Shareholder):

Physical: 268 West Avenue
Centurion
0157
South Africa

Email: noula.fotsios@momentum.co.za
Kagiso.Tsatsane@mmiholdings.co.za

Attention: Head Asset Origination.

- 59.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by email.
- 59.3 Any Party may by notice to the other Parties change the physical address chosen as its domicilium citandi et executandi to another physical address where postal delivery occurs in South Africa or its email address, provided that the change shall become effective on the fifth Business Day from the deemed receipt of the notice by the other Parties.
- 59.4 Any notice to a Party:
- 59.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the date of delivery or if such delivery is not during normal business hours or such date is not a Business Day, on the immediately succeeding Business Day; or
- 59.4.2 sent by email to its chosen email address stipulated in clause 59.1 during ordinary business hours, shall be deemed to have been received on the date of despatch or if delivery is not during normal business hours or such date is not a Business Day, on the immediately succeeding Business Day.
- 59.5 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 it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

60 ENGLISH LANGUAGE

All correspondence issued and all information provided hereunder shall be in the English language.

61 GOVERNING LAW AND JURISDICTION

- 61.1 This Agreement shall in all respects be governed by the laws of South Africa.
- 61.2 The Parties agree that any legal action or proceedings arising out of or in connection with this Agreement may be brought against such Party in the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) and irrevocably submits to the non-exclusive jurisdiction of such court. The Parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. Nothing herein shall affect the any Party's right to serve process in any manner permitted by law. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of any Party to take proceedings against any other Party in whatever other jurisdiction the Party taking such proceedings considers appropriate nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.
- 61.3 Each of the Account Bank, the Calculation Agent, the Security Custodian, the BIC2 Administrator and the BFC2 Administrator irrevocably and unconditionally:
- 61.3.1 agrees that if any Party brings legal proceedings against it or its assets in relation to the Finance Documents no immunity from such legal proceedings (which will be deemed to include without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) will be claimed by or on behalf of itself or with respect to its assets;
 - 61.3.2 waives any such right of immunity from suit which it or its assets now has or may in the future acquire in connection with any action against it based on the Finance Documents; and
 - 61.3.3 consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

62 SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction shall, with respect to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated pro non scripto and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

63 EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, all of which shall together constitute one and the same instrument. A copy provided via email shall constitute a valid counterpart for all purposes hereunder.

64 INDEPENDENT ADVICE

Each Party acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, each Party acknowledges that all of the provisions of this Agreement have been negotiated as between it and the other Parties and are part of the overall intention of the Parties in connection with this Agreement.

65 CONFIDENTIALITY

65.1 Save to the extent required to be disclosed for the purposes of implementing the Transaction or with the prior written consent of MTN to the contrary, each Party will keep confidential and will not disclose to any person:

65.1.1 the details of this Agreement, the details of the negotiations leading to this Agreement, and the information handed over to such Party during the course of negotiations, as well as the details of all the transactions or agreements contemplated in this Agreement; and

65.1.2 all information relating to the business or the operations and affairs of the other Parties (together "**Confidential Information**"),

save that a BFC2 Preference Shareholder will to be entitled to disclose Confidential Information to the members of its group and to any person to whom a BFC2 Preference Shareholder may wish to transfer any BFC2 Preference Shares, and their officers, directors, employees and professional advisers, subject to:

65.1.2.1 any such member of its group, potential financier or their officers, directors, employees granting a confidentiality undertaking in favour of the relevant BIC2 Preference Shareholder in writing, substantially in a form approved by the African Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or

65.1.2.2 in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the relevant BIC2 Preference Shareholder, any such professional adviser granting a confidentiality undertaking in favour of the relevant BIC2 Preference Shareholder in writing in a form, and in substance reasonably satisfactory to the Preference Share Agent.

65.2 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:

65.2.1 is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality; or

65.2.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who received such Confidential Information; or

65.2.3 is disclosed to any professional adviser or potential financier of BIC2 or MTN subject to:

65.2.3.1 any such potential financier granting a confidentiality undertaking in favour of the relevant BIC2 Preference Shareholder in writing, substantially in a form approved by the African Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or

65.2.3.2 in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the relevant BIC2 Preference Shareholder, any such professional adviser granting a confidentiality undertaking in favour of the relevant BIC2 Preference Shareholder in writing in a form, and in substance reasonably satisfactory to the Preference Share Agent; or

65.2.3.3 is required by the provisions of any Applicable Law, statute or regulation or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed.

65.3 The provisions of clauses 65.1 and 65.2 will not apply to the relevant BFC2 Preference Shareholder to the extent that disclosure of Confidential Information is made by (or on behalf of) the relevant BFC2 Preference Shareholder pursuant to any enforcement of their rights under any Finance Document in accordance with its terms.

65.4 The provisions of this clause supersede any prior confidentiality undertaking given by any Party in favour of MTN in relation to the Transaction and shall endure for a period of 24 months after the later of (a) termination of this Agreement in respect of such Party; and (b) such Party ceasing to be a Party to this Agreement for any reason.

66 WHOLE AGREEMENT, NO AMENDMENT

66.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.

66.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

66.3 No oral pactum de non petendo shall be of any force or effect.

66.4 Unless recorded in a written document signed by the Parties in terms of clause 66.2,

no extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

- 66.5 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

67 PAYMENTS

Notwithstanding anything to the contrary contained herein or in any other Finance Document, no payment obligations of BIC2 under any Finance Document shall become due or payable prior to the Issue Date.

ANNEXURE A: ACCESSION UNDERTAKING

To: **FirstRand Bank Limited** (acting through its Rand Merchant Bank division)

From: Prospective Replacement Account Bank

Date: [◆]

Dear Sirs

ACCESSION UNDERTAKING - REPLACEMENT ACCOUNT BANK

1. We refer to the Account Bank and Agency Agreement dated 21 August 2016, as amended, (the "**Agreement**") between, *inter alios*, Nedbank Limited (acting through its Corporate and Investment Banking Division), Jabisan 04 (RF) Proprietary Limited, MTN Zakhele Futhi (RF) Limited and MTN Group Limited, as amended and/or restated from time to time. This is an Accession Undertaking and terms used in this Accession Undertaking have the same meaning as in the Agreement.
2. We confirm that we are to replace FirstRand Bank Limited (acting through its Rand Merchant Bank division) as the Account Bank with effect from [◆] under and in accordance with the terms of the Agreement.
3. We acknowledge and agree that upon and by reason of our delivering this Accession Undertaking to the addressees referred to herein, we will thereby forthwith become a Party to the Agreement as the Account Bank thereunder and shall be entitled to the rights and benefits, and be bound by the obligations, of the Account Bank thereunder.
4. This Accession Undertaking may be executed in any number of counterparts and this has the same effect as if the counterparts were on a single copy of this Accession Undertaking.
5. This Accession Undertaking has been executed on the date stated above and shall be governed by and construed in accordance with the laws of South Africa.

For: [Prospective replacement Account Bank]

Name:

Address:

Who warrants his authority hereto

ANNEXURE B: ACCESSION UNDERTAKING

To: **FirstRand Bank Limited (acting through its Rand Merchant Bank division)**

From: Prospective Replacement Calculation Agent

Date: [◆]

Dear Sirs

ACCESSION UNDERTAKING - REPLACEMENT CALCULATION AGENT

1. We refer to the Account Bank and Agency Agreement dated 21 August 2016, as amended, (the "**Agreement**") between, *inter alios*, Nedbank Limited (acting through its Corporate and Investment Banking Division), Jabisan 04 (RF) Proprietary Limited, MTN Zakhele Futhi (RF) Limited and MTN Group Limited, as amended and/or restated from time to time. This is an Accession Undertaking and terms used in this Accession Undertaking have the same meaning as in the Agreement.
2. We confirm that we are to replace FirstRand Bank Limited (acting through its Rand Merchant Bank division) as the Calculation Agent with effect from [◆] under and in accordance with the terms of the Agreement.
3. We acknowledge and agree that upon and by reason of our delivering this Accession Undertaking to the addressees referred to herein, we will thereby forthwith become a Party to the Agreement as the Calculation Agent thereunder and shall be entitled to the rights and benefits, and be bound by the obligations, of the Calculation Agent thereunder.
4. This Accession Undertaking may be executed in any number of counterparts and this has the same effect as if the counterparts were on a single copy of this Accession Undertaking.
5. This Accession Undertaking has been executed on the date stated above and shall be governed by and construed in accordance with the laws of South Africa.

For: [Prospective replacement Calculation Agent]

Name:

Address:

Who warrants his authority hereto

ANNEXURE C: ACCESSION UNDERTAKING

To: **FirstRand Bank Limited (acting through its Rand Merchant Bank division)**

From: Prospective Replacement BIC2 Administrator

Date: [◆]

Dear Sirs

ACCESSION UNDERTAKING - REPLACEMENT BIC2 ADMINISTRATOR

1. We refer to the Account Bank and Agency Agreement dated 21 August 2016, as amended, (the "**Agreement**") between, *inter alios*, Nedbank Limited (acting through its Corporate and Investment Banking Division), Jabisan 04 (RF) Proprietary Limited, MTN Zakhele Futhi (RF) Limited, as amended and/or restated from time to time. This is an Accession Undertaking and terms used in this Accession Undertaking have the same meaning as in the Agreement.
2. We confirm that we are to replace [existing BIC2 Administrator] as the BIC2 Administrator with effect from [◆] under and in accordance with the terms of the Agreement.
3. We acknowledge and agree that upon and by reason of our delivering this Accession Undertaking to the addressees referred to herein, we will thereby forthwith become a Party to the Agreement as the BIC2 Administrator thereunder and shall be entitled to the rights and benefits, and be bound by the obligations, of the BIC2 Administrator thereunder.
4. This Accession Undertaking may be executed in any number of counterparts and this has the same effect as if the counterparts were on a single copy of this Accession Undertaking.
5. This Accession Undertaking has been executed on the date stated above and shall be governed by and construed in accordance with the laws of South Africa.

For: [Prospective replacement BIC2 Administrator]

Name:

Address:

Who warrants his authority hereto

ANNEXURE D: ACCESSION UNDERTAKING

To: **FirstRand Bank Limited (acting through its Rand Merchant Bank division)**

From: Prospective Replacement BFC2 Administrator

Date: [◆]

Dear Sirs

ACCESSION UNDERTAKING - REPLACEMENT BFC2 ADMINISTRATOR

1. We refer to the Account Bank and Agency Agreement dated 21 August 2016, as amended, (the "**Agreement**") between, *inter alios*, Nedbank Limited (acting through its Corporate and Investment Banking Division), Jabisan 04 (RF) Proprietary Limited, MTN Zakhele Futhi (RF) Limited, as amended and/or restated from time to time. This is an Accession Undertaking and terms used in this Accession Undertaking have the same meaning as in the Agreement.
2. We confirm that we are to replace [existing BFC2 Administrator] as the BFC2 Administrator with effect from [◆] under and in accordance with the terms of the Agreement.
3. We acknowledge and agree that upon and by reason of our delivering this Accession Undertaking to the addressees referred to herein, we will thereby forthwith become a Party to the Agreement as the BFC2 Administrator thereunder and shall be entitled to the rights and benefits, and be bound by the obligations, of the BFC2 Administrator thereunder.
4. This Accession Undertaking may be executed in any number of counterparts and this has the same effect as if the counterparts were on a single copy of this Accession Undertaking.
5. This Accession Undertaking has been executed on the date stated above and shall be governed by and construed in accordance with the laws of South Africa.

For: [Prospective replacement BFC2 Administrator]

Name:

Address:

Who warrants his authority hereto

ANNEXURE E: ACCESSION UNDERTAKING

To: **FirstRand Bank Limited (acting through its Rand Merchant Bank division)**

From: Prospective Replacement Security Custodian

Date: [◆]

Dear Sirs

ACCESSION UNDERTAKING - REPLACEMENT SECURITY CUSTODIAN

1. We refer to the Account Bank and Agency Agreement dated 21 August 2016, as amended, (the "**Agreement**") between, *inter alios*, Nedbank Limited (acting through its Corporate and Investment Banking Division), Jabisan 04 (RF) Proprietary Limited, MTN Zakhele Futhi (RF) Limited and MTN Group Limited, as amended and/or restated from time to time. This is an Accession Undertaking and terms used in this Accession Undertaking have the same meaning as in the Agreement.
2. We confirm that we are to replace [existing Security Custodian] as the Security Custodian with effect from [◆] under and in accordance with the terms of the Agreement.
3. We acknowledge and agree that upon and by reason of our delivering this Accession Undertaking to the addressees referred to herein, we will thereby forthwith become a Party to the Agreement as the Security Custodian thereunder and shall be entitled to the rights and benefits, and be bound by the obligations, of the Security Custodian thereunder.
4. This Accession Undertaking may be executed in any number of counterparts and this has the same effect as if the counterparts were on a single copy of this Accession Undertaking.
5. This Accession Undertaking has been executed on the date stated above and shall be governed by and construed in accordance with the laws of South Africa.

For: [Prospective replacement Security Custodian]

Name:

Address:

Who warrants his authority hereto

ANNEXURE F: ACCESSION UNDERTAKING

To: **FirstRand Bank Limited (acting through its Rand Merchant Bank division)**

From: Prospective Replacement Preference Share Custodian

Date: [◆]

Dear Sirs

ACCESSION UNDERTAKING - REPLACEMENT PREFERENCE SHARE CUSTODIAN

1. We refer to the Account Bank and Agency Agreement dated 21 August 2016, as amended, (the "**Agreement**") between, *inter alios*, Nedbank Limited (acting through its Corporate and Investment Banking Division), Jabisan 04 (RF) Proprietary Limited, MTN Zakhele Futhi (RF) Limited and MTN Group Limited, as amended and/or restated from time to time. This is an Accession Undertaking and terms used in this Accession Undertaking have the same meaning as in the Agreement.
2. We confirm that we are to replace [existing Preference Share Custodian] as the Preference Share Custodian with effect from [◆] under and in accordance with the terms of the Agreement.
3. We acknowledge and agree that upon and by reason of our delivering this Accession Undertaking to the addressees referred to herein, we will thereby forthwith become a Party to the Agreement as the Preference Share Custodian thereunder and shall be entitled to the rights and benefits, and be bound by the obligations, of the Preference Share Custodian thereunder.
4. This Accession Undertaking may be executed in any number of counterparts and this has the same effect as if the counterparts were on a single copy of this Accession Undertaking.
5. This Accession Undertaking has been executed on the date stated above and shall be governed by and construed in accordance with the laws of South Africa.

For: [Prospective replacement Preference Share Custodian]

Name:

Address:

Who warrants his authority hereto

[SIGNATURE PAGES INTENTIONALLY LEFT BLANK]

SCHEDULE 9: AMENDED AND RESTATED CALL OPTION AGREEMENT



(1) MTN GROUP LIMITED

(2) FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
(as BFC2 Preference Shareholder)

(3) MOMENTUM METROPOLITAN LIFE LIMITED
(as BFC2 Preference Shareholder)

(4) UNITED TOWERS PROPRIETARY LIMITED
(as BFC2 Preference Shareholder)

and

(5) FIRSTRAND BANK LIMITED
(acting through its Rand Merchant Bank division)
(in its capacity as Preference Share Agent)

**AMENDED AND RESTATED
CALL OPTION AGREEMENT**

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ANNEXURE A - FORM OF CALL OPTION EXERCISE NOTICE

ANNEXURE B - FORM OF MTN ACCEDED NOMINEE ACCESSION UNDERTAKING

ANNEXURE C - CALL OPTION NOTICE

WHEREBY IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

1.1 words importing -

- 1.1.1. any one gender include the other two genders;
- 1.1.2. the singular include the plural and *vice versa*; and
- 1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2 words and expressions defined or incorporated by reference in the BIC2 MOI (as defined below) shall, unless the context dictates otherwise, bear the same meanings where used in this Agreement. In addition, unless the context dictates otherwise, words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

- 1.2.1. "**Accession Undertaking**" means an undertaking to be executed by any MTN Nominee who wishes to become an MTN Acceded Nominee, substantially in the form of **Annexure B** hereto, in terms of which such MTN Nominee accedes to this Agreement and agrees to be bound by the provisions of this Agreement in all respects;
- 1.2.2. "**Adjustment Event Call Option**" means the irrevocable call option which MTN and any MTN Acceded Nominee is granted by the Holders entitling MTN or any MTN Acceded Nominee to purchase all of the applicable BFC2 Adjustment Affected Preference Shares from the applicable Holders on the terms and conditions of this Agreement;
- 1.2.3. "**Adjustment Event Call Option Period**" means, in respect of any Adjustment Event Call Option, the period from the date of the applicable Call Option Notice up to the date which falls 6 (six) months from the date of the applicable BFC2 Adjustment Notice;
- 1.2.4. "**Agreement**" means this call option agreement together with all annexures hereto;
- 1.2.5. "**BFC2 Adjustment Affected Preference Share**" means any BFC2 Preference Share in respect of which a BFC2 Adjustment Notice has been given by the Preference Share Agent to BFC2 and "**BFC2 Adjustment Affected Preference Shares**" shall mean all such shares;
- 1.2.6. "**BFC2 Adjustment Event**" has the meaning ascribed thereto in the BFC2 MOI;
- 1.2.7. "**BFC2 Adjustment Notice**" shall have the meaning ascribed thereto in the BFC2 MOI;

- 1.2.8. **"BFC2 Illegality Affected Preference Share"** means any BFC2 Preference Share in respect of which a BFC2 Illegality Event will occur and **"BFC2 Illegality Affected Preference Shares"** shall mean all such shares;
- 1.2.9. **"BFC2 Illegality Event"** has the meaning ascribed thereto in the BFC2 MOI;
- 1.2.10. **"BFC2 Margin Dividend"** has the meaning ascribed thereto in the BFC2 MOI;
- 1.2.11. **"BFC2 MOI"** means the memorandum of incorporation of BFC2, as amended from time to time;
- 1.2.12. **"BFC2 Potential Trigger Event"** has the meaning ascribed thereto in the BFC2 MOI;
- 1.2.13. **"BFC2 Preference Share Subscription Agreement"** means the preference share subscription agreement dated on or about the Original Signature Date and originally entered into between BFC2 (as issuer), the BFC2 Initial Investors and Nedbank (acting through its Corporate and Investment Banking division) (in its capacity as Preference Share Agent) in terms of which the BFC2 Initial Investors subscribed for, and BFC2 issued to such subscribers, certain BFC2 Preference Shares, all on the terms and conditions contained therein;
- 1.2.14. **"BFC2 Preference Share Terms"** means the preferences, rights, limitations and interests attaching to the BFC2 Preference Shares as set in the BFC2 MOI;
- 1.2.15. **"BFC2 Redemption Amount"** has the meaning ascribed thereto in the BFC2 MOI;
- 1.2.16. **"BFC2 Strike Price"** means the purchase price payable by MTN or the applicable MTN Acceded Nominee in respect of the applicable BFC2 Preference Shares pursuant to the exercise of a Call Option, which shall comprise (but without double counting) –
 - 1.2.16.1 the aggregate of any amounts owed by the Company to the applicable Holder of such BFC2 Preference Shares under any Finance Document (including, without limitation, but without duplication, any costs payable by the Company to such Holder pursuant to the BFC2 Preference Share Subscription Agreement or any of the other Finance Documents and any indemnity payments due and payable by the Company to such Holder under any of the Finance Documents); and
 - 1.2.16.2 with respect to each applicable BFC2 Preference Share, an amount equal to –
 - 1.2.16.2.1 the BFC2 Redemption Amount; plus
 - 1.2.16.2.2 all other amounts necessary to place each applicable Holder of a BFC2 Preference

Share in the same financial and net after Tax position it would have been in –

1.2.16.2.2.1 in respect of a Trigger Event Call Option, had the BFC2 Trigger Event or BFC2 Potential Trigger Event not occurred; and

1.2.16.2.2.2 in respect of an Illegality Event Call Option or Adjustment Event Call Option, had the Company voluntarily redeemed the applicable BFC2 Preference Shares on the applicable Call Option Closing Date in accordance with the provisions of the BFC2 Preference Share Subscription Agreement, the BFC2 Preference Share Terms and each other Finance Document to which it is a party (it being recorded, for the avoidance of doubt, that no BFC2 Margin Dividend is payable in such circumstances),

including, without limitation, any Taxes on any amount received by the relevant BFC2 Preference Shareholder pursuant to clause 1.2.16.1 or this clause 1.2.16.2 and any Dividends Tax Credit, if any, that it would have received had the Company so voluntarily redeemed;

1.2.17. **"BFC2 Trigger Event"** has the meaning ascribed thereto in the BFC2 MOI;

1.2.18. **"BFC2 Unredeemed Preference Shares"** means those of the BFC2 Preference Shares that have not been redeemed by the Company in full by the date on which the Trigger Event Call Option is properly exercised by MTN or the applicable MTN Acceded Nominee in terms of this Agreement;

1.2.19. **"Call Option Closing Date"** means, in respect of any Call Option pursuant to which MTN or an MTN Acceded Nominee delivers a Call Option Exercise Notice, the 3rd (third) Business Day from the expiry date of the applicable Call Option Period, or such longer period as the Preference Share Agent may agree in writing;

- 1.2.20. "Call Option Exercise Date" means the date on which MTN or any MTN Acceded Nominee delivers a Call Option Exercise Notice in accordance with the provisions of this Agreement;
- 1.2.21. "Call Option Exercise Notice" means a written notice to be delivered by MTN or any MTN Acceded Nominee to the Preference Share Agent during the applicable Call Option Period in order to exercise a Call Option, such notice to be in substantially the form of **Annexure A** hereto;
- 1.2.22. "Call Option Notice" means a written notice to be delivered by the Preference Share Agent to MTN, advising MTN that a Call Option may be exercised by MTN or any MTN Acceded Nominee, which notice shall –
- 1.2.22.1 be given by the Preference Share Agent –
- 1.2.22.1.1 in respect of a Trigger Event Call Option, on the date on which the Preference Share Agent gives a written notice to BFC2 requiring BFC2 to remedy a BFC2 Potential Trigger Event;
- 1.2.22.1.2 in respect of an Illegality Event Call Option, within 3 (three) Business Days after the date of receipt of the applicable Holder Illegality Event Notice;
- 1.2.22.1.3 in respect of an Adjustment Event Call Option, on the date on which the Preference Share Agent gives any BFC2 Adjustment Notice to BFC2;
- 1.2.22.2 provide a *bona fide* estimate of the Call Option Strike Price which is payable in respect of such Call Option on the applicable Call Option Closing Date, were such Call Option to be exercised by MTN or an MTN Acceded Nominee, which estimate shall set out a calculation in respect of the components of the Call Option Strike Price that are certain as at the Call Option Closing Date, as well as an estimate of those components of the Call Option Strike Price (the "**Variable Components**") that will be confirmed by the Preference Share Agent on the Call Option Closing Date; and
- 1.2.22.3 provide details of any waivers, indulgences, discharges, concessions or extensions of time which have been granted by the Preference Share Agent to BFC2 under or in terms of the BFC2 Preference Share Subscription Agreement and the BFC2 Preference Share Terms which remain in effect as at the date of the Call Option Notice,
- such notice to be in substantially the form of **Annexure C** hereto;

- 1.2.23. **"Call Option Period"** means –
- 1.2.23.1 a Trigger Event Call Option Period;
 - 1.2.23.2 an Illegality Event Call Option Period; or
 - 1.2.23.3 an Adjustment Event Call Option Period,
- as the context may require or such other period agreed in writing between the Preference Share Agent and MTN;
- 1.2.24. **"Call Option Strike Price"** means –
- 1.2.24.1 in respect of the Trigger Event Call Option, the BFC2 Strike Price in respect of all the BFC2 Unredeemed Preference Shares;
 - 1.2.24.2 in respect of the Illegality Event Call Option, the BFC2 Strike Price in respect of the BFC2 Illegality Affected Preference Shares;
 - 1.2.24.3 in respect of an Adjustment Event Call Option, the applicable BFC2 Strike Price in respect of the BFC2 Adjustment Affected Preference Shares;
- 1.2.25. **"Call Options"** means –
- 1.2.25.1 the Trigger Event Call Option;
 - 1.2.25.2 the Illegality Event Call Option; and
 - 1.2.25.3 the Adjustment Event Call Option,
- and a reference to **"Call Option"** shall be a reference to any of them;
- 1.2.26. **"Company"** means Jabisan 04 (RF) Proprietary Limited (Registration No. 2014/021122/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.27. **"Holders"** means –
- 1.2.27.1 the holders of the BFC2 Unredeemed Preference Shares on the date on which the Trigger Event Call Option is exercised by MTN or the applicable MTN Acceded Nominee;
 - 1.2.27.2 the holders of the applicable BFC2 Illegality Affected Preference Shares on the date on which the Illegality Event Call Option is exercised by MTN or the applicable MTN Acceded Nominee; and
 - 1.2.27.3 the holders of the applicable BFC2 Adjustment Affected Preference Shares on the date on which the Adjustment Event Call Option is exercised by MTN or the applicable MTN

Acceded Nominee,

and "**Holder**" shall be a reference to any of them;

- 1.2.28. "**Holder Illegality Event Date**" means the date specified by a Holder in any applicable Holder Illegality Event Notice as being the date on which a BFC2 Illegality Event will or is reasonably expected to take effect in respect of the BFC2 Preference Shares held by such Holder, or such other date as may be agreed in writing between the Preference Share Agent and MTN;
- 1.2.29. "**Holder Illegality Event Notice**" means the written notice to be given by a Holder to the Preference Share Agent, as soon as reasonably possible after such Holder becomes aware that a BFC2 Illegality Event will or is reasonably expected to take effect in respect of the BFC2 Preference Shares held by such Holder, notifying the Preference Share Agent of the occurrence or reasonably expected occurrence of such BFC2 Illegality Event, and specifying the applicable Holder Illegality Event Date;
- 1.2.30. "**Illegality Event Call Option**" means the irrevocable call option which MTN or the applicable MTN Acceded Nominee is granted by the Holders entitling MTN or the applicable MTN Acceded Nominee to purchase all of the applicable BFC2 Illegality Affected Preference Shares from the applicable Holders on the terms and conditions of this Agreement;
- 1.2.31. "**Illegality Event Call Option Period**" means, in respect of any Illegality Event Call Option, the period from the date of the applicable Call Option Notice to the later of:
 - 1.2.31.1 3 (three) Business Days from the date of the applicable Call Option Notice; and
 - 1.2.31.2 the Holder Illegality Event Date;
- 1.2.32. "**Interfunder Accession Undertaking**" means an undertaking to be executed by MTN or any MTN Acceded Nominee in the case of the exercise by MTN or such MTN Acceded Nominee of the Adjustment Event Call Option and/or the Illegality Event Call Option, in terms of which MTN or such MTN Nominee accedes to the Interfunder Agreement in accordance with the provisions of the Interfunder Agreement and agrees to be bound by the provisions of the Interfunder Agreement in all respects, in each case on and with effect from the applicable Call Option Closing Date;
- 1.2.33. "**Material Adverse Effect**" means a material adverse effect on:
 - 1.2.33.1 the ability of MTN to perform its obligations under this Agreement;
 - 1.2.33.2 the validity or enforceability of this Agreement; or
 - 1.2.33.3 any right or remedy against MTN of any other party to this Agreement in respect of this Agreement;

- 1.2.34. **"MTN"** means MTN Group Limited (Registration No. 1994/009584/06), a public company with limited liability public company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.35. **"MTN Acceded Nominee"** means, at any relevant time, each MTN Nominee that that has become an MTN Acceded Nominee in accordance with the provisions of clause 8 hereof, and **"MTN Acceded Nominees"** shall mean all of them;
- 1.2.36. **"MTN Holdings"** means Mobile Telephone Networks Holdings Limited (Registration No. 1993/001411/07/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.37. **"MTN International"** means MTN International Proprietary Limited (Registration No. 1998/002351/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.38. **"MTN Nominee"** means, at any time at which a Call Option may be exercised by MTN or an MTN Acceded Nominee in terms of this Agreement:
- 1.2.38.1 any Material Subsidiary which is duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.38.2 MTN Holdings;
- 1.2.38.3 MTN International; and
- 1.2.38.4 any other entity approved by the Preference Share Agent in writing,
- provided that such entity is a Subsidiary of MTN at such time and provided further that such entity is not a Sanctioned Entity;
- 1.2.39. **"Nominee Material Adverse Effect"** means, in respect of any MTN Acceded Nominee, a material adverse effect on:
- 1.2.39.1 the ability of such MTN Acceded Nominee to perform its obligations under this Agreement;
- 1.2.39.2 the validity or enforceability of this Agreement; or
- 1.2.39.3 any right or remedy against such MTN Acceded Nominee of any other Party to this Agreement in respect hereof;
- 1.2.40. **"Original Signature Date"** means 21 August 2016;
- 1.2.41. **"Parties"** means:
- 1.2.41.1 each Holder;
- 1.2.41.2 MTN;
- 1.2.41.3 each MTN Acceded Nominee; and

- 1.2.41.4 the Preference Share Agent,
- and "**Party**" means, as the context requires, any of them;
- 1.2.42. "**Preference Share Agent**" means the Preference Share Agent as appointed from time to time to act on behalf of the relevant Holder in accordance with the terms of the Interfunder Agreement;
- 1.2.43. "**Sanctioned Entity**" shall have the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 1.2.44. "**Shares**" means, in relation to a Holder, its BFC2 Unredeemed Preference Shares, its BFC2 Illegality Affected Preference Shares or its BFC2 Adjustment Affected Preference Shares, if any, as the case may be;
- 1.2.45. "**Subsidiary**" means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% (fifty per cent) of the voting capital or similar right of ownership and "**control**", for this purpose, means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise;
- 1.2.46. "**Trigger Event Call Option**" means the irrevocable call option which MTN or the applicable MTN Acceded Nominee is granted by the Holders entitling MTN or the applicable MTN Acceded Nominee to purchase all of the BFC2 Unredeemed Preference Shares from the Holders on the terms and conditions of this Agreement;
- 1.2.47. "**Trigger Event Call Option Period**" means –
- 1.2.47.1 in respect of the occurrence of the BFC2 Potential Trigger Event contemplated in clause 33.2.3.1.13 (*Acceleration of Financial Indebtedness (MTN)*) of the BFC2 MOI, the period from the date of the applicable Call Option Notice to the earlier of:
- 1.2.47.1.1 1 (one) Business Day from the date of such Call Option Notice;
- 1.2.47.1.2 the date and time on which and at which the BFC2 Potential Trigger Event is waived in writing by the Preference Share Agent; and
- 1.2.47.1.3 the date and time on which and at which the BFC2 Potential Trigger Event is remedied;
- 1.2.47.2 in respect of the occurrence of any of the BFC2 Potential Trigger Events contemplated in:
- 1.2.47.2.1 clause 33.2.3.1.32 (*One Day VWAP of the MTN Shares is R38,00 (thirty eight Rand) or less*); and/or

- 1.2.47.2.2 clause 33.2.3.1.15 (*Breach of Total Share Cover Ratio or Revised Total Share Cover Ratio*);
- 1.2.47.2.3 clause 33.2.3.1.6 (*Material Adverse Effect*);
- 1.2.47.2.4 clause 33.2.3.1.10 (*Invalidity of Finance Documents*);
- 1.2.47.2.5 clause 33.2.3.1.13 (*Breach of Financial Indebtedness*);
- 1.2.47.2.6 clause 33.2.3.1.20 (*Distributions*);
- 1.2.47.2.7 clause 33.2.3.1.24 (*Asset Unbundling Transaction*);
- 1.2.47.2.8 clause 33.2.3.1.25 (*Insolvency*); and/or
- 1.2.47.2.9 clause 33.2.3.1.29 (*Attachment of Assets*)

of the BFC2 MOI, the period from the date of the applicable Call Option Notice to the earlier of:

- 1.2.47.2.10 2 (two) Business Days from the date of such Call Option Notice;
- 1.2.47.2.11 the date and time on which and at which the BFC2 Potential Trigger Event is waived in writing by the Preference Share Agent; and
- 1.2.47.2.12 the date and time on which and at which the Potential Trigger Event is remedied; and

1.2.47.3 in respect of the occurrence of any other BFC2 Potential Trigger Event (save for any BFC2 Potential Trigger Event contemplated in clauses 33.2.3.1.33 (*MTN Tranche 1 Subscription Shares*), 33.2.3.1.34 (*MTN Tranche 2 Subscription Shares*) or 33.2.3.1.35 (*MTN Tranche 3 Subscription Shares*); 33.2.3.1.36 (*Breach of the Repurchase Agreement*) and/or 33.2.3.1.25 (*Failure to Redeem the Class A Shares*)), the period from date of the applicable Call Option Notice to the earlier of:

- 1.2.47.3.1 3 (three) Business Days from the date of the applicable Call Option Notice or the expiry of the grace period, if any, in respect of such BFC2 Potential Trigger Event, whichever is the later;
- 1.2.47.3.2 the date and time on which and at which the BFC2 Potential Trigger Event is waived in writing by the Preference Share Agent; and

1.2.47.3.3 the date and time on which and at which the BFC2 Potential Trigger Event is remedied; and

1.2.48. **"Variable Components"** shall have the meaning ascribed thereto in clause 1.2.22.2 above;

- 1.3 any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted from time to time;
- 1.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5 subject to clause 1.6, where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;
- 1.6 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day;
- 1.7 any reference to a Party includes that Party's successors-in-title and permitted assigns;
- 1.8 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.9 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.10 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.11 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 1.12 any reference in this Agreement to a Party shall, if such party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.13 the words **"include"**, **"including"** and **"in particular"** shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;
- 1.14 the words **"other"** and **"otherwise"** shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible; and

- 1.15 any reference in this Agreement to this Agreement or to any other Finance Document shall include a reference to each such agreement as the same may be amended, restated, replaced, novated or supplemented from time to time.

2. INTRODUCTION

- 2.1 BIC2 wished to raise funding in the form of preference share capital in order to subscribe for the Subscription Shares and accordingly BIC2 issued the BIC2 Preference Shares to the Company for these purposes.
- 2.2 The Company in turn wished to raise funding in order to subscribe for the BIC2 Preference Shares by issuing certain BFC2 Preference Shares, and each BFC2 Initial Investor subscribed for its BFC2 Preference Shares on the terms and conditions set out in the BFC2 Preference Share Subscription Agreement.
- 2.3 MTN has requested that each Holder grants the Call Options.
- 2.4 The Holders, in turn, are willing to grant the Call Options to MTN and the MTN Acceded Nominees.
- 2.5 The Parties wish to enter into this Agreement to record the terms and conditions of the Call Options and matters incidental thereto.

3. CONDITION PRECEDENT

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4. TRIGGER EVENT CALL OPTION

4.1 Grant of Trigger Event Call Option

- 4.1.1. Subject to clause 3 with effect from, and inclusive of, the Issue Date, the Holders granted to MTN and the MTN Acceded Nominees the Trigger Event Call Option in respect of all of the BFC2 Unredeemed Preference Shares, all on the terms and conditions set out in this clause 4.
- 4.1.2. The Trigger Event Call Option may be exercised by MTN or an MTN Acceded Nominee at any time during the Trigger Event Call Option Period and, following the exercise of the Trigger Event Call Option, MTN or the applicable MTN Acceded Nominee, as the case may be, will be obliged to purchase all the BFC2 Unredeemed Preference Shares from the Holders on the applicable Call Option Closing Date, in accordance with the provisions of clause 4.2.2 hereof.
- 4.1.3. MTN or an MTN Acceded Nominee shall be entitled, but not obliged, to deliver a Call Option Exercise Notice during the Trigger Event Call Option Period.
- 4.1.4. No consideration is payable by MTN or any MTN Acceded Nominee to the Holders for the granting of the Trigger Event Call Option.
- 4.1.5. Notwithstanding anything contained herein, No Trigger Event Call Option is granted by the Holders to MTN or any MTN Acceded Nominee

following the occurrence of a Potential Trigger Event contemplated in clauses 33.2.3.1.33 (*MTN Tranche 1 Subscription Shares*), 33.2.3.1.34 (*MTN Tranche 2 Subscription Shares*), 33.2.3.1.35 (*MTN Tranche 3 Subscription Shares*), 33.2.3.1.36 (*Breach of the Repurchase Agreement*) and/or 33.2.3.1.25 (*Breach of the Failure to Redeem the Class A Shares*) of the BFC2 MOI.

4.2 Exercise of Trigger Event Call Option

4.2.1. The Trigger Event Call Option shall be exercisable by MTN or an MTN Acceded Nominee, as the case may be, by means of MTN or an MTN Acceded Nominee delivering a Call Option Exercise Notice to the Preference Share Agent during the Trigger Event Call Option Period.

4.2.2. Should the Trigger Event Call Option be exercised in accordance with the provisions of clause 4.2.1, then the Holders hereby sell all of the BFC2 Unredeemed Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, which hereby purchases all of the BFC2 Unredeemed Preference Shares from the Holders, on the terms and subject to the conditions set out in clauses 4.2 and 4.3 and in particular on the basis that :

4.2.2.1 ownership, risk in and benefit to the BFC2 Unredeemed Preference Shares (including the right to receive the redemption proceeds thereof) shall pass to MTN or the applicable MTN Acceded Nominee, as the case may be, on the date on which payment of the BFC2 Strike Price in respect of the BFC2 Unredeemed Preference Shares is irrevocably received by the Preference Share Agent on behalf of the Holders of the BFC2 Unredeemed Preference Shares;

4.2.2.2 no Holder gives any representations or warranties to MTN or the applicable MTN Acceded Nominee, as the case may be, in respect of the BFC2 Unredeemed Preference Shares sold by it in terms of this Agreement other than that it is entitled to transfer beneficial ownership of the BFC2 Unredeemed Preference Shares sold by it and it has not disposed of or otherwise created any Encumbrance, option or right of pre-emption or similar rights in respect of such BFC2 Unredeemed Preference Shares;

4.2.2.3 MTN or the applicable MTN Acceded Nominee, as the case may be, shall pay all and every securities transfer and other Tax which is or does become payable in respect of the transfer of the BFC2 Unredeemed Preference Shares by each Holder to it;

4.2.2.4 if, on the date on which the BFC2 Unredeemed Preference Shares are to be delivered to MTN or the applicable MTN Acceded Nominee, as the case may be, in terms hereof, the Company is in liquidation or if, as of such date, any other impediment exists to the transfer of the BFC2 Unredeemed Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, as contemplated herein, the

Preference Share Agent shall, provided that all sums due by MTN or the applicable MTN Acceded Nominee, as the case may be, to the Holders in accordance with this Agreement and the other Finance Documents have been irrevocably paid in full, and if so requested by MTN or the applicable MTN Acceded Nominee, as the case may be, use its reasonable commercial endeavours, in the case of the Company being in liquidation, to obtain the sanction of the liquidator of the Company in respect of the transfer of the BFC2 Unredeemed Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, or, in the case of any other impediment, to use its reasonable commercial endeavours to resolve same so as to permit transfer of the BFC2 Unredeemed Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, as contemplated herein. If the Preference Share Agent is not requested by MTN or the applicable MTN Acceded Nominee, as the case may be, to obtain, or is so requested, but is unable to obtain the sanction of the liquidator as aforesaid or to resolve such impediment, then provided that all sums due by MTN or the applicable MTN Acceded Nominee, as the case may be, to the Holders in accordance with this Agreement and the other Finance Documents have been and remain irrevocably paid in full –

- 4.2.2.4.1 the Preference Share Agent shall hold the BFC2 Unredeemed Preference Shares together with any amounts contemplated in clause 4.2.2.4.2 below in trust for and on behalf of MTN or the applicable MTN Acceded Nominee, as the case may be;
- 4.2.2.4.2 if the Company is in liquidation, as soon as practicably possible, the Preference Share Agent shall pay to MTN or the applicable MTN Acceded Nominee, as the case may be, all and any amounts received from the liquidator or the Company in respect of such BFC2 Unredeemed Preference Shares;
- 4.2.2.4.3 no Holder shall enforce any of its rights in respect of such BFC2 Unredeemed Preference Shares sold by it in terms hereof without the prior written consent of MTN or the applicable MTN Acceded Nominee, as the case may be; and
- 4.2.2.4.4 each Holder shall enforce its rights in respect of the BFC2 Unredeemed Preference Shares sold by it in terms hereof whenever lawfully and reasonably called upon to do so by MTN or the applicable MTN Acceded Nominee, as the case may be.

- 4.2.3. All reasonable costs and expenses incurred or to be incurred by the Preference Share Agent or any Holder in obtaining any consent or in enforcing any rights as contemplated in clause 4.2.2.4 shall be borne and paid by MTN or the applicable MTN Acceded Nominee, as the case may be, on first demand by the Preference Share Agent. Notwithstanding the foregoing, neither the Preference Share Agent nor any Holder shall be obliged to take any steps in terms of clause 4.2.2.4 until such time as the Preference Share Agent or such Holder, as applicable, has been placed in funds in relation to, or otherwise received security for the payment of, such costs and expenses.
- 4.2.4. The Variable Component of the applicable Call Option Strike Price for the BFC2 Unredeemed Preference Shares shall be confirmed by the Preference Share Agent, on behalf of the Holders, by no later than 10h00 on the applicable Call Option Closing Date.
- 4.2.5. The amount of the applicable Call Option Strike Price for the BFC2 Unredeemed Preference Shares shall be –
- 4.2.5.1 paid by MTN or the applicable MTN Acceded Nominee, as the case may be, to the Preference Share Agent, on behalf of the Holders -
- 4.2.5.1.1 by no later than 14h00 on the applicable Call Option Closing Date;
- 4.2.5.1.2 in immediately available, freely transferable, cleared funds free and clear of set-off counterclaim or deduction, including any deduction for or on account of Tax, unless MTN or the applicable MTN Acceded Nominee, as the case may be, is required to make such payment subject to the deduction or withholding of Tax, in which case the sum payable by MTN or the applicable MTN Acceded Nominee, as the case may be (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that each Holder receives a sum net of any deduction or withholding equal to the sum which it would have received had no such deduction or withholding been made or required to be made;
- 4.2.5.1.3 into a South African bank account specified in writing by the Preference Share Agent when the applicable Call Option Strike Price is notified to MTN or the applicable MTN Acceded Nominee, as the case may be; and
- 4.2.5.1.4 irrespective of whether or not MTN or the applicable MTN Acceded Nominee, as the case may be, disputes the determination or

calculation of the applicable Call Option Strike Price, it being recorded that neither MTN nor the applicable MTN Acceded Nominee, as the case may be, shall be entitled to withhold payment of the Call Option Strike Price in this instance and its sole remedy will be to claim a reduction of the applicable Call Option Strike Price after the applicable Call Option Closing Date.

4.3 Delivery of Documents

4.3.1. On the applicable Call Option Closing Date, against receipt of payment in full of the applicable Call Option Strike Price:

4.3.1.1 the Preference Share Agent shall subject to clause 4.2.2.4, deliver (or shall procure the delivery) to MTN or the applicable MTN Acceded Nominee, as the case may be:

4.3.1.1.1 the share certificates in respect of all of the BFC2 Unredeemed Preference Shares; and

4.3.1.1.2 securities transfer forms signed on behalf of the Holders but in blank as to the transferee;

4.3.1.2 each Holder hereby cedes to MTN or the applicable MTN Acceded Nominee, as the case may be, all of its rights under the Finance Documents insofar as and to the extent related to the BFC2 Unredeemed Preference Shares sold by it in terms hereof (including all its rights under the Security Documents but excluding its Indemnity Period Claims and its Indemnity Period Security held in respect of such Indemnity Period Claims relating to such BFC2 Unredeemed Preference Shares), without recourse to such Holder other than in respect of any breach of representations and warranties given by such Holder to MTN or the applicable MTN Acceded Nominee, as the case may be, in terms hereof.

4.3.2. Neither the Preference Share Agent nor any Holder shall be obliged to procure the registration of transfer of the BFC2 Unredeemed Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be.

4.4 The Trigger Event Call Option is granted by each of the Holders in favour of MTN or an MTN Acceded Nominee in respect of all of the BFC2 Unredeemed Preference Shares from time to time of the Holders. Accordingly, the purchase and sale of all of the BFC2 Unredeemed Preference Shares pursuant to an exercise of the Trigger Event Call Option in terms of this Agreement shall be an indivisible transaction and the Trigger Event Call Option will not be capable of being exercised against only some of the Holders or in respect of only part of the BFC2 Unredeemed Preference Shares.

5. ILLEGALITY EVENT CALL OPTION

5.1 Grant of Illegality Event Call Option

- 5.1.1. Subject to clause 3, with effect from, and inclusive of, the Issue Date, each Holder granted to MTN and each MTN Acceded Nominee the Illegality Event Call Option in respect of all of its BFC2 Illegality Affected Preference Shares, all on the terms and conditions set out in this clause 5.
- 5.1.2. The Illegality Event Call Option may be exercised by MTN or an MTN Acceded Nominee at any time during the Illegality Event Call Option Period and, following the exercise of the Illegality Event Call Option by MTN or the applicable MTN Acceded Nominee, MTN or the applicable MTN Acceded Nominee, as the case may be, will be obliged to purchase all the BFC2 Illegality Affected Preference Shares from the relevant Holder/s on the applicable Call Option Closing Date, in accordance with the provisions of clause 5.2.2 hereof.
- 5.1.3. MTN or an MTN Acceded Nominee shall be entitled, but not obliged, to deliver a Call Option Exercise Notice during the Illegality Event Call Option Period.
- 5.1.4. No consideration is payable by MTN or any MTN Acceded Nominee to the Holders for the granting of the Illegality Event Call Option.

5.2 Exercise of Illegality Event Call Option

- 5.2.1. The Illegality Event Call Option shall be exercisable by MTN or an MTN Acceded Nominee, as the case may be, by means of MTN delivering:
 - 5.2.1.1 a Call Option Exercise Notice; and
 - 5.2.1.2 a duly executed Interfunder Accession Undertaking,to the Preference Share Agent during the Illegality Event Call Option Period.
- 5.2.2. Should the Illegality Event Call Option be exercised in accordance with the provisions of clause 5.2.1, then the relevant Holder(s) hereby sells all of its BFC2 Illegality Affected Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, which hereby purchases all of such BFC2 Illegality Affected Preference Shares from such Holder(s), on the terms and subject to the conditions set out in clauses 5.2 and 5.3 and in particular on the basis that:
 - 5.2.2.1 ownership, risk in and benefit to such BFC2 Illegality Affected Preference Shares (including the right to receive the redemption proceeds thereof) shall pass to MTN or the applicable MTN Acceded Nominee, as the case may be, on the date on which payment of the BFC2 Strike Price in respect of such BFC2 Illegality Affected Preference Shares is irrevocably received by the Preference Share Agent on behalf of relevant Holder(s) of the BFC2 Illegality Affected

Preference Shares;

- 5.2.2.2 no Holder gives any representations or warranties to MTN or the applicable MTN Acceded Nominee, as the case may be, in respect of the BFC2 Illegality Affected Preference Shares sold by it in terms of this Agreement other than that it is entitled to transfer the beneficial ownership of the BFC2 Illegality Affected Preference Shares sold by it and it has not disposed of or otherwise created any Encumbrance, option or right of pre-emption or similar rights in respect of such BFC2 Illegality Affected Preference Shares;
- 5.2.2.3 MTN or the applicable MTN Acceded Nominee, as the case shall be, shall pay all and every securities transfer and other Tax which is or does become payable in respect of the transfer of the applicable BFC2 Illegality Affected Preference Shares by each relevant Holder to it;
- 5.2.2.4 if, on the date on which the applicable BFC2 Illegality Affected Preference Shares are to be delivered to MTN or the applicable MTN Acceded Nominee, as the case may be, in terms hereof, the Company is in liquidation or if, as of such date, any other impediment exists to the transfer of the BFC2 Illegality Affected Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, as contemplated herein, the Preference Share Agent shall, provided that all sums due by MTN or the applicable MTN Acceded Nominee to the relevant Holder in accordance with this Agreement and the other Finance Documents have been irrevocably paid in full and if so requested by MTN or the applicable MTN Acceded Nominee, as the case may be, use its reasonable commercial endeavours, in the case of the Company being in liquidation, to obtain the sanction of the liquidator of the Company in respect of the transfer of the BFC2 Illegality Affected Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, or, in the case of any other impediment, to use its reasonable commercial endeavours to resolve same so as to permit transfer of the BFC2 Illegality Affected Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, as contemplated herein. If the Preference Share Agent is not requested by MTN or the applicable MTN Acceded Nominee, as the case may be, or is so requested but is unable to obtain the sanction of the liquidator as aforesaid or to resolve such impediment, then provided that all sums due by MTN or the applicable MTN Acceded Nominee, as the case may be, to the relevant Holder in accordance with this Agreement and the other Finance Documents have been and remain irrevocably paid in full –
- 5.2.2.4.1 the Preference Share Agent shall hold the applicable BFC2 Illegality Affected Preference Shares together with any amounts

contemplated in clause 5.2.2.4.2 below in trust for and on behalf of MTN or the applicable MTN Acceded Nominee, as the case may be;

5.2.2.4.2 if the Company is in liquidation, as soon as practicably possible, the Preference Share Agent shall pay to MTN or the applicable MTN Acceded Nominee, as the case may be, all and any amounts received from the liquidator or the Company in respect of such BFC2 Illegality Affected Preference Shares;

5.2.2.4.3 no Holder shall enforce any of its rights in respect of such BFC2 Illegality Affected Preference Shares sold by it in terms hereof without the prior written consent of MTN or the applicable MTN Acceded Nominee, as the case may be; and

5.2.2.4.4 each Holder shall enforce its rights in respect of the BFC2 Illegality Affected Preference Shares sold by it in terms hereof whenever lawfully and reasonably called upon to do so by MTN or the applicable MTN Acceded Nominee, as the case may be.

5.2.3. All reasonable costs and expenses incurred or to be incurred by the Preference Share Agent or any Holder in obtaining any consent or in enforcing any rights as contemplated in clause 5.2.2.4 shall be borne and paid by MTN or the applicable MTN Acceded Nominee, as the case may be, on first demand by the Preference Share Agent or such Holder. Notwithstanding the foregoing, neither the Preference Share Agent nor any Holder shall be obliged to take any steps in terms of clause 5.2.2.4 until such time as the Preference Share Agent or such Holder, as applicable, has been placed in funds in relation to, or otherwise received security for the payment of, such costs and expenses.

5.2.4. The Variable Component of the applicable Call Option Strike Price for the BFC2 Illegality Affected Preference Shares shall be confirmed by the Preference Share Agent, on behalf of the Holders, by no later than 10h00 on the applicable Call Option Closing Date.

5.2.5. The applicable Call Option Strike Price for the BFC2 Illegality Affected Preference Shares shall be –

5.2.5.1 paid by MTN or the applicable MTN Acceded Nominee, as the case may be, to the Preference Share Agent, on behalf of the relevant Holder –

5.2.5.1.1 by no later than 14h00 on the applicable Call Option Closing Date;

- 5.2.5.1.2 in immediately available, freely transferable, cleared funds free and clear of set-off, counterclaim or deduction, including any deduction for or on account of Tax unless MTN or the applicable MTN Acceded Nominee, as the case may be, is required to make such payment subject to the deduction or withholding of Tax, in which case the sum payable by MTN or the applicable MTN Acceded Nominee, as the case may be, (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that each relevant Holder receives a sum net of any deduction or withholding equal to the sum which it would have received had no such deduction or withholding been made or required to be made;
- 5.2.5.1.3 into a South African bank account specified in writing by the Preference Share Agent when the applicable Call Option Strike Price is notified to MTN or the applicable MTN Acceded Nominee, as the case may be; and
- 5.2.5.1.4 irrespective of whether or not MTN or the applicable MTN Acceded Nominee, as the case may be, disputes the determination or calculation of the Call Option Strike Price, it being recorded that MTN or the applicable MTN Acceded Nominee, as the case may be, shall not be entitled to withhold payment of the Call Option Strike Price in this instance and its sole remedy will be to claim a reduction of the Call Option Strike Price after the applicable Call Option Closing Date.

5.3 Delivery of Documents

- 5.3.1. On the applicable Call Option Closing Date, against receipt of payment in full of the applicable Call Option Strike Price:
 - 5.3.1.1 the Preference Share Agent shall, subject to clause 5.2.2.4, deliver (or shall procure the delivery) to MTN or the applicable MTN Acceded Nominee or its nominee:
 - 5.3.1.1.1 the share certificates in respect of the relevant BFC2 Illegality Affected Preference Shares; and
 - 5.3.1.1.2 securities transfer forms signed on behalf of the relevant Holder but in blank as to the transferee;

5.3.1.2 each relevant Holder hereby cedes to MTN or the applicable MTN Acceded Nominee all of its rights under the Finance Documents insofar as and to the extent related to the BFC2 Illegality Affected Preference Shares sold by it in terms hereof (including all its rights under the Security Documents but excluding its Indemnity Period Claims and its Indemnity Period Security held in respect of such Indemnity Period Claims relating to such BFC2 Illegality Affected Preference Shares), without recourse to such Holder other than in respect of any breach of representations and warranties given by such Holder to MTN or the applicable MTN Acceded Nominee in terms hereof.

5.3.2. Neither the Preference Share Agent nor any relevant Holder shall be obliged to procure the registration of transfer of the relevant BFC2 Illegality Affected Preference Shares to MTN or the applicable MTN Acceded Nominee.

6. ADJUSTMENT EVENT CALL OPTION

6.1 Grant of Adjustment Event Call Option

6.1.1. Subject to clause 3, with effect from, and inclusive of, the Issue Date, each Holder granted to MTN and each MTN Acceded Nominee the Adjustment Event Call Option in respect of all of its BFC2 Adjustment Affected Preference Shares, all on the terms and conditions set out in this clause 6.

6.1.2. The Adjustment Event Call Option may be exercised by MTN or an MTN Acceded Nominee at any time during the Adjustment Event Call Option Period and, following the exercise of the Adjustment Event Call Option by MTN or the applicable MTN Acceded Nominee, MTN or the applicable MTN Acceded Nominee, as the case may be, will be obliged to purchase all the BFC2 Adjustment Affected Preference Shares from the relevant Holder/s on the applicable Call Option Closing Date, in accordance with the provisions of clause 6.2.2 hereof.

6.1.3. MTN or an MTN Acceded Nominee shall be entitled, but not obliged, to deliver a Call Option Exercise Notice during the Adjustment Event Call Option Period.

6.1.4. No consideration is payable by MTN or any MTN Acceded Nominee to the Holders for the granting of the Adjustment Event Call Option.

6.2 Exercise of Adjustment Event Call Option

6.2.1. The Adjustment Event Call Option shall be exercisable by MTN or an MTN Acceded Nominee, as the case may be, by means of MTN delivering:

6.2.1.1 a Call Option Exercise Notice; and

6.2.1.2 a duly executed Interfunder Accession Undertaking,

to the Preference Share Agent during the Adjustment Event Call Option Period.

6.2.2. Should the Adjustment Event Call Option be exercised in accordance with the provisions of clause 6.2.1, then the relevant Holder(s) hereby sells all of its BFC2 Adjustment Affected Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, which hereby purchases all of such BFC2 Adjustment Affected Preference Shares from such Holder(s), on the terms and subject to the conditions set out in clauses 6.2 and 6.3 and in particular on the basis that:

6.2.2.1 ownership, risk in and benefit to such BFC2 Adjustment Affected Preference Shares (including the right to receive the redemption proceeds thereof) shall pass to MTN or the applicable MTN Acceded Nominee, as the case may be, on the date on which payment of the BFC2 Strike Price in respect of such BFC2 Adjustment Affected Preference Shares is irrevocably received by the Preference Share Agent on behalf of relevant Holder(s) of the BFC2 Adjustment Affected Preference Shares;

6.2.2.2 no Holder gives any representations or warranties to MTN or the applicable MTN Acceded Nominee, as the case may be, in respect of the BFC2 Adjustment Affected Preference Shares sold by it in terms of this Agreement other than that it is entitled to transfer the beneficial ownership of the BFC2 Adjustment Affected Preference Shares sold by it and it has not disposed of or otherwise created any Encumbrance, option or right of pre-emption or similar rights in respect of such BFC2 Adjustment Affected Preference Shares;

6.2.2.3 MTN or the applicable MTN Acceded Nominee, as the case may be, shall pay all and every securities transfer and other Tax which is or does become payable in respect of the transfer of the applicable BFC2 Adjustment Affected Preference Shares by each relevant Holder to it;

6.2.2.4 if, on the date on which the applicable BFC2 Adjustment Affected Preference Shares are to be delivered to MTN or the applicable MTN Acceded Nominee, as the case may be, in terms hereof, the Company is in liquidation or if, as of such date, any other impediment exists to the transfer of the BFC2 Adjustment Affected Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, as contemplated herein, the Preference Share Agent shall, provided that all sums due by MTN or the applicable MTN Acceded Nominee, as the case may be, to the relevant Holder in accordance with this Agreement and the other Finance Documents have been irrevocably paid in full and if so requested by MTN or the applicable MTN Acceded Nominee, as the case may be, use its reasonable commercial endeavours, in the case of the Company being in liquidation, to obtain the

sanction of the liquidator of the Company in respect of the transfer of the BFC2 Adjustment Affected Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, or, in the case of any other impediment, to use its reasonable commercial endeavours to resolve same so as to permit transfer of the BFC2 Adjustment Affected Preference Shares to MTN or the applicable MTN Acceded Nominee, as the case may be, as contemplated herein. If the Preference Share Agent is not requested by MTN or the applicable MTN Acceded Nominee or is so requested but is unable to obtain the sanction of the liquidator as aforesaid or to resolve such impediment, then provided that all sums due by MTN or the applicable MTN Acceded Nominee, as the case may be, to the relevant Holder in accordance with this Agreement and the other Finance Documents have been and remain irrevocably paid in full –

6.2.2.4.1 the Preference Share Agent shall hold the applicable BFC2 Adjustment Affected Preference Shares together with any amounts contemplated in clause 6.2.2.4.2 below in trust for and on behalf of MTN or the applicable MTN Acceded Nominee, as the case may be;

6.2.2.4.2 if the Company is in liquidation, as soon as practicably possible, the Preference Share Agent shall pay to MTN or the applicable MTN Acceded Nominee, as the case may be, all and any amounts received from the liquidator or the Company in respect of such BFC2 Adjustment Affected Preference Shares;

6.2.2.4.3 no Holder shall enforce any of its rights in respect of such BFC2 Adjustment Affected Preference Shares sold by it in terms hereof without the prior written consent of MTN or the applicable MTN Acceded Nominee, as the case may be; and

6.2.2.4.4 each Holder shall enforce its rights in respect of the BFC2 Adjustment Affected Preference Shares sold by it in terms hereof whenever lawfully and reasonably called upon to do so by MTN or the applicable MTN Acceded Nominee, as the case may be.

6.2.3. All reasonable costs and expenses incurred or to be incurred by the Preference Share Agent or any Holder in obtaining any consent or in enforcing any rights as contemplated in clause 6.2.2.4 shall be borne and paid by MTN or the applicable MTN Acceded Nominee, as the case may be, on first demand by the Preference Share Agent or such Holder.

Notwithstanding the foregoing, neither the Preference Share Agent nor any Holder shall be obliged to take any steps in terms of clause 6.2.2.4 until such time as the Preference Share Agent or such Holder, as applicable, has been placed in funds in relation to, or otherwise received security for the payment of, such costs and expenses.

6.2.4. The Variable Component of the applicable Call Option Strike Price for the BFC2 Adjustment Affected Preference Shares shall be confirmed by the Preference Share Agent, on behalf of the Holders, by no later than 10h00 on the applicable Call Option Closing Date.

6.2.5. The applicable Call Option Strike Price for the BFC2 Adjustment Affected Preference Shares shall be –

6.2.5.1 paid by MTN or the applicable MTN Acceded Nominee, as the case may be, to the Preference Share Agent, on behalf of the relevant Holder –

6.2.5.1.1 by no later than 14h00 on the applicable Call Option Closing Date;

6.2.5.1.2 in immediately available, freely transferable, cleared funds free and clear of set-off, counterclaim or deduction, including any deduction for or on account of Tax unless MTN or the applicable MTN Acceded Nominee, as the case may be, is required to make such payment subject to the deduction or withholding of Tax, in which case the sum payable by MTN or the applicable MTN Acceded Nominee, as the case may be, (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that each relevant Holder receives a sum net of any deduction or withholding equal to the sum which it would have received had no such deduction or withholding been made or required to be made;

6.2.5.1.3 into a South African bank account specified in writing by the Preference Share Agent when the applicable Call Option Strike Price is notified to MTN or the applicable MTN Acceded Nominee, as the case may be; and

6.2.5.1.4 irrespective of whether or not MTN or the applicable MTN Acceded Nominee, as the case may be, disputes the determination or calculation of the Call Option Strike Price, it being recorded that MTN or the applicable MTN Acceded Nominee, as the case may be, shall not be entitled to withhold payment of the Call Option Strike Price in this instance

and its sole remedy will be to claim a reduction of the Call Option Strike Price after the applicable Call Option Closing Date.

6.3 Delivery of Documents

6.3.1. On the applicable Call Option Closing Date, against receipt of payment in full of the applicable Call Option Strike Price:

6.3.1.1 the Preference Share Agent shall, subject to clause 6.2.2.4, deliver (or shall procure the delivery) to MTN or the applicable MTN Acceded Nominee or its nominee:

6.3.1.1.1 the share certificates in respect of the relevant BFC2 Adjustment Affected Preference Shares; and

6.3.1.1.2 securities transfer forms signed on behalf of the relevant Holder but in blank as to the transferee; and

6.3.1.2 each relevant Holder hereby cedes to MTN or the applicable MTN Acceded Nominee all of its rights under the Finance Documents insofar as and to the extent related to the BFC2 Adjustment Affected Preference Shares sold by it in terms hereof (including all its rights under the Security Documents but excluding its Indemnity Period Claims and its Indemnity Period Security held in respect of such Indemnity Period Claims relating to such BFC2 Adjustment Affected Preference Shares), without recourse to such Holder other than in respect of any breach of representations and warranties given by such Holder to MTN or the applicable MTN Acceded Nominee in terms hereof.

6.3.2. Neither the Preference Share Agent nor any relevant Holder shall be obliged to procure the registration of transfer of the relevant BFC2 Adjustment Affected Preference Shares to MTN or the applicable MTN Acceded Nominee.

7. **UNCONDITIONAL PAYMENT OBLIGATIONS**

7.1 It is specifically agreed that it shall not be a defence in favour of MTN or any MTN Acceded Nominee that the Company has been liquidated (whether provisionally or finally) or is insolvent or is under judicial management or placed under supervision for business rescue proceedings (or any equivalent thereof) and MTN or the applicable MTN Acceded Nominee shall be obliged to pay the applicable Call Option Strike Price to the relevant Holder in accordance with the provisions of clauses 4.2.5, 5.2.5 or 6.2.5, as the case may be, upon exercise of a Call Option by MTN or such applicable MTN Acceded Nominee.

7.2 The applicable Call Option Strike Price shall be payable by MTN or the applicable MTN Acceded Nominee irrespective of any relevant Holder's actual Tax circumstances. Accordingly, if a relevant Holder would not be liable to pay any Tax

that would have resulted from the receipt of the applicable Call Option Strike Price under this Agreement only because that relevant Holder has the benefit of an assessed loss or a Dividends Tax Credit, if any, or a credit or similar relaxation or exemption in respect of Dividends Tax or any other Tax, whether a withholding Tax or otherwise, then that Holder shall not thereby be deprived of its right to receive the applicable Call Option Strike Price in respect of the applicable BFC2 Preference Shares sold by it in terms hereof which shall apply as if such assessed loss, Dividends Tax Credit, if any, relaxation or exemption did not exist and as if that relevant Holder was liable to pay such Tax.

- 7.3 MTN and each MTN Acceded Nominee acknowledges and agrees that nothing in this Agreement shall restrict any Holder from dealing with any BFC2 Preference Shares in accordance with the terms and conditions contained in the Finance Documents.

8. NOMINATION

MTN may nominate an MTN Nominee to exercise the rights and perform the obligations of MTN under this Agreement as follows:

- 8.1 the MTN Nominee need not be in existence at the time this Agreement is signed but must be in existence at the time of the nomination;
 - 8.2 the prospects of the MTN Nominee obtaining the relevant authorisations necessary for it to exercise its rights must be not less than the prospects of MTN doing so;
 - 8.3 in order to exercise the applicable Call Option, the MTN Nominee must accept MTN's nomination in writing and must accede to the provisions of this Agreement and:
 - 8.3.1. the written nomination by MTN;
 - 8.3.2. the written acceptance thereof by the MTN Nominee;
 - 8.3.3. the duly completed and executed Accession Undertaking and Interfunder Accession Undertaking;
 - 8.3.4. a certified copy of a resolution of the board of directors of MTN or the applicable MTN Nominee, as the case may be, which is of full force and effect, authorising the entry into of, and performance under, this Agreement by MTN or the applicable MTN Nominee; and
 - 8.3.5. to the extent required, a certified copy of a special resolution passed by the shareholders of MTN or the applicable MTN Nominee, as the case may be, and duly registered by the Registrar of Companies, which is of full force and effect, approving the grant of the financial assistance (if any) by MTN or the applicable MTN Nominee, as the case may be, in terms of the Agreement,
- must be delivered to the Preference Share Agent by no later than the applicable Call Option Exercise Date;
- 8.4 MTN's right to nominate a third party as an MTN Nominee is conditional on MTN not being in breach of any obligation under this Agreement at the time at which the applicable Call Option is exercised.

9. CONFIDENTIALITY

9.1 Save to the extent required to be disclosed for the purposes of implementing the Transaction or with the prior written consent of MTN to the contrary, each Party (other than MTN and each MTN Acceded Nominee) will keep confidential and will not disclose to any person:

9.1.1. the details of this Agreement, the details of the negotiations leading to this Agreement, and the information handed over to such Party during the course of negotiations, as well as the details of all the transactions or agreements contemplated in this Agreement; and

9.1.2. all information relating to the business or the operations and affairs of the other Parties, including MTN and each MTN Acceded Nominee (together "**Confidential Information**"),

save that a Holder will to be entitled to disclose Confidential Information to the members of its group and to any person to whom a Holder may wish to transfer any BFC2 Preference Shares, and their officers, directors, employees and professional advisers, subject to:

9.1.3. any such member of its group, potential financier or their officers, directors, employees granting a confidentiality undertaking in favour of the relevant Holder in writing, substantially in a form approved by the Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or

9.1.4. in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the relevant Holder, any such professional adviser granting a confidentiality undertaking in favour of the relevant Holder in writing in a form, and in substance reasonably satisfactory to the Preference Share Agent.

9.2 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:

9.2.1. is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality; or

9.2.2. is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who received such Confidential Information; or

9.2.3. is disclosed to any professional adviser or potential financier of the Company, BIC2 or MTN subject to:

9.2.3.1 any such potential financier granting a confidentiality undertaking in favour of the relevant Holder in writing, substantially in a form approved by the Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or

- 9.2.3.2 in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the relevant Holder, any such professional adviser granting a confidentiality undertaking in favour of the relevant Holder in writing in a form, and in substance reasonably satisfactory to the Preference Share Agent; or
- 9.2.4. is required by the provisions of any Applicable Law, statute or regulation or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed.
- 9.3 The provisions of clauses 9.1 and 9.2 will not apply to the relevant Holder to the extent that disclosure of Confidential Information is made by (or on behalf of) the relevant Holder pursuant to any enforcement of their rights under any Finance Document in accordance with its terms.
- 9.4 With effect from the Issue Date, the provisions of this clause superseded any prior confidentiality undertaking given by a Holder in favour of MTN pursuant to a Confidentiality Letter in relation to the Transaction and, in relation to each Party, shall endure for a period of 24 (twenty four) months after the later of (a) termination of this Agreement in respect of such Party; and (b) such Party ceasing to be a Party to this Agreement for any reason.

10. REPRESENTATIONS AND WARRANTIES

- 10.1 MTN hereby represents and warrants in favour of the other Parties to this Agreement that:
 - 10.1.1. as at the Issue Date, the applicable Call Option Exercise Date and the applicable Call Option Closing Date, it is a limited company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
 - 10.1.2. as at the Issue Date, the applicable Call Option Exercise Date and the applicable Call Option Closing Date, it has the power to own its assets and carry on its business as it is being conducted;
 - 10.1.3. as at the applicable Call Option Exercise Date and the applicable Call Option Closing Date, it has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of its obligations under, this Agreement and its obligations under the transactions contemplated by this Agreement;
 - 10.1.4. as at the applicable Call Option Exercise Date and the applicable Call Option Closing Date, subject to any general principles of South African law limiting its obligations, this Agreement is its legally binding, valid and enforceable obligation;
 - 10.1.5. as at the Issue Date, the applicable Call Option Exercise Date and the applicable Call Option Closing Date, this Agreement is in the proper form for the enforcement of this Agreement in the jurisdiction of MTN's incorporation;

- 10.1.6. as at the Issue Date, the applicable Call Option Exercise Date and the applicable Call Option Closing Date, the entry into and performance by it of its obligations under, and its obligations under the transactions contemplated by, this Agreement do not conflict with:
 - 10.1.6.1 any Applicable Law or regulation applicable to it;
 - 10.1.6.2 its Constitutional Documents; or
 - 10.1.6.3 any document which is binding upon it or its assets,if such conflict would constitute or give rise to a Material Adverse Effect;
- 10.1.7. as at the applicable Call Option Exercise Date and the applicable Call Option Closing Date, all authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Agreement have been obtained or effected (as appropriate) and are in full force and effect.
- 10.2 Each MTN Acceded Nominee hereby represents and warrants in favour of the other Parties to this Agreement that as at the date of execution of its Accession Undertaking, the applicable Call Option Exercise Date and the applicable Call Option Closing Date:
 - 10.2.1. it is a limited company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
 - 10.2.2. it has the power to own its assets and carry on its business as it is being conducted;
 - 10.2.3. it has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of its obligations under, this Agreement and its obligations under the transactions contemplated by this Agreement;
 - 10.2.4. subject to any general principles of South African law limiting its obligations, this Agreement is its legally binding, valid and enforceable obligation;
 - 10.2.5. this Agreement is in the proper form for its enforcement in the jurisdiction of its incorporation;
 - 10.2.6. the entry into and performance by it of, and the transactions contemplated by, this Agreement do not conflict with:
 - 10.2.6.1 any Applicable Law or regulation applicable to it;
 - 10.2.6.2 its Constitutional Documents; or
 - 10.2.6.3 any document which is binding upon it or its assets,if such conflict would constitute or give rise to a Nominee Material Adverse Effect; and

- 10.2.7. all authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Agreement have been obtained or effected (as appropriate) and are in full force and effect.
- 10.3 Each Holder, in respect of itself only, hereby represents and warrants in favour of MTN and each MTN Acceded Nominee that:
- 10.3.1. as at the applicable Call Option Exercise Date and the applicable Call Option Closing Date, save as provided for herein, no person will have any rights (including any option or right of first refusal or pre-emption) to acquire its BFC2 Preference Shares;
 - 10.3.2. as at the applicable Call Option Exercise Date and the applicable Call Option Closing Date, it has the requisite power, capacity and authority to enter into and perform this Agreement;
 - 10.3.3. as at the Issue Date, the applicable Call Option Exercise Date and the applicable Call Option Closing Date, this Agreement has been duly authorised and executed by, and as at the applicable Call Option Exercise Date and the applicable Call Option Closing Date constitutes a binding obligation on it;
 - 10.3.4. as at the applicable Call Option Exercise Date and the applicable Call Option Closing Date, it has the right to sell and transfer the full legal and beneficial interest in its BFC2 Preference Shares free from any lien, charge or Encumbrance and all its BFC2 Preference Shares are fully paid or credited as fully paid;
 - 10.3.5. if at any time such relevant Holder sells or transfers all or any of its BFC2 Preference Shares, that Holder will ensure that any purchaser of those BFC2 Preference Shares accedes to and becomes a party to this Agreement on the date on which such purchaser purchases those BFC2 Unredeemed Preference Shares; and
 - 10.3.6. save as otherwise disclosed by the Preference Share Agent in the Call Option Notice, there are no waivers, indulgences, discharges, concessions or extensions of time which have been granted by the Preference Share Agent to BFC2 under or in terms of the BFC2 Preference Share Subscription Agreement, the BFC2 Preference Share Terms which remain in effect as at the date of the Call Option Notice and no waivers, indulgences, discharges, concessions or extensions of time will be granted by the Preference Share Agent to BFC2 under or in terms of the BFC2 Preference Share Subscription Agreement and the BFC2 Preference Share Terms between the date of the Call Option Notice and the applicable Call Option Closing Date, save as may otherwise be agreed in writing by MTN.
- 10.4 Each of the representations and warranties given by the relevant Parties in terms of clauses 10.1, 10.2 and 10.3 shall:
- 10.4.1. *prima facie* be deemed to be a representation of fact inducing the other Parties to enter into this Agreement;
 - 10.4.2. be presumed to be material unless the contrary is proved;

- 10.4.3. insofar as any of the warranties is promissory or relates to a future event, be deemed to have been given as at the due date for fulfilment of the promise or for the happening of the event, as the case may be; and
 - 10.4.4. be a separate warranty and in no way be limited or restricted by reference to or inference from the terms of any other warranty.
- 10.5 Save as set out in clauses 4.2.2.2, 5.2.2.2, 6.2.2.2 and 10.3, no Holder nor the Preference Share Agent gives any warranties or representations in regard to the BFC2 Preference Shares whether express or implied, and the BFC2 Preference Shares are hereby sold pursuant to the Call Options *voetstoots* (as is, where is). MTN and each MTN Acceded Nominee acknowledges that it shall rely solely on its own judgement in exercising the Call Options.

11. SPECIAL PROVISIONS

- 11.1 If any payment by MTN or any MTN Acceded Nominee hereunder is set aside or reversed or refunded for any lawful reason, MTN or such MTN Acceded Nominee, as the case may be, shall remain liable to the relevant Holder in terms of this Agreement for the discharge of any obligation arising from or revived by the occurrence of any such event, even if it takes place after the termination of MTN or such MTN Acceded Nominee's liability in terms of this Agreement in other respects.
- 11.2 Notwithstanding any indication to the contrary herein, nothing in this Agreement constitutes a suretyship and all undertakings by MTN and each MTN Acceded Nominee shall be construed as primary undertakings, giving rise to principal obligations of MTN and each MTN Acceded Nominee.
- 11.3 Should any amount required to be paid by MTN or any Acceded Nominee to the Preference Share Agent in terms of this Agreement not be paid on or before the due date therefore, such outstanding amount shall accrue interest at the Prime Rate plus 2% (two per cent) nominal annual compounded monthly in arrear from the due date for the payment of such amount until the irrevocable payment thereof in full to the Preference Share Agent (both dates inclusive) without duplicating any payment due in respect of the BFC2 Preference Shares. Any such interest accrued as aforesaid shall be calculated on the daily balance outstanding and all such accrued interest shall be paid in full, free of deductions, on the first demand of the Preference Share Agent.

12. BREACH

If any Party hereto commits a breach or fails in the observance of any of the terms and conditions hereof and fails to remedy such default or breach within 5 (five) Business Days of delivery of written notice requiring it so to do, then the non-defaulting Party shall be entitled to cancel this Agreement or to claim immediate payment and/or performance by the defaulting Party of all of the defaulting Party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the non-defaulting Party's rights to claim damages. The foregoing is without prejudice to such other rights as the non-defaulting Party may have at law.

13. CESSION AND ASSIGNMENT

- 13.1 Any Holder and/or any Subscriber is entitled to cede, delegate or transfer any or all of its rights, obligations and interests, as the case may be, in and to the BFC2 Preference Share Subscription Agreement and its BFC2 Preference Shares to any third party (each a "**New Party**") in accordance with the provisions of the BFC2 Preference Share Subscription Agreement. Likewise, any New Party shall thereafter be entitled to cede, delegate or transfer any or all of its rights, obligations and interests, as the case may be, in and to the BFC2 Preference Share Subscription Agreement and the BFC2 Preference Shares to other third parties (each, also a New Party) subject to the same restrictions as the Subscribers and/or Holders are subject to under the provisions of the BFC2 Preference Share Subscription Agreement.
- 13.2 Upon the transfer of any of the rights and obligations of the Subscribers and/or any New Party in respect of the BFC2 Preference Share Subscription Agreement and the BFC2 Preference Shares as envisaged by clause 13.1, the Call Options shall be deemed to have been given by each New Party to MTN and each MTN Acceded Nominee as if such New Party had been an original Party to this Agreement.

14. CERTIFICATE OF INDEBTEDNESS

A certificate by the Preference Share Agent as to the existence and amount of any costs, interest, fees, expenses or other amount (including the applicable Call Option Strike Price) payable by MTN or any MTN Acceded Nominee to any Holder in terms of this Agreement, the fact that such amount is due and payable and the interest rate or any other fact relating to such amount shall be, save for manifest error –

- 14.1 *prima facie* proof of its contents and of their correctness for all purposes;
- 14.2 valid as a liquid document for purposes of any provisional sentence, summary judgment or other proceedings instituted by the Preference Share Agent against MTN or such MTN Acceded Nominee, as the case may be; and
- 14.3 deemed to be sufficiently particular for the purposes of pleading or trial in any action or other proceedings instituted by the Preference Share Agent against MTN or such MTN Acceded Nominee, as the case may be.

15. CONTINUING OBLIGATIONS

Neither the obligations of MTN or any MTN Acceded Nominee herein contained nor the rights, powers and remedies conferred upon the relevant Holder in terms hereof shall be discharged, impaired or otherwise affected by –

- 15.1 the fact that the right of MTN or any MTN Acceded Nominee to exercise its rights under this Agreement resulted from or was caused by any matter outside of its control by any other person in respect of any obligation under this Agreement or any other Finance Document;
- 15.2 the fact that the Company does not have distributable profits or other funds from which to declare dividends or otherwise make payments to the BFC2 Preference Shareholders;

- 15.3 the fact that it might not be competent, possible or legally permissible for the Company to fulfil in whole or in part its obligations in terms of the BFC2 Preference Shares;
- 15.4 any defect, unenforceability or other irregularity in the rights acquired by the relevant Holder in terms of the BFC2 Preference Share Subscription Agreement and/or any defect, unenforceability or irregularity in any of the rights attaching to the BFC2 Preference Shares;
- 15.5 the fact that it might not be competent or proper for the relevant Holder to dispose of their right, title and interest in and to the BFC2 Preference Shares;
- 15.6 any amendment, modification, extension, termination or any other change at any time to the BFC2 Preference Share Subscription Agreement or any other Finance Document;
- 15.7 any release or discharge at any time or from time to time by operation of law of the Company or any other person of any obligation under the BFC2 Preference Share Subscription Agreement or any other Finance Document;
- 15.8 the grant of any indulgence, the giving of any extension of time or the making of any concession or arrangement of whatsoever nature by the Preference Share Agent under and in accordance with the terms of the BFC2 Preference Share Subscription Agreement or Finance Document to or with the Company or BIC2 or MTN or any MTN Acceded Nominee or any other person;
- 15.9 whether or not the Company is at any time in liquidation or under judicial management or business rescue (whether provisional or final);
- 15.10 any other occurrence, circumstance, happening or event whether similar or dissimilar to any of the foregoing and whether foreseen or unforeseen, at any time or from time to time, which otherwise might constitute a legal defence or discharge of any of the obligations of MTN or any MTN Acceded Nominee in terms of this Agreement or any of the other Finance Documents to which it is a party,

provided that the provisions of this clause 15 shall not operate to limit the rights of MTN or any applicable MTN Acceded Nominee against any Holder as a result of the breach of any representation or warranty given by such Holder to MTN or an MTN Acceded Nominee in terms hereof.

16. PREFERENCE SHARE AGENT

- 16.1 Each of MTN and each MTN Acceded Nominee acknowledges that the subscribers appointed the Preference Share Agent as their agent in terms of the Interfunder Agreement and shall be entitled, from time to time, to remove the Preference Share Agent, provided that they replace the Preference Share Agent in accordance with the provisions of the Interfunder Agreement.
- 16.2 Where this Agreement –
 - 16.2.1. makes reference to the Preference Share Agent exercising any discretion or election, performing any function, exercising or enforcing any right, requiring the performance of any obligation or in any other manner whatsoever, such reference shall be to the Preference Share Agent acting

on behalf of the relevant Holders in accordance with the provisions of the Interfunder Agreement;

- 16.2.2. requires that the waiver, consent, instruction, approval or permission of the Preference Share Agent is to be obtained, such waiver, consent, instruction, approval or permission shall at all times be required to be obtained from the relevant Holders directly and the granting or withholding of such waiver, consent, instruction, approval or permission shall be issued by the Preference Share Agent and not by the relevant Holders; and
 - 16.2.3. requires that any notice be given to the Holders or any of the Holders may give notice to any other Party, all such notices shall be given to or by (as the case may be) the Preference Share Agent acting as agent on behalf of relevant Holders.
- 16.3 MTN and each MTN Acceded Nominee shall be entitled to rely on any written instructions received from the Preference Share Agent and on any written waivers, consents and approvals given by the Preference Share Agent as being that of the subscribers for the BFC2 Preference Shares (in respect of the period up to the Issue Date) or of the relevant Holders (in respect of the period after the Issue Date). Any action taken by MTN or any MTN Acceded Nominee in fulfilment of or pursuant to any such written instructions, waivers, consents and/or approvals shall constitute a valid discharge of its obligations (including payment) in terms of this Agreement to the BFC2 Preference Shareholders.
- 16.4 No Holder shall be entitled to exercise any right conferred upon it by this Agreement otherwise than through the Preference Share Agent.

17. WHOLE AGREEMENT, NO AMENDMENT

- 17.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.
- 17.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 17.3 No oral *pactum de non petendo* shall be of any force or effect.
- 17.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

- 17.5 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

18. DOMICILIUM CITANDI ET EXECUTANDI

- 18.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

18.1.1. Preference Share Agent:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

E-mail: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management, Investment Banking division;

18.1.2. MTN:

Physical: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

E-mail: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba;

18.1.3. MML:

Physical: 268 West Avenue
Centurion
0157
South Africa

E-mail: Kagiso.Tsatsane@mmltd.co.za

Attention: Head: Asset Origination;

18.1.4. United Towers:

Physical: c/o Absa Bank Limited
15 Alice Lane
Sandown
Sandton
2196
South Africa

E-mail: xradocmanvalidations@absa.africa

Attention: Transaction Administration IMPEX; and

18.1.5. RMB:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

E-mail: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management, Investment Banking division.

18.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by e-mail.

18.3 Any Party may by notice to the other Parties change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address where postal delivery occurs in Gauteng or its e-mail address, provided that the change shall become effective *vis-à-vis* that addressee on the 7th (seventh) Business Day from the receipt of the notice by the addressee.

18.4 Any notice to a Party –

18.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery or if such delivery is not during ordinary business hours or if such date is not a Business Day, the immediately succeeding Business Day; or

18.4.2. sent by e-mail to its chosen e-mail address stipulated in clause 18.1 during ordinary business hours, shall be deemed to have been received on the date of despatch or if such delivery is not during ordinary business hours or such date is not a Business Day, on the immediately succeeding Business Day (unless the contrary is proved).

- 18.5 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 it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

19. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

20. EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts all of which, when read together, shall constitute one and the same instrument.

21. LAW AND JURISDICTION

- 21.1 This Agreement shall be governed by and construed in accordance with the laws of South Africa.
- 21.2 Each Party irrevocably agrees for the benefit of the other Parties that the High Court of South Africa (Gauteng Local Division, Johannesburg) shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise under and/or out of and/or relating to and/or in connection with this Agreement and for such purposes irrevocably submits to the jurisdiction of such court.
- 21.3 Each Party irrevocably waives any objection which it may have now or hereafter to the court referred to in clause 21.2 being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise under and/or out of and/or relating to and/or in connection with this Agreement and irrevocably agrees not to claim that such court is not a convenient or appropriate forum.
- 21.4 The submission to the jurisdiction of the court referred to in clause 21.2 shall not (and shall not be construed so as to) limit the right of any Party to take proceedings against any other Party in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

22. INDEPENDENT ADVICE

Each Party acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, each Party acknowledges that all of the provisions of this Agreement have been negotiated as between it and the Preference Shareholders and are part of the overall intention of the Parties in connection with this Agreement.

23. COSTS

23.1 Amendment Costs

MTN shall promptly on demand pay to the Preference Share Agent (on behalf of the relevant Holder) the amount of all reasonable or necessary costs and expenses (including reasonable or necessary legal fees on the attorney and own client scale) incurred by the relevant Holder in connection with any amendment, variation, supplement, replacement, novation, waiver or consent which is requested by MTN or any MTN Acceded Nominee in relation to this Agreement.

23.2 Enforcement Costs

MTN shall promptly on demand pay to the Preference Share Agent (on behalf of the relevant Holder) the amount of all properly evidenced costs and expenses (including legal fees on the scale as between attorney and own client whether incurred before or after judgement) incurred by the relevant Holder in connection with the enforcement of, or the preservation of any rights of such Holder under, this Agreement as a result of any breach or threatened breach of the provisions of this Agreement by MTN and/or any MTN Acceded Nominee.

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Annexure A - Form of Call Option Exercise Notice

(To appear on MTN or MTN Acceded Nominee's letterhead)

To: FirstRand Bank Limited (acting through its Rand Merchant Bank division) (in its capacity as Preference Share Agent)

From: [MTN Group Limited]

Date: [insert]

Dear Sirs

CALL OPTION AGREEMENT: CALL OPTION EXERCISE NOTICE

1. We refer to the Amended and Restated Call Option Agreement (the "**Agreement**") dated [◆] 2021 entered into between MTN, the Preference Share Agent, RMB, MML and United Towers. Terms defined in the Agreement shall bear the same meaning herein.
2. We acknowledge receipt of your notice that a BFC2 Potential Trigger Event has occurred.

OR
3. We acknowledge receipt of your notice that a BFC2 Illegality Event will occur in respect of [*name Holders*].

OR
4. We acknowledge receipt of your notice that a BFC2 Adjustment Event will occur in respect of [*name Holders*].
5. Accordingly, we are entitled to exercise our rights in respect of the Call Option, and hereby give you notice of the exercise of such rights.

Yours faithfully

For: [MTN or MTN Acceded Nominee']

Annexure B - Form of MTN Acceded Nominee Accession Undertaking

To: **FirstRand Bank Limited** (acting through its Rand Merchant Bank division)

(as Preference Share Agent)

From: **[Insert full name of MTN Acceded Nominee]** (the "MTN Acceded Nominee")

Date: [insert]

Dear Sirs

AMENDED AND RESTATED MTN SUBORDINATION AND UNDERTAKING AGREEMENT DATED [◆] 2021 (the "Agreement")

1. We refer to the Agreement. This is an Accession Undertaking, and terms used in this Accession Undertaking have the same meaning as in the Agreement.
2. This Accession Undertaking is delivered to you as Preference Share Agent pursuant to clause 8.3 of the Agreement.
3. In consideration of the MTN Acceded Nominee being accepted as an MTN Acceded Nominee for the purposes of the Agreement, the MTN Acceded Nominee hereby confirms that, as from the date of acceptance of this Accession Undertaking by the Preference Share Agent, it:
 - 3.1 shall be Party to the Agreement as an MTN Acceded Nominee;
 - 3.2 undertakes to perform all the obligations expressed in the Agreement to be assumed by an MTN Acceded Nominee; and
 - 3.3 agrees that it shall be bound by all the provisions of the Agreement as if it had been an original Party to the Agreement as an MTN Acceded Nominee.
4. This Accession of Undertaking may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Accession Undertaking.
5. This Accession Undertaking shall be governed by and construed in accordance with the laws of South Africa.

For and on behalf of

[◆] Proprietary Limited

Name:

Capacity:

Who warrants his authority hereto

Address for notices for purposes of clause 18 of the Agreement:

Address:

E-mail:

Attention:

For and on behalf of

The Preference Share Agent

FirstRand Bank Limited

(acting through its Rand Merchant Bank division)

Name:

Capacity:

Who warrants his authority hereto

Annexure C - Call Option Notice

(To appear on letterhead of Preference Share Agent)

To: MTN Group Limited

From: FirstRand Bank Limited (acting through its Rand Merchant Bank division) (in its capacity as Preference Share Agent)

Date: [insert]

Dear Sirs

AMENDED AND RESTATED CALL OPTION AGREEMENT: CALL OPTION NOTICE

1. We refer to the Amended and Restated Call Option Agreement (the "**Agreement**") dated [◆] 2021 entered into between MTN, the Preference Share Agent, RMB, United Towers and MML. Terms defined in the Agreement shall bear the same meaning herein.
2. We hereby advise you that a BFC2 Potential Trigger Event has occurred.

OR
3. We hereby advise you that a BFC2 Illegality Event will occur in respect of [*name Holders*].

OR
4. We hereby advise you that a BFC2 Adjustment Event will occur in respect of [*name Holders*].
5. Accordingly, we hereby advise you that are entitled to exercise our rights in respect of the Call Option.
6. The Call Option Strike Price which is payable in respect of such Call Option on the applicable Call Option Closing Date, were such Call Option to be exercised by MTN or an MTN Acceded Nominee, is R [◆] ([◆] Rand), comprised as follows:
 - 6.1 [Issue Price of applicable BFC2 Unredeemed Preference Shares: R[◆]]
 - 6.2 [BFC2 accrued or Scheduled Preference Dividends: R[◆]]
 - 6.3 [BFC2 Arrear Dividends: R[◆]]
 - 6.4 [Estimate of BFC2 Breakage Cost Dividends: R[◆]]
 - 6.5 [BFC2 Unpaid Dividends: R[◆]]
 - 6.6 [BFC2 Margin Dividend: R[◆]]
 - 6.7 [BFC2 Additional Dividends: R[◆]]

6.8 [The amount of any BFC2 Breakage Gain: R[◆]]

6.9 [Estimate of other amounts owing by BFC2 to the applicable Holder: R[◆]]

6.10 [Tax on the foregoing amounts: R[◆]]

determined in accordance with the calculation attached to this notice.

7. The following waivers, indulgences, discharges, concessions or extensions of time have been granted by the Preference Share Agent to BFC2 under or in terms of the BFC2 Preference Share Subscription Agreement, the BFC2 Preference Share Terms which remain in effect as at the date of the Call Option Notice, namely:

[list any such waivers, indulgences, discharges, concessions or extensions of time or delete if there are none]

Yours faithfully

For: FirstRand Bank Limited

(acting through its Rand Merchant Bank division)

In its capacity as Preference Share Agent

SCHEDULE 10: AMENDED AND RESTATED FIRST RANKING GUARANTEE



(1) MTN ZAKHELE FUTHI (RF) LIMITED
(as Guarantor)

(2) FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
(as BFC2 Preference Shareholder)

(3) MOMENTUM METROPOLITAN LIFE LIMITED
(as BFC2 Preference Shareholder)

(4) UNITED TOWERS PROPRIETARY LIMITED
(as BFC2 Preference Shareholder)

and

(5) FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
(in its capacity as Preference Share Agent)

AMENDED AND RESTATED
FIRST RANKING GUARANTEE AGREEMENT
in respect of the obligations under the BFC2 Preference Shares

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WHEREBY IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

1.1 words importing:

1.1.1 any one gender include the other two genders;

1.1.2 the singular include the plural and *vice versa*; and

1.1.3 natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2 Save as otherwise defined herein, terms defined in or incorporated by reference in the BFC2 MOI (as defined below) shall bear the same meanings when used herein. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1 **"Agreement"** means this guarantee agreement together with any annexures hereto;

1.2.2 **"BFC2 MOI"** means the memorandum of incorporation of BFC2 from time to time;

1.2.3 **"BFC2 Percentage"** means on any day in respect of each BFC2 Preference Shareholder, the number of BFC2 Preference Shares held by that BFC2 Preference Shareholder divided by the total number of BFC2 Preference Shares in the issued share capital of BFC2 on that day, expressed as a percentage;

1.2.4 **"BFC2 Redemption Amount"** shall bear the meaning ascribed thereto in the BFC2 Preference Share Terms;

1.2.5 **"BIC2"** means MTN Zakhele Futhi (RF) Limited (Registration No. 2016/268837/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;

1.2.6 **"BIC2 Account Cession"** means the deed of account cession originally entered into between the Guarantor, BFC2 Initial Investors and the Original Preference Share Agent pursuant to which the Guarantor ceded in security the BIC2 Account Cession Collateral to the BFC2 Preference Shareholders as security for its obligations under this Agreement, all on the terms and conditions contained therein;

1.2.7 **"BIC2 Account Cession Collateral"** shall bear the meaning ascribed to the term **"Collateral"** in the BIC2 Account Cession;

1.2.8 **"BIC2 Pledge and Cession"** means the deed of pledge and cession originally entered into between the Guarantor, the BFC2 Initial Investors

and the Original Preference Share Agent pursuant to which the Guarantor pledges and cedes in security the BIC2 Pledge and Cession Collateral to the BFC2 Preference Shareholders as security for its obligations under this Agreement, all on the terms and subject to the conditions contained therein;

- 1.2.9 **"BIC2 Pledge and Cession Collateral"** shall bear the meaning ascribed to the term **"Collateral"** in the BIC2 Pledge and Cession;
- 1.2.10 **"Companies Act"** means the Companies Act, 2008 (Act No. 71 of 2008);
- 1.2.11 **"Company"** means Jabisan 04 (RF) Proprietary Limited (Registration No. 2014/021122/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa and carrying on business at 18 Fricker Road, Johannesburg, 2196, South Africa;
- 1.2.12 **"Effective Date"** means 23 November 2016;
- 1.2.13 **"Guaranteed Amount"** means:
 - 1.2.13.1 if all the BFC2 Preference Shares have not been redeemed in full at the time of a Guarantee Event (but without double counting):
 - 1.2.13.1.1 all amounts required to redeem all BFC2 Unredeemed Preference Shares in full in accordance with the BFC2 Preference Share Terms; plus
 - 1.2.13.1.2 such other amounts as are necessary to place each holder of such BFC2 Unredeemed Preference Shares in the same net financial position and net after Tax position it would have been in had the Company paid all amounts required to redeem such BFC2 Unredeemed Preference Shares in full on the due date therefor in accordance with the provisions of the BFC2 Preference Share Terms, as applicable, including, without limitation, any dividends Taxes on any amount received by a BFC2 Preference Shareholder pursuant to clause 1.2.13.1 and any Tax Credit that they would have received had the Company so performed; plus
 - 1.2.13.1.3 all amounts required or scheduled to be paid or which are due and payable by the Company to the BFC2 Preference Shareholders pursuant to the Finance Documents; or
 - 1.2.13.2 if all the BFC2 Preference Shares have been redeemed in full at the time of a Guarantee Event, the aggregate of all amounts required or scheduled to be paid or which are due and payable by the Company to the BFC2 Preference Shareholders pursuant to the Finance Documents;

- 1.2.14 **"Guarantee Due Date"** means the 1st (first) Business Day after a Notice Date, provided that such date shall be a day no earlier than the Issue Date;
- 1.2.15 **"Guarantee Event"** means any event which occurs during the Guarantee Period in terms of which:
- 1.2.15.1 the BFC2 Preference Shares have become redeemable in accordance with their terms and have not been redeemed on the due date therefor; and/or
- 1.2.15.2 any amount becomes due and payable by the Company under or pursuant to any Finance Document after the expiry of any originally applicable remedy period, including at any time after the BFC2 Preference Shares have been redeemed;
- 1.2.16 **"Guarantee Limit"** means the aggregate of:
- 1.2.16.1 all proceeds realised from the disposal of the BIC2 Pledge and Cession Collateral and the BIC2 Account Cession Collateral;
- 1.2.16.2 all proceeds realised from the realisation of all other assets that may be pledged and ceded in security by the Guarantor to the BFC2 Preference Shareholders in connection with the obligations of the Company or the Guarantor under the Finance Documents from time to time; and
- 1.2.16.3 interest on the amounts contemplated in clauses 1.2.16.1 and 1.2.16.2 at the Prime Rate from and including the date of receipt of such amounts until and excluding the date of determination of the Guaranteed Amount;
- 1.2.17 **"Guarantee Notice"** shall bear the meaning specified in clause 4.2;
- 1.2.18 **"Guarantee Period"** means the period from the Effective Date to the date on which all obligations, whether actual or contingent, of the Guarantor under this Guarantee have been fully, finally and irrevocably discharged;
- 1.2.19 **"Guarantor"** means BIC2;
- 1.2.20 **"Notice Date"** means the date of receipt, or deemed receipt, by the Guarantor from the Preference Share Agent of a Guarantee Notice;
- 1.2.21 **"Original Preference Share Agent"** means Nedbank;
- 1.2.22 **"Original Signature Date"** means 21 August 2016;
- 1.2.23 **"Parties"** means the BFC2 Preference Shareholders, the Preference Share Agent and the Guarantor;
- 1.2.24 **"Prime Rate"** means the quoted prime lending rate from time to time of the Preference Share Agent (or, if the Preference Share Agent is not Absa Bank Limited, FirstRand Bank Limited, The Standard Bank of South Africa Limited or Nedbank Limited, or any division of any of them, then the quoted prime lending rate from time to time of RMB (expressed as a

percentage rate of interest per annum), calculated daily and compounded monthly on the basis of a 365 (three hundred and sixty five) day year factor irrespective of whether the year is a leap year or not), as certified (save for manifest error) by any manager of the Preference Share Agent or RMB, as applicable, whose appointment, designation or authority need not be proved; and

1.2.25 **"Warranty Date"** means the Original Signature Date and each day thereafter until all the Guarantor's obligations hereunder have been fully, finally and irrevocably discharged.

- 1.3 any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted or replaced from time to time;
- 1.4 any reference in this Agreement to any other agreement or document copy shall be construed as a reference to such other agreement as same may have been, or may from time to time be, amended, restated, varied, novated, restated or supplemented;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.6 where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;
- 1.7 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day unless if as a result of such adjustment any redemption of a Preference Share will occur before 3 (three) years and 1 (one) day after the Issue Date in which event the relevant day for payment shall be the next succeeding Business Day;
- 1.8 any reference to a Party includes that Party's successors-in-title and permitted assigns;
- 1.9 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.10 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.11 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.12 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;

- 1.13 the Finance Documents shall to the extent permitted by Applicable Laws be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted assigns or liquidators, as the case may be; and
- 1.14 the use of any expression in any Finance Document covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the parties to the Finance Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2. RECORDAL

2.1 It is recorded that:

- 2.1.1 in terms of the BFC2 Preference Share Subscription Agreement, the BFC2 Initial Investors subscribed for certain BFC2 Preference Shares on the Effective Date;
- 2.1.2 in terms of the Refinancing Agreement, BFC2 proposes to issue certain additional BFC2 Preference Shares to the BFC2 Refinancing Investors; and
- 2.1.3 the Guarantor has guaranteed the obligations of the Company to the BFC2 Preference Shareholders and provided certain indemnities to the BFC2 Preference Shareholders, all on the terms and subject to the conditions set forth in this Agreement.

2.2 The Parties wish to record the terms and conditions of their agreement in writing.

3. CONDITION PRECEDENT

[Deliberately left blank]

4. GUARANTEE AND UNDERTAKING TO PAY

- 4.1 This Agreement shall become effective on the Effective Date and shall endure until the end of the Guarantee Period or such earlier date as provided for in clause 14 of the BIC2 Preference Share Subscription Agreement or such earlier date as the Preference Share Agent may agree in writing. During this period, the Guarantor, as principal and primary obligor (and not merely as surety), irrevocably undertakes in favour of the BFC2 Preference Shareholders to pay to each BFC2 Preference Shareholder its BFC2 Percentage of the Guaranteed Amount on the Guarantee Due Date in accordance with the applicable BIC2 Priority of Payments.
- 4.2 If, at any time, a Guarantee Event occurs (which event shall be the sole condition to the Guarantor's obligations to pay the Guaranteed Amount as aforesaid, subject to a maximum of the Guarantee Limit, pursuant to this clause 4.2), the Preference Share Agent shall be entitled to give written notice (a "**Guarantee Notice**") to the Guarantor describing the Guarantee Event, specifying the Guaranteed Amount and demanding payment of the Guaranteed Amount and the Guarantor shall be obliged to pay the

Guaranteed Amount, subject to a maximum of the Guarantee Limit, to the Preference Share Agent on behalf of the BFC2 Preference Shareholders on or before the applicable Guarantee Due Date.

- 4.3 As a separate, divisible and independent obligation but without double counting, the Guarantor hereby and with effect from the Effective Date, indemnifies each BFC2 Preference Shareholder and agrees to hold them harmless on first demand against any Loss (including, without limitation, the loss of any dividend Tax Credit) and/or Tax whatsoever which the BFC2 Preference Shareholders may incur or sustain directly as a result of any amount becoming owing by the Company to the BFC2 Preference Shareholders under any Finance Document which is not paid when due, including any amount which is paid by the Company to any BFC2 Preference Shareholder and as a dividend being treated as Taxable in the hands of the BFC2 Preference Shareholder or any amount of such dividend being subject to a Dividend Tax or not receiving a dividend Tax Credit, if any, such that each such BFC2 Preference Shareholder is placed in the same financial and net after Tax position as if such dividend had received a dividend Tax Credit, if any or had not been Taxable in the hands of the BFC2 Preference Shareholder or had not been subject to such Dividend Tax, provided that such indemnity shall not apply to any consequential losses or any cost, claim, liability, loss or expense incurred as a result of the wilful misconduct or gross negligence of the BFC2 Preference Shareholders.
- 4.4 If a Guarantee Event occurs and the Guarantor irrevocably pays to the BFC2 Preference Shareholders the Guaranteed Amount in respect of the BFC2 Unredeemed Preference Shares and the Guaranteed Amount is less than or equal to the Guarantee Limit, then against such payment (and in consideration therefor), each of the BFC2 Preference Shareholders shall, provided the Guarantor has signed an accession deed in accordance with the Interfunder Agreement and has become a party thereto, dispose of the BFC2 Unredeemed Preference Shares to the Guarantor at no cost and shall deliver to the Guarantor the share certificates and share transfer forms (duly completed and executed by the BFC2 Preference Shareholder but blank as to transferee) in respect of the applicable BFC2 Unredeemed Preference Shares on the basis that:
- 4.4.1 ownership, risk in and benefit to the BFC2 Unredeemed Preference Shares (including the right to receive the redemption proceeds thereof) shall pass to the Guarantor on the date on which payment of the Guaranteed Amount in respect of the BFC2 Unredeemed Preference Shares is irrevocably made by the Guarantor to the BFC2 Preference Shareholders;
- 4.4.2 each of the BFC2 Preference Shareholders gives no representations or warranties to the Guarantor in respect of its BFC2 Unredeemed Preference Shares respectively other than that it is the beneficial owner of the BFC2 Preference Shares, and it has not disposed of or otherwise created any encumbrance, option or right of pre-emption or similar rights in respect thereof; and
- 4.4.3 the Guarantor shall pay all and every securities transfer Tax which may have become payable in respect of the transfer of the BFC2 Unredeemed Preference Shares by each BFC2 Preference Shareholder to it.
- 4.5 Notwithstanding anything to the contrary contained herein, no payment obligations of BIC2 under any Finance Document shall become due or payable by the Guarantor prior to the Issue Date.

5. WARRANTIES AND REPRESENTATIONS

- 5.1 The Guarantor represents and warrants in favour of the BFC2 Preference Shareholders that:
- 5.1.1 as at the Original Signature Date and on each date thereafter, all:
 - 5.1.1.1 actions and conditions required in order to enable the Guarantor lawfully to enter into, exercise its rights under and comply with its obligations contained in the Transaction Documents, and to ensure that those obligations are legally binding and enforceable, have been taken and fulfilled; and
 - 5.1.1.2 requisite resolutions of the Guarantor's board of directors (and, if applicable, the shareholders of the Guarantor) have been duly and properly passed and all statutory and other relevant formalities have been observed to authorise the Guarantor's execution and performance of the Key Transaction Documents to which it is party and such resolutions are in full force and effect and have not been varied or rescinded;
 - 5.1.2 on each Warranty Date, no Obligor Material Adverse Event will have occurred;
 - 5.1.3 on the Issue Date and each Warranty Date thereafter, the Company is the sole, legal and beneficial owner of the BIC2 Preference Shares and the Company has good and unencumbered title to the BIC2 Preference Shares;
 - 5.1.4 on each Warranty Date, each of the BIC2 Pledge and Cession and the BIC2 Account Cession validly creates the security interest which is expressed to be created by the BIC2 Pledge and Cession and the BIC2 Account Cession respectively; and
 - 5.1.5 on each Warranty Date, the assets of the Guarantor (fairly valued) exceed its liabilities (fairly valued) and the Guarantor is able to pay its debts as and when they become due.
- 5.2 In addition, the Guarantor hereby, on each Warranty Date, repeats and gives in favour of the BFC2 Preference Shareholders all the warranties and representations made by the Guarantor in favour of the BIC2 Preference Shareholder in the BIC2 Preference Share Subscription Agreement, as if such representations and warranties were expressly incorporated herein, *mutatis mutandis*, with all references to "*the Company*" being construed as references to the Guarantor and all references to the "*BIC2 Preference Shareholder*" being construed as references to the BFC2 Preference Shareholders.
- 5.3 Each BFC2 Preference Shareholder has entered into the Transaction Documents to which it is party on the strength of, and relying on, the representations and warranties set out in clause 5.1, each of which shall be deemed to be a separate representation and warranty given without prejudice to any other representation or warranty. Each of the representations in terms of this clause 5 is a material representation inducing each of the BFC2 Preference Shareholders to enter into this Agreement and the other

Transaction Documents to which it is party and/or to invest in or acquire the BFC2 Preference Shares. The representations and warranties set out in clause 5.1 shall survive the termination of this Agreement for whatsoever reason.

6. SPECIAL PROVISIONS

- 6.1 If any payment by the Company and/or the Guarantor having the effect of reducing or discharging the Guarantor's liability under this Agreement is set aside or reversed or refunded for any lawful reason, the Guarantor shall remain liable to the BFC2 Preference Shareholders in terms of this Agreement for the discharge of any obligation arising from or revived by the occurrence of any such event, even if it takes place after the termination of the Guarantor's liability in terms of this Agreement in other respects, until the end of the Guarantee Period.
- 6.2 Notwithstanding any indication to the contrary herein, this Agreement does not constitute a suretyship and shall be construed as a primary undertaking, giving rise to a principal obligation by the Guarantor.
- 6.3 Should any amount required to be paid by the Guarantor to the BFC2 Preference Shareholders or the Preference Share Agent in terms of this Agreement not be paid on or before the due date therefor, such outstanding amount shall accrue interest at the Prime Rate from the due date for the payment of such amount until the irrevocable payment thereof in full to the Preference Share Agent (both dates inclusive) without duplicating any payment due under the BFC2 Preference Shares (on the basis that the BFC2 Preference Shareholders shall be put in the same (and no better or worse) position than if all amounts scheduled, due, payable and/or owing to the BFC2 Shareholders under and in terms of the BFC2 Preference Shares were paid and discharged in full). Any such interest accrued as aforesaid shall be calculated on the daily balance outstanding and all such accrued interest shall be paid in full, free of deductions, on the first demand of the Preference Share Agent.

7. GENERAL UNDERTAKINGS

- 7.1 The Guarantor hereby unconditionally and irrevocably undertakes to the BFC2 Preference Shareholders that (unless the Preference Share Agent otherwise agrees in writing) during the Guarantee Period, it shall ensure that its liabilities under this Agreement will rank at least *pari passu* in point of priority and security with all its other present or future unsecured and unsubordinated debts (both actual and contingent).
- 7.2 In addition, the Guarantor hereby, on each Warranty Date, repeats and gives in favour of the BFC2 Preference Shareholders all the undertakings made by the Guarantor in favour of the BIC2 Preference Shareholder in clause 7.4 of the BIC2 Preference Share Subscription Agreement, as if such undertakings were expressly incorporated herein, *mutatis mutandis*, with all references to "*the Company*" being construed as references to the Guarantor and all references to the "*BIC2 Preference Shareholder*" being construed as references to the BFC2 Preference Shareholders.

8. COSTS INDEMNITY

- 8.1 In addition to the Guarantor's obligations to pay the Guaranteed Amount, as a separate, divisible and independent obligation (renouncing the benefit of all exceptions, the

consequences of which the Guarantor declares it understands, which could or might be taken to any claim by a BFC2 Preference Shareholder and/or the Preference Share Agent for the payment of the amounts indemnified), and notwithstanding clause 4.1, the Guarantor indemnifies the BFC2 Preference Shareholders and the Preference Share Agent and shall hold them harmless on first demand by the Preference Share Agent against any cost or expense (including legal costs on an attorney and own client scale) which the BFC2 Preference Shareholders or the Preference Share Agent incurs in exercising their rights against the Guarantor under this Agreement or any of the other Finance Documents, as a result of the Guarantor having failed to fully and timeously perform any obligation under this Agreement or any of the other Finance Documents.

- 8.2 No claim for costs under clause 8.1 shall result in any duplication of any payment made to the BFC2 Preference Shareholders or the Preference Share Agent in respect of substantially the same cause of action.

9. INFORMATION UNDERTAKINGS

For as long as there are BFC2 Preference Shares which have not been redeemed by the Company or any other amounts are actually or contingently owing by the Guarantor under this Agreement and unless the Preference Share Agent otherwise agrees in writing, the Guarantor shall deliver to the Preference Share Agent notification of any declaration or payment of any dividend by the Guarantor promptly after such declaration or payment.

10. PAYMENTS, NO SET-OFF, DEDUCTION OR WITHHOLDING

All payments required to be made by the Guarantor under this Agreement or any other Finance Document shall be made to the Preference Share Agent (by electronic funds transfer in immediately available funds into such account as the Preference Share Agent may notify to the Guarantor in writing) free and clear of any deductions whatsoever and without set-off or withholding unless the Guarantor is required by Applicable Laws to make such payment subject to the deduction or withholding, in which case the sum payable by the Guarantor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, the BFC2 Preference Shareholders are in the same financial and net after Tax position they would have been in had no such deduction or withholding been made or required to be made.

11. CESSION AND DELEGATION

- 11.1 The Guarantor shall not be entitled to cede all or any of its rights or delegate all or any of its obligations under this Agreement without the prior written consent of the Preference Share Agent.
- 11.2 The Preference Share Agent shall be entitled at any time to cede all or any of its rights and to delegate all or any of its obligations hereunder to any person who replaces the Preference Share Agent in accordance with the provisions of the Interfunder Agreement.
- 11.3 The BFC2 Preference Shareholders shall be entitled at any time to cede all or any of their rights and to delegate all or any of their obligations hereunder to any third party to which each of them is entitled to cede all or any of their rights and to delegate all or any of their obligations under the BFC2 Preference Share Subscription Agreement and/or to transfer any or all of the BFC2 Preference Shares pursuant to the Finance

Documents. The Guarantor hereby unconditionally and irrevocably consents to the splitting of claims against it which may result from or pursuant to or in consequence of any such cession and/or delegation by the BFC2 Preference Shareholders and/or the Preference Share Agent.

12. CERTIFICATE OF INDEBTEDNESS

A certificate by any manager of the Preference Share Agent (whose authority, status and appointment need not be proved) as to the existence and amount of any costs, interest, fees, expenses or other amount (including the Guaranteed Amount) payable by any Guarantor to the Preference Share Agent on behalf of the BFC2 Preference Shareholders in terms of this Agreement, the fact that such amount is due and payable and the interest rate or any other fact relating to such amount shall be, save for manifest error:

- 12.1 *prima facie* proof of its contents and of their correctness for all purposes;
- 12.2 valid as a liquid document for purposes of any provisional sentence, summary judgment or other proceedings instituted by any BFC2 Preference Shareholder or the Preference Share Agent on behalf of any BFC2 Preference Shareholders against the Guarantor; and
- 12.3 deemed to be sufficiently particular for the purposes of pleading or trial in any action or other proceedings instituted by the BFC2 Preference Shareholders or the Preference Share Agent on behalf of the BFC2 Preference Shareholders against the Guarantor.

13. CONTINUING OBLIGATIONS

- 13.1 The obligations of the Guarantor in this Agreement constitute continuing obligations notwithstanding any settlement of account or other matter or event whatsoever including, without limitation, and notwithstanding any redemption of the BFC2 Preference Shares and in particular but without limitation, shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the obligations of the Company or the Guarantor under the Finance Documents and shall continue in force and effect until the end of the Guarantee Period or such earlier period as the Preference Share Agent may agree in writing.
- 13.2 No obligations of the Guarantor herein contained nor the rights, powers and remedies conferred upon the BFC2 Preference Shareholders and the Preference Share Agent in terms hereof shall be discharged, impaired or otherwise affected by:
 - 13.2.1 the fact that the BFC2 Preference Shareholders' and/or the Preference Share Agent's right to exercise its rights under this Agreement resulted from or was caused by any matter outside of its control by any other person in respect of any obligation under this Agreement or any other Transaction Document;
 - 13.2.2 the fact that the Company does not have distributable profits or other funds from which to declare dividends or otherwise make payments to the BFC2 Preference Shareholders or is otherwise statutorily prevented from doing so;
 - 13.2.3 the fact that the Company does not pay any BFC2 Redemption Amount to the BFC2 Preference Shareholders for any reason whatsoever, including

- without limitation, the Company's failure to comply with any provisions of the Companies Act;
- 13.2.4 any irregularity in the issue or allotment of the BFC2 Preference Shares to the BFC2 Preference Shareholders;
 - 13.2.5 any defect or irregularity in the certificate, title or rights in and to the BFC2 Preference Shares;
 - 13.2.6 the fact that it might not be competent or proper for the Company to issue or allot the BFC2 Preference Shares to the BFC2 Preference Shareholders or that it might not be competent, possible or legally permissible for the Company to fulfil in whole or in part its obligations in terms of the BFC2 Preference Shares;
 - 13.2.7 any defect, unenforceability or other irregularity in the rights acquired by the BFC2 Preference Shareholders in terms of the BFC2 Preference Share Subscription Agreement and/or any defect, unenforceability or irregularity in any of the rights attaching to the BFC2 Preference Share Terms;
 - 13.2.8 any amendment, modification, extension, termination or any other change at any time to the BFC2 Preference Share Subscription Agreement or any other Transaction Document;
 - 13.2.9 any release or discharge at any time or from time to time by operation of law of the Company or the Guarantor or any other person of any obligation under the BFC2 Preference Share Subscription Agreement or any of the Finance Documents;
 - 13.2.10 the granting of any indulgence, the giving of any extension of time or the making of any concession or arrangement of whatsoever nature under the BFC2 Preference Share Subscription Agreement or any other Transaction Document to the Company or the Guarantor or any other person;
 - 13.2.11 whether or not the Company is at any time in liquidation (whether provisional or final) or subject to supervision under the provisions of Chapter VI of the Companies Act;
 - 13.2.12 whether or not the rights of the BFC2 Preference Shareholders hereunder could have been exercised at an earlier time or in respect of any prior Guarantee Event or otherwise; and/or
 - 13.2.13 any other occurrence, circumstance, happening or event whether similar or dissimilar to any of the foregoing and whether foreseen or unforeseen, at any time or from time to time, which otherwise might constitute a legal defence or discharge of any of the obligations of the Guarantor in terms of this Agreement or any of the other Finance Documents.
- 13.3 In the event that business rescue proceedings have commenced in relation to the Company in accordance with the provisions of Chapter VI of the Companies Act, unless the Guaranteed Amount and all indemnity amounts pursuant to clauses 4.3 and 8.1 hereof have been paid in full, the Guarantor (in its capacity as creditor of the Company) undertakes not to vote to amend, approve or reject a proposed business rescue plan in relation to such business rescue proceedings in the manner contemplated

in section 152 of the Companies Act if such vote, proposal or offer would or is likely to be detrimental to the BFC2 Preference Shareholders and/or any of the BFC2 Preference Shareholders' claims against the Company. If there is a dispute between the BFC2 Preference Shareholders and the Company as to whether any amendment, approval or rejection of a proposed business rescue plan would or is likely to be detrimental to the BFC2 Preference Shareholders, the Guarantor shall not be entitled to act in any of the aforementioned circumstances, unless the BFC2 Preference Shareholders have agreed to such action, until such time as the dispute has been resolved.

- 13.4 In the event that a compromise is reached between the Company and the Company's creditors in accordance with the provisions of section 155 of the Companies Act, unless the Guaranteed Amount and all indemnity amounts pursuant to clauses 4.3 and 8.1 hereof have been paid in full, the Guarantor undertakes (in its capacity as creditor of the Company) not to vote to accept or reject a proposal in relation to such compromise, as contemplated in section 155 of the Companies Act, which would or is likely to be detrimental to the BFC2 Preference Shareholders and/or any of the BFC2 Preference Shareholders' claims against the Company. If there is a dispute between the BFC2 Preference Shareholders and the Company as to whether any amendment, approval or rejection of a proposed business rescue plan would or is likely to be detrimental to the BFC2 Preference Shareholders the Guarantor shall not be entitled to act in any of the aforementioned circumstances, unless the BFC2 Preference Shareholders have agreed to such action, until such time as the dispute has been resolved.
- 13.5 The obligations of the Guarantor contained in this Agreement shall be in addition to and without prejudice to any other guarantee, suretyship or other security held or hereafter held by the BFC2 Preference Shareholders or the Preference Share Agent in respect of the transactions contemplated herein.

14. WHOLE AGREEMENT, NO AMENDMENT

- 14.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.
- 14.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 14.3 No oral *pactum de non petendo* shall be of any force or effect.
- 14.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

- 14.5 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

15. NOTICES

- 15.1 The Parties choose as their addresses for notices for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

15.1.1 Guarantor:

Physical: 135 Rivonia Road
Sandown
Sandton
2196
South Africa

Email: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration

with a copy to

BFC2

Physical: 135 Rivonia Road
Sandown
Sandton
2196
South Africa

E-mail: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration; and

15.1.2 BFC2 Preference Shareholders
c/o the Preference Share Agent:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

E-mail: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management:
Investment Banking.

- 15.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by electronic mail.
- 15.3 Any Party may by notice to the other Parties change the physical address chosen as its address for notices *vis-à-vis* that Party to another physical address where postal delivery occurs in South Africa or its email address, provided that the change shall become effective *vis-à-vis* that addressee on the 7th (seventh) Business Day from the receipt of the notice by the addressee.
- 15.4 Any notice to a Party:
- 15.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its address for notices shall be deemed to have been received on the day of delivery or if such delivery is not during ordinary business hours or such date is not a Business Day, the immediately succeeding Business Day; or
- 15.4.2 sent by e-mail to its chosen e-mail address stipulated in clause 15.1 during ordinary business hours, shall be deemed to have been received on the date of despatch or if such delivery is not during normal business hours or such date is not a Business Day, on the immediately succeeding Business Day (unless the contrary is proved).
- 15.5 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 it notwithstanding that it was not sent to or delivered at its chosen address for notices.

16. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

17. EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts all of which, when read together, shall constitute one and the same instrument.

18. LAW AND JURISDICTION

- 18.1 This Agreement shall be governed by and construed in accordance with the laws of South Africa.
- 18.2 The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement)

or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

- 18.3 The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle Disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.
- 18.4 Clauses 18.2 and 18.3 are for the benefit of the BFC2 Preference Shareholders and the Preference Share Agent only. As a result, none of the BFC2 Preference Shareholders nor the Preference Share Agent shall be prevented from taking proceedings relating to a Dispute in any other court with jurisdiction. To the extent allowed by law, the BFC2 Preference Shareholders and/or the Preference Share Agent may take concurrent proceedings in any number of jurisdictions.

19. INDEPENDENT ADVICE

The Guarantor acknowledges in favour of the BFC2 Preference Shareholders and the Preference Share Agent that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Guarantor acknowledges that all of the provisions of this Agreement have been negotiated as between it and the BFC2 Preference Shareholders and the Preference Share Agent and are part of the overall intention of the Parties in connection with this Agreement.

[SIGNATURE PAGES INTENTIONALLY LEFT BLANK]

SCHEDULE 11: AMENDED AND RESTATED BIC2 PLEDGE AND CESSION



(1) MTN ZAKHELE FUTHI (RF) LIMITED
(as Cedent)

(2) FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
(as BFC2 Preference Shareholder)

(3) MOMENTUM METROPOLITAN LIFE LIMITED
(as BFC2 Preference Shareholder)

(4) UNITED TOWERS PROPRIETARY LIMITED
(as BFC2 Preference Shareholder)

and

(5) FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
(in its capacity as Preference Share Agent)

AMENDED AND RESTATED BIC2 PLEDGE AND CESSION
in respect of the First Ranking Guarantee

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IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

1.1 words importing:

1.1.1 any one gender include the other two genders;

1.1.2 the singular include the plural and *vice versa*; and

1.1.3 natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2 Save as otherwise defined herein, terms defined in the BIC2 MOI (as defined below) shall bear the same meanings when used herein. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1 "**Agreement**" means this pledge and cession agreement together with all annexures hereto;

1.2.2 "**BIC2 MOI**" means the memorandum of incorporation of BIC2 from time to time;

1.2.3 "**Cedent**" means MTN Zakhele Futhi (RF) Limited (Registration No. 2016/268837/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;

1.2.4 "**Cessionaries**" means the BFC2 Preference Shareholders from time to time;

1.2.5 "**Collateral**" means the Subject Shares and any other assets designated as Collateral in terms of this Agreement;

1.2.6 "**Financial Markets Act**" means the Financial Markets Act (Act No. 19 of 2012);

1.2.7 "**Original Signature Date**" means 21 August 2016;

1.2.8 "**Parties**" means the Preference Share Agent, the Cessionaries and the Cedent, and "**Party**" shall mean any one of them;

1.2.9 "**Secured Obligations**" means all moneys, liabilities and obligations which are now or at any time hereafter may be due, owing or payable by the Cedent, actually or contingently, under or pursuant to the First Ranking Guarantee, or as a consequence of any breach, non-performance, disclaimer or repudiation by the Cedent (or by any liquidator, trustee, executor, curator, administrator or any similar officer of the Cedent) of any of its obligations under the First Ranking Guarantee, and (except as expressly otherwise provided) references to the Secured Obligations include references to any of them;

1.2.10 "**Security Interest**" means any agreement or arrangement having the effect of creating a security interest or right of possession, including any mortgage, pledge, cession, cession in *securitatem debiti*, lien, lease, right of retention, right of set-off or claim, hypothecation, assignment, security interest, title retention, trust

arrangement, preferential arrangement or encumbrance whatever, however created or arising;

- 1.2.11 **"Subject Shares"** has the meaning ascribed thereto in the BIC2 MOI, and includes any and all of the Cedent's rights, title and interests therein and thereto of whatsoever nature and howsoever arising, whether actual, prospective or contingent, direct or indirect, arising under common law, contract or statute, whether a claim for the payment of money (whether in respect of principal or otherwise) or for the performance of another obligation, including (i) voting rights in relation to the Subject Shares, all rights and benefits in respect of any agreement for the Disposal or realisation thereof and all contracts, warranties, remedies, security, indemnities and other undertakings in respect thereof; and (ii) all rights to any monies, proceeds, shares issued in exchange or substitution of the Subject Shares, dividends and/or Distributions made or realised in respect of the Subject Shares (or any of them), whether or not those rights and interests were within the contemplation of the Parties at the Original Signature Date and, individually, any property forming part thereof; and
- 1.2.12 **"Subject Shares Securities Account"** has the meaning ascribed thereto in the BIC2 MOI;
- 1.3 any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted or replaced from time to time;
- 1.4 any reference in this Agreement to any other Agreement or document copy shall be construed as a reference to such other Agreement as same may have been, or may from time to time be, amended, restated, varied, novated or supplemented;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.6 where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;
- 1.7 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day;
- 1.8 any reference to a Party includes that Party's successors-in-title and permitted assigns;
- 1.9 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.10 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.11 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

- 1.12 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.13 the Finance Documents shall to the extent permitted by Applicable Laws be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted assigns or liquidators, as the case may be;
- 1.14 the use of any expression in any Finance Document covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the parties to the Finance Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2. PLEDGE AND CESSION IN SECURITY

- 2.1 The Cedent hereby and with effect from the Issue Date, pledged and ceded in *securitatem debiti* the Subject Shares to and in favour of the Cessionaries as a continuing general covering collateral security for the due, proper and timely payment and performance in full of all the Secured Obligations on the terms and conditions set out in this Agreement, which pledge and cession in security the Cessionaries accepted.
- 2.2 It is the intention of the parties that the cession in security in clause 2.1 shall operate as a first ranking pledge and cession in security of each part and of all of the Subject Shares analogous to a pledge, and not as an out-and-out cession and transfer thereof.

3. THE SUBJECT SHARES

- 3.1 It is recorded that, prior to the Refinancing Date, the Subject Shares were dematerialised.
- 3.2 On the Refinancing Date and in accordance with the relevant provisions of the Refinancing Agreement, the Cedent shall:
 - 3.2.1 issue the instructions contemplated in **Annexure A** hereto to the Security Custodian; and
 - 3.2.2 deliver to the Preference Share Agent an original letter from the Security Custodian, in substantially the form contained in **Annexure B** hereto,in each case referring to the relevant dematerialised Subject Shares.
- 3.3 To the extent that, at any time on or after the Issue Date, any of the Subject Shares at any time comprise any securities which have not been dematerialised:
 - 3.3.1 the Cedent shall forthwith after becoming the holder of such securities deliver the certificates in respect of such securities to the Security Custodian, together with a valid transfer form for the transfer of such securities, duly executed by or on behalf of the transferor and in blank as to transferee; and
 - 3.3.2 the Security Custodian shall be entitled to retain possession of such certificates and transfer forms and to deal with them in accordance with the terms of this Agreement until such time as this Agreement terminates in accordance with its terms, at which time the certificates and the transfer forms shall, subject to the provisions of any other Finance Document, be returned to the Cedent (or its nominee).

- 3.4 Should any of the Subject Shares which are certificated as of the date of delivery (other than the Issue Date) be dematerialised at any time thereafter, then the Cedent shall forthwith, upon the happening of that event, deliver to the Preference Share Agent a written acknowledgement signed by or on behalf of the Security Custodian, confirming and specifying (to the Preference Share Agent's satisfaction):
- 3.4.1 the Cedent's ownership of the relevant Subject Shares and that such shares are held by the Security Custodian;
 - 3.4.2 the entry, in accordance with section 39 of the Financial Markets Act and the applicable rules of the relevant central securities depository, of the Security Interest over the Subject Shares in the Subject Shares Securities Account created by this Agreement in favour of the Cessionaries;
 - 3.4.3 that the Security Custodian will not remove the entry referred to in clause 3.4.2 nor will the relevant Subject Shares be transferred to a third party without the written consent of the Preference Share Agent first having been obtained; and
 - 3.4.4 no other Security Interest was noted against the relevant Subject Shares at the time that the entry referred to in clause 3.4.2 was made.
- 3.5 Without in any way limiting or derogating from any other provision hereof, if at any time hereafter any Additional Shares are issued to or acquired by the Cedent for any reason whatsoever, then:
- 3.5.1 if such further shares are dematerialised, they shall be subject to this Agreement and the Cedent hereby irrevocably nominates constitutes and appoints the Preference Share Agent (or its nominee) as its lawful attorney and agent, with full power and authority, to forthwith instruct the Security Custodian to hold them in the Subject Shares Securities Account in accordance with this Agreement; or
 - 3.5.2 if such shares are materialised, then the documents of title evidencing any such shares shall forthwith be delivered to the Security Custodian (*mutatis mutandis* in accordance with clause 3.1) accompanied by undated share transfer declarations in respect thereof duly signed by or on behalf of the transferor as registered holder/s thereof and in blank as to transferee, together with certified copies of such other irrevocable resolutions, consents and authorities as may be required for the transfer of such Subject Shares.

4. REPRESENTATIONS AND WARRANTIES

- 4.1 The Cedent warrants and represents:
- 4.1.1 that, with effect from the Issue Date and on each day thereafter, it is a limited liability company, duly incorporated and validly existing under the laws of South Africa and has the power to own its assets and carry on its business as it is being conducted;
 - 4.1.2 that, with effect from the Issue Date and on each day thereafter it is and will remain the sole and beneficial owner of the Collateral to the exclusion of all others and no person (other than (i) the Cessionaries under this Agreement; and (ii) MTN, MTN Holdings and each Subordinated MTN Acceded Nominee under the BIC2 Reversionary Pledge and Cession) has an option or right of refusal over the Collateral;
 - 4.1.3 that, with effect from the Issue Date and on each day thereafter, the Collateral pledged and ceded in security to the Cessionaries under this Agreement has not been pledged and/or ceded (either outright or as security), discounted, factored,

mortgaged under notarial bond or otherwise, or otherwise disposed of or hypothecated, nor is it subject to any other rights in favour of any person (including, without limitation, any rights of pre-emption), other than under and in terms of the BIC2 Reversionary Pledge and Cession and the Security Interest created pursuant to this Agreement will have first ranking priority in respect of the Subject Shares;

- 4.1.4 that, as at the Original Signature Date and the Refinancing Date, it has the power, authority and legal right to sign and perform this Agreement, that all obligations undertaken by it and the pledge and cession in security created under this Agreement have been authorised by all necessary corporate action required by it and constitute its legal, valid and binding obligations enforceable against it in accordance with the terms of this Agreement and that the memorandum of incorporation of the Cedent does not place any limitations or restrictions on the Cedent to pledge and cede the Collateral as provided for in this Agreement;
- 4.1.5 that, with effect from the Issue Date and on each day thereafter, it is required to give notice to or obtain consents or waivers from any person in connection with the pledge and cession of any of the Subject Shares, all such notices have been given and consents or waivers have been obtained before the Issue Date and are in full force and effect; and
- 4.1.6 that, as at the Original Signature Date and on each day thereafter, its entry into the First Ranking Guarantee and this Agreement and the fulfilment of its obligations in accordance with the terms thereof and hereof do not contravene any law, regulation or any contractual obligation binding on it.
- 4.2 Save as expressly contemplated by, and subject to the provisions of, the Finance Documents, the Cedent acknowledges that it may not pledge, cede, assign or transfer or in any other manner create any Encumbrance whatsoever, or allow any Encumbrance whatsoever to be created, over or deal with the Collateral without the prior written consent of the Preference Share Agent.
- 4.3 Should the Collateral be subject to any right in breach of the representation and warranty in clause 4.1.3 then, without prejudice to any other rights that the Cessionaries may have, any reversionary or other interests the Cedent may have in the Collateral are also ceded in security to the Cessionaries and if the holder of that cession or right is entitled to possession of any of the documents referred to in clause 3, and it exercises that right, then the Cedent shall deliver photocopies of the documents to the Cessionaries, and as soon as the holder of that cession or right ceases to be entitled to possession or gives up possession, the Cedent shall deliver the relevant documents to the Cessionaries. Without in any way limiting or derogating from the foregoing, the Cedent acknowledges and agrees that the Cessionaries shall be entitled to receive payment from such prior cessionary of such amounts as such prior cessionary shall receive in excess of the sums due to it by the Cedent.
- 4.4 It is agreed that the Cessionaries have entered into the Finance Documents on the strength of and relying on the warranties and representations in this clause 4, each of which shall be deemed to be separate warranties and representations, given without prejudice to any other warranty or representation, and deemed to be material representations inducing the Cessionaries to enter into the Finance Documents.
- 4.5 This Agreement is in addition to and not in substitution for any other security held or hereafter to be held by the Cessionaries from any party in connection with the Secured Obligations, or otherwise and the Cessionaries shall, without prejudice to their rights hereunder, be entitled to release any such additional security held by them.

5. UNDERTAKINGS BY THE CEDENT

- 5.1 The undertakings in this clause 5 shall remain in force from and after the Original Signature Date until released in accordance with clause 9 below.
- 5.2 The Cedent undertakes in favour of the Cessionaries and the Preference Share Agent that it shall:
- 5.2.1 at its cost do or permit to be done each and every act or thing which the Preference Share Agent may from time to time require to be done for the purposes of enforcing and preserving the Cessionaries' rights hereunder and in respect of the Collateral, and will allow its name to be used as and when required by the Preference Share Agent for that purpose;
 - 5.2.2 not knowingly take or omit to take any action the taking or omission of which will in any way adversely affect the interests of the Cessionaries in and to the Collateral;
 - 5.2.3 not create any Security Interest or permit any Security Interest to exist over the Collateral, other than as permitted in terms of the Finance Documents and not, save as expressly permitted under the Finance Documents, sell, assign, transfer or otherwise dispose of any of the Collateral;
 - 5.2.4 not, save as expressly permitted under the Finance Documents, give any consent, waiver or approval nor make any decision, demand or determination nor exercise any discretion nor exercise any option or election in relation to or in connection with the Collateral without the express prior written consent of the Preference Share Agent;
 - 5.2.5 furnish to the Preference Share Agent from time to time such information and reports regarding the Collateral as the Preference Share Agent may request; and
 - 5.2.6 procure that all amounts due and payable to it in respect of the Subject Shares or the Collateral (or part thereof) are paid directly into the BIC2 Collection Account, via STRATE and the Security Custodian if the Subject Shares are dematerialised at the relevant time, or otherwise in accordance with the instructions of the Preference Share Agent and the Account Bank and Agency Agreement.

6. EXERCISE OF RIGHTS

- 6.1 If, at any time during the currency of this Agreement, the Secured Obligations become due and payable in accordance with the provisions of the First Ranking Guarantee and are not paid when due in accordance with the terms thereof (taking into account any applicable grace period), the Preference Share Agent on behalf of the Cessionaries shall be entitled, and the Cedent hereby authorises the Preference Share Agent on behalf of the Cessionaries irrevocably and *in rem suam* without reference to the Cedent and, unless required by law, without first obtaining an order of court, to:
- 6.1.1 procure the registration of all or any of the Subject Shares into its name or the names of its nominees, or any other person, or to attend any general meeting of shareholders or members of any issuer of any Subject Shares as the Cedent's proxy or representative, to exercise any voting rights attaching to the Subject Shares or any of them in such manner as it may in its sole and absolute discretion deem fit, and to represent the Cedent in all respects at any such meeting;
 - 6.1.2 require from the Cedent all information necessary in the Preference Share Agent's opinion to effect recovery of any amounts contemplated in terms of this

- Agreement including, without limitation, the right to inspect the books and records of the Cedent and to make copies thereof;
- 6.1.3 demand, collect, recover, compromise and give a good discharge for any and all moneys received by the Cessionaries and/or the Preference Share Agent and/or payable in relation to the Collateral;
- 6.1.4 exercise in relation to the Collateral all such rights as the Cedent might then exercise in relation to the same or might, but for the terms of this Cession, so exercise;
- 6.1.5 obtain any additional and/or other Security Interest from the Cedent and/or from any other person whomsoever as security for the Secured Obligations (with the Cedent's concurrence or that of the third party, as the case may be);
- 6.1.6 receive all Distributions or payments paid from time to time on account of the Collateral, which payments and Distributions shall, if irrevocably received and retained by the Cessionaries, be applied *pro tanto* in discharge of the Cedent's liability to the Cessionaries in respect of the Secured Obligations;
- 6.1.7 to realise the Collateral or any part thereof (in relation to the Subject Shares, whether after registration of the Subject Shares into its name or the names of its nominees or any other person or without such registration) either by:
- 6.1.7.1 public auction; or
- 6.1.7.2 private treaty at fair value;
- 6.1.8 to take over the Collateral or any part thereof at a fair market value which, in the event of the Cedent disputing such value, shall be determined by the managing director (or equivalent) of an independent merchant bank agreed to by the Parties or, failing agreement within 5 Business Days, appointed by the President for the time being of the South African Institute of Chartered Accountants (or the successor body thereto) (which managing director (or equivalent) shall (i) act as an expert and not as an arbitrator and (ii) be instructed to make his determination within 10 (ten) Business Days after being requested to do so, and whose decision shall be final and binding and who shall determine the liability for his charges which shall be paid accordingly);
- 6.1.9 to apply the net proceeds of any sale (after all expenses of realisation) to, or set off the purchase price payable by it/them for the Collateral (or the relevant part thereof) against, the Cedent's indebtedness to the Cessionaries in respect of the Secured Obligations on the basis that any excess on realisation will be paid to the Cedent and any shortfall will remain as a debt due by the Cedent to the Cessionaries;
- 6.1.10 convey valid title in and to the Collateral (or any part thereof) to any purchaser thereof;
- 6.1.11 settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Collateral or in any way relating to this Agreement and execute releases or other discharges in relation thereto;
- 6.1.12 bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever, civil or criminal, in relation to the Collateral;

- 6.1.13 institute such legal proceedings or other action as the Preference Share Agent may deem reasonably necessary on behalf and in the name of the Cedent in respect of the Collateral (or any part thereof), and to proceed to the final determination thereof; and
 - 6.1.14 execute and do all such acts and things as the Preference Share Agent may consider necessary or proper for or in relation to any of the purposes aforesaid.
- 6.2 If at any time the Preference Share Agent on behalf of the Cessionaries becomes entitled to exercise its rights under clause 6.1, the Cedent hereby authorises and appoints the Preference Share Agent irrevocably and *in rem suam* with power of substitution as the Cedent's attorney and agent in the Cedent's name, place and stead to sign and execute:
- 6.2.1 any proxy in favour of the Cessionaries or their nominee to enable the Cessionaries to exercise any voting rights attaching to the Subject Shares or any of them;
 - 6.2.2 such documents as may be necessary:
 - 6.2.2.1 in order to render the Subject Shares or any of them negotiable including, without limitation, the signature of share transfer declarations;
 - 6.2.2.2 to receive payment of the purchase price of the Collateral (or any part thereof); and/or
 - 6.2.2.3 to enable the Cessionaries to exercise any of the rights granted to them herein; and
 - 6.2.3 all such documents and do all such things as may be necessary or desirable to give effect to this Agreement and to take any steps in pursuance of the rights and powers which the Cessionaries may have in terms of this Agreement.
- 6.3 Notwithstanding anything to the contrary contained herein, no payment obligations of the Cedent under any of the Finance Documents shall become due or payable prior to the Issue Date.

7. CONTINUING SECURITY

- 7.1 The provisions of this Agreement shall be and continue to be of full force and effect and binding on the Cedent notwithstanding:
- 7.1.1 the Preference Share Agent and/or the Cessionaries agreeing with the Cedent any variation or departure (however substantial) of or from the First Ranking Guarantee or any other Finance Document so that any such variation or departure shall, whatever its nature, be binding upon the Cedent in all circumstances, notwithstanding that it may increase or otherwise affect the liability of the Cedent; or
 - 7.1.2 the Preference Share Agent and/or the Cessionaries releasing or granting any time or any indulgence whatsoever to the Cedent under the First Ranking Guarantee or any other Finance Document or any contravention by the Cedent of the First Ranking Guarantee or any other Finance Document, or entering into any transaction or arrangements whatsoever with or in relation to the Cedent and/or any third party; or
 - 7.1.3 the Preference Share Agent and/or the Cessionaries taking, accepting, varying, dealing with, enforcing, abstaining from enforcing, surrendering or releasing any

- security for the obligations secured hereby in such manner as it thinks fit, or claiming, proving for, accepting or transferring any payment in respect of such obligations in any composition by, or winding up of, the Cedent and/or any third party or abstaining from so claiming, proving, accepting or transferring; or
- 7.1.4 the winding up, dissolution, administration, merger, amalgamation or reorganisation of the Cedent and/or any Cessionary and/or the Preference Share Agent or any change in their status, function, control or ownership; or
- 7.1.5 any of the obligations of the Cedent under the First Ranking Guarantee and/or any other Finance Document or any obligation of BFC2 under the Finance Documents being or becoming illegal, invalid, unenforceable or ineffective in any manner or respect whatsoever; or
- 7.1.6 any time or other indulgence being granted or agreed to be granted to the Cedent under the First Ranking Guarantee and/or any other Finance Document; or
- 7.1.7 any amendment to, or any variation, waiver or release of any of the obligations of the Cedent under the First Ranking Guarantee and/or any other Finance Document; or
- 7.1.8 any additional security from the Cedent or any other person for the Secured Obligations may not be obtained or protected or may be released or may cease to be held for any other reason; or
- 7.1.9 any of the Finance Documents are varied or novated in any way; and/or
- 7.1.10 any other act, event or omission which, but for this clause 7, might operate or might otherwise have operated to discharge, impair or otherwise affect any of the obligations of the Cedent herein contained or any of the rights, powers or remedies conferred upon the Cessionaries, whether by the First Ranking Guarantee, the other Finance Documents or by law.
- 7.2 The liabilities and obligations of the Cedent under this Agreement shall remain in force notwithstanding any settlement of account, act, omission, neglect, event or matter whatsoever, and in particular but without limitation, shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the liabilities and obligations of the Cedent under the First Ranking Guarantee or any other Finance Document. Without prejudice to its generality, the foregoing shall apply in relation to anything which would have discharged the Cedent (wholly or in part) or which would have afforded the Cedent with any legal or equitable defence, and in relation to any winding up or dissolution of, or any change in constitution or corporate identity or loss of corporate identity by the Cedent or any other person.
- 7.3 The Cedent shall render to the Cessionaries and/or the Preference Share Agent such assistance as the Cessionaries and/or the Preference Share Agent may require for the purposes of enforcing their rights in respect of the Collateral.

8. APPLICATION OF MONEYS AND PROCEEDS

- 8.1 After the security hereby constituted becomes enforceable, the Cedent shall, forthwith upon being so required by the Preference Share Agent, or the Preference Share Agent may, if the Cedent fails to comply with the Preference Share Agent's requirement, give notice to any person obliged to make payment of any moneys forming part of the Collateral directing such person to make all future payments of any monies forming part of the Collateral to such account as the Preference Share Agent may specify in writing. If the Cedent receives any payments on account of the Collateral after the security hereby constituted becomes enforceable, it shall forthwith pay such sums to the Preference Share Agent to be applied by

the Preference Share Agent in accordance with clause 8.2 and until so paid such monies shall be held upon trust by the Cedent for the Preference Share Agent.

- 8.2 The Preference Share Agent shall apply all moneys it receives under this Agreement in or towards satisfaction of the Secured Obligations in accordance with the BFC2 Priority of Payments (as this term is defined in the BFC2 MOI).
- 8.3 The Preference Share Agent has been appointed as the agent of the Cessionaries. Where this Agreement makes reference to the Preference Share Agent performing any function, exercising or enforcing any right, requiring the performance of any obligation or in any other manner whatsoever, such reference shall be to the Preference Share Agent acting as agent on behalf of the Cessionaries. Accordingly, the Cedent shall be entitled to rely on any written instructions received from the Preference Share Agent and on any written waivers, consents and approvals given by the Preference Share Agent as being that of the Cessionaries.

9. RELEASE

- 9.1 Notwithstanding anything to the contrary herein contained:
- 9.1.1 the relevant Collateral will be released when required pursuant to a Permitted Disposal; and
- 9.1.2 all the Collateral shall be released on the date, and in the manner provided for in clause 14.10 (*Payment of Indemnified Amount and/or SARS Amount and Release of Security*) of the BIC2 Preference Share Subscription Agreement.
- 9.2 The original of this Agreement shall be kept by the Preference Share Agent. Upon the release of the Cedent from liability under this Agreement, the original of this Agreement shall be delivered to the Cedent; provided that if at any time thereafter any of the Secured Obligations are reinstated, the original Agreement shall be returned forthwith to the Preference Share Agent.

10. AVOIDANCE OF PAYMENTS

Any settlement, discharge or release between the Cedent and the Cessionaries shall be conditional upon no security or payment granted or made to the Cessionaries by the Cedent or any other person being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, business rescue or liquidation for the time being in force and, in the event of such security or payment being so avoided or reduced, the Cessionaries shall be entitled to recover the value or amount of such security or payment from the Cedent and from the security created by or pursuant to this Agreement subsequently as if such settlement, discharge or release had not occurred. The Cedent agrees that, in such circumstances, this Agreement and the security hereby constituted shall be deemed to have remained in full force and effect notwithstanding any such assurance, security, guarantee, payment, release, settlement, discharge or arrangement.

11. CERTIFICATE

A certificate signed by any representative of the Preference Share Agent reflecting the amount of:

- 11.1 the Cedent's indebtedness to the Cessionaries in respect of the Secured Obligations; and
- 11.2 any costs or expenses incurred by the Cessionaries and/or the Preference Share Agent in the exercise of their rights herein and the net proceeds of any realisation of the Collateral,

shall, in the absence of manifest error, be *prima facie* evidence of the Cedent's indebtedness to the Cessionaries for the purpose of provisional sentence or summary judgment proceedings or for any other purpose.

12. RENUNCIATION OF LEGAL EXCEPTIONS

The Cedent hereby renounces the legal benefits and exceptions of excussion, division, *non numeratae pecuniae* (no money paid) and *non causa debiti* (no cause of debt), the Cedent declaring itself to be fully acquainted with the full meaning and effect of such legal benefits and exceptions and of this renunciation.

13. REMEDIES AND WAIVERS

- 13.1 The rights, powers and remedies provided by this Agreement are cumulative and are not, nor are they to be construed as, exclusive of any right of set-off or other rights, powers and remedies provided by law.
- 13.2 No failure on the part of the Cessionaries and/or the Preference Share Agent to exercise, or delay on the part of the Cessionaries and/or the Preference Share Agent in exercising, any of the rights, powers and remedies provided by this Agreement or by law shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise thereof or the exercise of any other such right, power or remedy.

14. FURTHER ASSURANCES

Without in any way limiting or derogating from any other provision of this Cession, the Cedent shall from time to time promptly execute, acknowledge, deliver, file and register all such additional documents, instruments, agreements, certificates, consents and assurances and do all such other lawful acts and things as may be necessary or desirable or as the Cessionaries and/or the Preference Share Agent may reasonably request from time to time in order to maintain or perfect the Security Interest intended to be constituted by this Agreement or to enable the Cessionaries to obtain the full benefits of this Agreement and to exercise and enforce their rights and remedies under this Agreement.

15. LIMITATION OF LIABILITY

- 15.1 The Cessionaries and the Preference Share Agent and their directors, officers, agents, employees and advisors shall not be liable for any loss or damage, whether direct, indirect, consequential or otherwise, suffered by the Cedent arising from any cause in connection with this Agreement (including any loss, liability, damage or expense which the Cedent may suffer as a consequence, directly or indirectly, of the Cessionaries and/or the Preference Share Agent lawfully exercising any of their rights in terms of this Agreement, failing to preserve, protect, or enforce the Collateral or failing to accept or collect any right, payment or other benefit relating to the Collateral), whether the loss or damage results from or arises in contract, delict or any other cause and whether this Agreement has been terminated or not, other than as a result of the gross negligence, wilful misconduct, dishonesty or breach of contract by the Cessionaries and/or the Preference Share Agent.
- 15.2 The Cessionaries and/or the Preference Share Agent shall have no responsibility to preserve, protect or enforce the Collateral or to accept or collect any right, payment or other benefit relating to any of the Collateral and shall not be obliged to furnish any security to the Cedent in this regard.
- 15.3 Without prejudice to the other rights in terms of this Agreement or at law of the Cessionaries and/or the Preference Share Agent, if at any time the Cessionaries and/or the Preference Share Agent takes any steps which the Cessionaries and/or the Preference Share Agent in their reasonable discretion deem necessary for the preservation, protection or enforcement of the Collateral or for the acceptance or collection of any right, payment or other benefit relating to any of the Collateral and either of the Cessionaries and/or the Preference Share Agent incur any cost or expense in so doing, then the Cedent shall forthwith upon demand reimburse the Cessionaries and/or the Preference Share Agent with the reasonable amount of such cost or expense.

16. SUCCESSORS AND ASSIGNS

- 16.1 The Cedent shall be not entitled to cede any of its rights or transfer or purport to transfer any of its obligations hereunder without the prior written consent of the Cessionaries.
- 16.2 The Preference Share Agent shall be entitled at any time to cede all or any of its rights and to delegate all or any of its obligations hereunder to any person who replaces the Preference Share Agent in accordance with the provisions of the Interfunder Agreement
- 16.3 The Cessionaries shall be entitled at any time to cede all or any of their rights and to delegate all or any of their obligations hereunder to any third party to which each of them is entitled to cede all or any of their rights and to delegate all or any of their obligations under the BFC2 Preference Share Subscription Agreement and/or to transfer any or all of the BFC2 Preference Shares pursuant to the Finance Documents. The Cedent hereby unconditionally and irrevocably consents to the splitting of claims against it which may result from or pursuant to or in consequence of any such cession and/or delegation by the Cessionaries and/or the Preference Share Agent.

17. WHOLE AGREEMENT, NO AMENDMENT

- 17.1 This Agreement constitutes the whole Agreement between the Parties relating to the subject matter hereof.
- 17.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any Agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 17.3 No oral *pactum de non petendo* shall be of any force or effect.
- 17.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 17.5 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

18. NOTICES

- 18.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Cession, whether in respect of notices or other documents or communications of whatsoever nature, the following addresses:
 - 18.1.1 the Cessionaries:

c/o the Preference Share Agent;

18.1.2 the Cedent:

Physical: 135 Rivonia Road
Sandown
Sandton
2196
South Africa

Email: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration

with a copy to:

MTN:

Physical: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

Email: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba; and

18.1.3 the Preference Share Agent:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

Email: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management: Investment Banking,

or at such other address, not being a post office box or *poste restante*, of which the Party concerned may notify the other in writing.

18.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice only by hand delivery, electronic mail or by courier.

18.3 Any Party may by notice to the other parties change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address, provided that the change shall become effective vis-à-vis that addressee on the 14th (fourteenth) Business Day from the deemed receipt of the notice by the addressee.

18.4 Any notice to a Party:

18.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery or if such delivery is not during ordinary business hours or such date is not a Business Day, on the immediately succeeding Business Day; or

18.4.2 sent by e-mail to its chosen e-mail address stipulated in clause 18.1 during ordinary business hours, shall be deemed to have been received on the date of despatch or if such delivery is not during ordinary business hours or such date is not a Business Day, on the immediately succeeding Business Day (unless the contrary is proved).

18.5 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 it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

19. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

20. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, all of which shall together constitute one and the same instrument.

21. LAW AND JURISDICTION

21.1 This Agreement shall be governed by and construed in accordance with the laws of South Africa.

21.2 The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

21.3 The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle Disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

21.4 Clauses 21.2 and 21.3 are for the benefit of the Cessionaries and the Preference Share Agent only. As a result, none of the Cessionaries nor the Preference Share Agent shall be prevented from taking proceedings relating to a Dispute in any other court with jurisdiction. To the extent allowed by law, the Cessionaries and/or the Preference Share Agent may take concurrent proceedings in any number of jurisdictions.

22. INDEPENDENT ADVICE

The Cedent acknowledges, in favour of the Cessionaries and the Preference Share Agent, that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions

of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Cedent acknowledges that all of the provisions of this Agreement have been negotiated as between the Parties and are part of the overall intention of the Parties in connection with this Agreement.

[SIGNATURE PAGES INTENTIONALLY LEFT BLANK]

[TO BE PLACED ONTO THE CEDENT'S LETTERHEAD.]

To: [◆] [Insert details of Security Custodian.]

Date: [◆]

Dear Sirs

CESSION AND PLEDGE OF SHARES

1. You currently hold the following securities ("**Subject Shares**") as Central Securities Depository Participant in your respective sub-register(s) pertaining to the issuers of the Subject Shares:

[◆] [*Insert details of the Subject Shares.*]

2. You are hereby notified that we have ceded and pledged all our right, title and interest in and to the Subject Shares as security to Momentum Metropolitan Life Limited (Registration No. 1904/002186/06), FirstRand Bank Limited (acting through its Rand Merchant Bank division) (Registration No. 1929/001225/06) and United Towers Proprietary Limited (Registration No. 1968/01555/07) ("**Cessionaries**") in terms of an amended and restated security cession and pledge dated [◆] ("**BIC2 Pledge and Cession**") for the proper and punctual performance of all our obligations in terms of a written guarantee agreement dated on or about the date of the BIC2 Pledge and Cession between us (as guarantor) and the Cessionaries.
3. You are hereby instructed to make the appropriate entries in the relevant securities account(s) to record this cession and pledge of the Subject Shares in favour of the Cessionaries, as contemplated in section 39 of the Financial Markets Act.
4. Please note that we shall, prior to any exercise by the Cessionaries of its rights in terms of the Security Cession, be entitled to exercise the voting rights in respect of the Subject Shares at any general meeting of the issuers thereof.
5. Please provide the Cessionaries with written confirmation that you have made such entries, substantially in accordance with the draft confirmation annexed hereto.

Yours faithfully

[◆] [*Insert name of the Cedent.*]

(duly authorised)

[TO BE PLACED ONTO THE LETTERHEAD OF THE SECURITY CUSTODIAN.]

To: The Preference Share Agent

And to: [◆] [Insert details of the Cedent.]

Date: [◆]

Dear Sirs

CESSION AND PLEDGE OF SHARES

1. We refer to the letter from MTN Zakhele Futhi (RF) (Registration No. 2016/268837/06) ("**Cedent**"), received together with a pro forma confirmation and a copy of the written cession and pledge agreement concluded *inter alia* between yourselves, as Preference Share Agent, the Cedent and the holders of certain BFC2 Preference Shares ("**Cessionaries**") on [◆] ("**BIC2 Pledge and Cession**").
2. We acknowledge that, in terms of the BIC2 Pledge and Cession, the Cedent cedes and pledges to the Cessionaries, as security for the proper and punctual performance by the Cedent of its obligations in terms of a written guarantee agreement dated on or about the date of the BIC2 Pledge and Cession between the Cedent and the Cessionaries, the following securities ("**Subject Shares**"): [◆] [Note: Insert details of the Subject Shares.]
3. We confirm that:
 - 3.1. we are a "*participant*" as defined in the Financial Markets Act, as amended ("**Act**");
 - 3.2. an appropriate entry has been made in the relevant trading account in accordance with section 39 of the Financial Markets Act, to record the relevant security created under this Revisionary Pledge and Cession, specifying the Cessionaries as the pledgee and cessionary, the interest of the Cessionaries in the Subject Shares and the date of [◆] on which the BIC2 Pledge and Cession was concluded;
 - 3.3. at the time of making such entries, no other pledge and/or cession entries had been made in respect of the Subject Shares in the respective sub-registers.
4. We further confirm that:
 - 4.1. should, prior to the Cessionaries exercising any of its rights in terms of the Security Cession, any of the Subject Shares be sub-divided, consolidated or converted into any other shares, the sub-divided, consolidated or converted shares shall automatically be subject to the terms of the Security Cession;
 - 4.2. the Cedent shall, prior to any exercise by the Cessionaries of its rights in terms of the Security Cession, be entitled to exercise the voting rights in respect of the Subject Shares at any general meeting of the issuers thereof; and

- 4.3. we shall hold the Subject Shares subject to the terms of the Act and the BIC2 Pledge and Cession and we shall not transfer any of the Subject Shares or any interest therein, except as instructed by the Preference Share Agent.

Yours faithfully

For: [◆] [*Insert details of the Security Custodian.*]

(duly authorised)

SCHEDULE 12: AMENDED AND RESTATED BIC2 ACCOUNT CESSION



(1) MTN ZAKHELE FUTHI (RF) LIMITED
(as Cedent)

(2) FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
(as BFC2 Preference Shareholder)

(3) MOMENTUM METROPOLITAN LIFE LIMITED
(as BFC2 Preference Shareholder)

(4) UNITED TOWERS PROPRIETARY LIMITED
(as BFC2 Preference Shareholder)

and

(5) FIRSTRAND BANK LIMITED
(6) (ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
(in its capacity as Preference Share Agent)

AMENDED AND RESTATED BIC2 ACCOUNT CESSION
in respect of the First Ranking Guarantee

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IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

1.1 words importing:

1.1.1 any one gender include the other two genders;

1.1.2 the singular include the plural and *vice versa*; and

1.1.3 natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2 Save as defined herein, terms defined in the BIC2 MOI (as defined below) shall bear the same meanings when used herein. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1 **"Agreement"** means this account cession agreement together with all annexures hereto;

1.2.2 **"BFC2"** means Jabisan 04 (RF) Proprietary Limited (Registration No. 2014/021122/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa and carrying on business at 18 Fricker Road, Johannesburg, 2196, South Africa;

1.2.3 **"BIC2 Account Rights"** means all the Cedent's rights, title and interests in and to:

1.2.3.1 the BIC2 Accounts;

1.2.3.2 all amounts standing to the credit of each such BIC2 Account from time to time; and

1.2.3.3 all contracts, warranties, remedies, security, indemnities and other undertakings in respect of the BIC2 Accounts,

and all of the Cedent's rights and interests therein and thereto of whatsoever nature and howsoever arising (whether actual, prospective or contingent, direct or indirect, arising under common law or statute, whether a claim for the payment of money or the performance of another obligation and whether or not those rights and interests were within the contemplation of the Parties at the date of this Agreement) and, individually, any property forming part thereof;

1.2.4 **"BIC2 Accounts"** means, collectively, the BIC2 Collection Account, the BIC2 Security Account, the BIC2 Provisions Account, BIC2 Tax Provisions Account, the BIC2 Top-Up Loan Account, the BIC2 Subject Shares

Securities Account, BIC2 Subscription Account and any other bank account the Cedent may open from time to time in accordance with the Finance Documents, save for the BIC2 Public Offer Accounts and the BIC2 Unclaimed Funds Account;

1.2.5 **"BIC2 MOI"** means the memorandum of incorporation of BIC2 from time to time;

1.2.6 **"BIC2 Unclaimed Funds Account"** means the bank account held by BIC2 with Nedbank Limited having the following account details:

Account Name: BEECO Unclaimed Account

Bank: Nedbank Limited

Branch Code: 198 765

Account Number: 1119 098 165;

1.2.7 **"Cedent"** means MTN Zakhele Futhi (RF) Limited (Registration No. 2016/268837/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;

1.2.8 **"Cessionaries"** means the BFC2 Preference Shareholders from time to time;

1.2.9 **"Collateral"** means the BIC2 Account Rights and any other assets designated as Collateral in terms of this Agreement;

1.2.10 **"Effective Date"** means 23 November 2016;

1.2.11 **"Original Signature Date"** means 21 August 2016;

1.2.12 **"Parties"** means the Preference Share Agent, the Cessionaries and the Cedent, and **"Party"** shall mean any one of them;

1.2.13 **"Security Interest"** means any agreement or arrangement having the effect of creating a security interest or right of possession, including any mortgage, pledge, cession, cession in *securitatem debiti*, lien, lease, right of retention, right of set-off or claim, hypothecation, assignment, security interest, title retention, trust arrangement, preferential arrangement or encumbrance whatever, however created or arising;

1.2.14 **"Secured Obligations"** means all moneys, liabilities and obligations which are now or at any time hereafter may be due, owing or payable by the Cedent, actually or contingently, under or pursuant to the First Ranking Guarantee, or as a consequence of any breach, non-performance, disclaimer or repudiation by the Cedent (or by any liquidator, trustee, executor, curator, administrator, business rescue practitioner or any similar officer of the Cedent) of any of its obligations under the First Ranking Guarantee, and (except as expressly otherwise provided) references to the Secured Obligations include references to any of them; and

- 1.2.15 **"Subject Shares Securities Account"** has the meaning ascribed thereto in the BIC2 MOI;
- 1.3 any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted or replaced from time to time;
- 1.4 any reference in this Agreement to any other Agreement or document copy shall be construed as a reference to such other Agreement as same may have been, or may from time to time be, amended, restated, varied, novated or supplemented;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.6 where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;
- 1.7 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day;
- 1.8 any reference to a Party includes that Party's successors-in-title and permitted assigns;
- 1.9 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.10 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.11 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.12 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.13 the Finance Documents shall to the extent permitted by Applicable Laws be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted assigns or liquidators, as the case may be;
- 1.14 the use of any expression in any Finance Document covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the parties to the Finance Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2. CESSION IN SECURITY

- 2.1 The Cedent hereby and with effect from the Effective Date, cedes in *securitatem debiti* the BIC2 Account Rights to and in favour of the Cessionaries as a continuing general covering collateral security, for the due, proper and timely payment and performance in full of all the Secured Obligations on the terms and conditions set out in this Agreement, which cession in security the Cessionaries hereby accept.
- 2.2 It is the intention of the Parties that the cession in security in clause 2.1 shall operate as a first ranking cession in security of each part and of all of the BIC2 Account Rights individually and collectively analogous to a pledge, and not as an out-and-out cession and transfer thereof.
- 2.3 The Cedent shall, by no later than the date on which any BIC2 Account is opened, notify the Account Bank at which each such BIC2 Account is held of this Agreement by furnishing the Account Bank with a notice substantially in the form of **Annexure A** hereto and delivering to the Preference Share Agent copies of all notices so furnished and signed letters of acknowledgment, substantially in the form of **Annexure B** hereto.

3. BIC2 ACCOUNTS

The Cedent shall, by no later than 1 (one) Business Day following the date on which any BIC2 Account is opened, deliver to the Security Custodian all and any documents evidencing such BIC2 Account.

4. REPRESENTATIONS AND WARRANTIES

- 4.1 The Cedent warrants and represents:
- 4.1.1 that, with effect from the Original Signature Date and on each day thereafter, it is a limited liability company, duly incorporated and validly existing under the laws of South Africa and has the power to own its assets and carry on its business as it is being conducted;
- 4.1.2 that, with effect from the date on which each BIC2 Account is opened with the Account Bank and on each day thereafter it is and will remain the sole and beneficial owner of the Collateral to the exclusion of all others and no person (other than (i) the Cessionaries under this Agreement; and (ii) MTN, MTN Holdings and each Subordinated MTN Acceded Nominee under the BIC2 Reversionary Account Cession) has an option or right of refusal over the Collateral;
- 4.1.3 that, with effect from the Original Signature Date and on each day thereafter, the Collateral pledged and ceded in security to the Cessionaries under this Agreement has not been pledged and/or ceded (either outright or as security), or otherwise disposed of or hypothecated, nor is it subject to any other rights in favour of any person, other than under and in terms of the BIC2 Reversionary Account Cession and the Security Interest created pursuant to this Agreement will have first ranking priority in respect of the BIC2 Accounts;
- 4.1.4 that, as at the Original Signature Date and the Refinancing Date, it has the power, authority and legal right to sign and perform this Agreement, that all obligations undertaken by it and the cession in security created under this

Agreement have been authorised by all necessary corporate action required by it and constitute its legal, valid and binding obligations enforceable against it in accordance with the terms of this Agreement and that the memorandum of incorporation of the Cedent does not place any limitations or restrictions on the Cedent to pledge and cede the Collateral as provided for in this Agreement; and

- 4.1.5 that, as at the Original Signature Date and on each day thereafter, its entry into the First Ranking Guarantee and this Agreement and the fulfilment of its obligations in accordance with the terms thereof and hereof do not contravene any law, regulation or any contractual obligation binding on it.
- 4.2 Save as expressly contemplated by, and subject to the provisions of, the Finance Documents, the Cedent acknowledges that it may not pledge, cede, assign or transfer or in any other manner create any Encumbrance whatsoever, or allow any Encumbrance whatsoever to be created, over or deal with the Collateral without the prior written consent of the Preference Share Agent.
- 4.3 Should the Collateral be subject to any right in breach of the representation and warranty in clause 4.1.3 then, without prejudice to any other rights that the Cessionaries may have, any reversionary or other interests the Cedent may have in the Collateral are also ceded in security to the Cessionaries and if the holder of that cession or right is entitled to possession of any of the documents referred to in clause 3 above, and it exercises that right, then the Cedent shall deliver photocopies of the documents to the Cessionaries, and as soon as the holder of that cession or right ceases to be entitled to possession or gives up possession, the Cedent shall deliver the relevant documents to the Cessionaries. Without in any way limiting or derogating from the foregoing, the Cedent acknowledges and agrees that the Cessionaries shall be entitled to receive payment from such prior cessionary of such amounts as such prior cessionary shall receive in excess of the sums due to it by the Cedent.
- 4.4 It is agreed that the Cessionaries have entered into the Transaction Documents to which they are a party on the strength of and relying on the warranties and representations in this clause 4, each of which shall be deemed to be separate warranties and representations, given without prejudice to any other warranty or representation, and deemed to be material representations inducing the Cessionaries to enter into the Transaction Documents to which they are a party.
- 4.5 This Agreement is in addition to and not in substitution for any other security held or hereafter to be held by the Cessionaries from any party in connection with the Secured Obligations, or otherwise and the Cessionaries shall, without prejudice to their rights hereunder, be entitled to release any such additional security held by them.

5. UNDERTAKINGS BY THE CEDENT

- 5.1 The undertakings in this clause 5 shall remain in force from and after the Original Signature Date until released in accordance with clause 9 below.
- 5.2 The Cedent undertakes in favour of the Cessionaries and the Preference Share Agent that it shall:
 - 5.2.1 at its cost do or permit to be done each and every act or thing which the Preference Share Agent may from time to time require to be done for the purposes of enforcing and preserving the Cessionaries' rights hereunder and

in respect of the Collateral, and will allow its name to be used as and when required by the Preference Share Agent for that purpose;

- 5.2.2 not knowingly take or omit to take any action the taking or omission of which will in any way adversely affect the interests of the Cessionaries in and to the Collateral;
- 5.2.3 not create any Security Interest or permit any Security Interest to exist over the Collateral, other than as permitted in terms of the Finance Documents and not, save as expressly permitted under the Finance Documents, sell, assign, transfer or otherwise dispose of any of the Collateral;
- 5.2.4 not, save as expressly permitted under the Finance Documents, give any consent, waiver or approval nor make any decision, demand or determination nor exercise any discretion nor exercise any option or election in relation to or in connection with the Collateral without the express prior written consent of the Preference Share Agent;
- 5.2.5 furnish to the Preference Share Agent from time to time such information and reports regarding the Collateral as the Preference Share Agent may request; and
- 5.2.6 procure that all amounts due and payable to it in respect of the Collateral (or part thereof) are applied in terms of the applicable Priority of Payments or otherwise in accordance with the written instructions of the Preference Share Agent and the Account Bank and Agency Agreement.

6. EXERCISE OF RIGHTS

- 6.1 If, at any time during the currency of this Agreement, the Secured Obligations become due and payable in accordance with the provisions of the First Ranking Guarantee and are not paid when due in accordance with the terms thereof (taking into account any applicable grace period), the Preference Share Agent on behalf of the Cessionaries shall be entitled, to declare the security hereby constituted to be enforceable whereupon it shall become enforceable and the Preference Share Agent on behalf of the Cessionaries may take any steps to enforce the security constituted by this Agreement.
- 6.2 The Cedent hereby declares that, upon the security constituted by this Cession becoming enforceable in accordance with the provisions of clause 6.1, the Cedent will hold the Collateral upon trust to convey, assign or otherwise deal with the Collateral in such manner, at such time and to such person (including the Account Bank) as the Preference Share Agent shall direct for application in or towards the discharge of the Secured Obligations in accordance with the BFC2 Priority of Payments (as this term is defined in the BFC2 Preference Share Subscription Agreement). The Cessionaries shall be entitled, without limitation, without first seeking recourse against the Cedent in any court and without any notice to the Cedent, to take over the Collateral for their own benefit and account and to apply the amount standing to the credit of the BIC2 Accounts against the Secured Obligations in accordance with the BFC2 Priority of Payments (as this term is defined in the BFC2 Preference Share Subscription Agreement).
- 6.3 Notwithstanding anything to the contrary contained herein, no payment obligations of the Cedent under any Finance Documents shall become due and payable prior to the Issue Date.

6.4 If at any time the Preference Share Agent on behalf of the Cessionaries becomes entitled to exercise its rights under clause 6.1, the Cedent hereby authorises and appoints the Preference Share Agent irrevocably and *in rem suam* with power of substitution as the Cedent's attorney and agent in the Cedent's name, place and stead to sign and execute:

6.4.1 such documents as may be necessary:

6.4.1.1 to receive payment of the purchase price of the Collateral (or any part thereof); and/or

6.4.1.2 to enable the Cessionaries to exercise any of the rights granted to them herein; and

6.4.2 all such documents and do all such things as may be necessary or desirable to give effect to this Agreement and to take any steps in pursuance of the rights and powers which the Cessionaries may have in terms of this Agreement.

7. CONTINUING SECURITY

7.1 The provisions of this Agreement shall be and continue to be of full force and effect and binding on the Cedent notwithstanding:

7.1.1 the Preference Share Agent and/or the Cessionaries agreeing with the Cedent any variation or departure (however substantial) of or from the First Ranking Guarantee or any other Finance Document so that any such variation or departure shall, whatever its nature, be binding upon the Cedent in all circumstances, notwithstanding that it may increase or otherwise affect the liability of the Cedent; or

7.1.2 the Preference Share Agent and/or the Cessionaries releasing or granting any time or any indulgence whatsoever to the Cedent under the First Ranking Guarantee or any other Finance Document or any contravention by the Cedent of the First Ranking Guarantee or any other Finance Document, or entering into any transaction or arrangements whatsoever with or in relation to the Cedent and/or any third party; or

7.1.3 the Preference Share Agent and/or the Cessionaries taking, accepting, varying, dealing with, enforcing, abstaining from enforcing, surrendering or releasing any security for the obligations secured hereby in such manner as it thinks fit, or claiming, proving for, accepting or transferring any payment in respect of such obligations in any composition by, or winding up of, the Cedent and/or any third party or abstaining from so claiming, proving, accepting or transferring; or

7.1.4 the winding up, dissolution, administration or reorganisation of the Cedent and/or any Cessionary and/or the Preference Share Agent or any change in their status, function, control or ownership; or

7.1.5 any of the obligations of the Cedent under the First Ranking Guarantee and/or any other Finance Document or any obligation of BFC2 under the Finance Documents being or becoming illegal, invalid, unenforceable or ineffective in any manner or respect whatsoever; or

- 7.1.6 any time or other indulgence being granted or agreed to be granted to the Cedent under the First Ranking Guarantee and/or any other Finance Document; or
 - 7.1.7 any amendment to, or any variation, waiver or release of any of the obligations of the Cedent under the First Ranking Guarantee and/or any other Finance Document; or
 - 7.1.8 any additional security from the Cedent or any other person for the Secured Obligations may not be obtained or protected or may be released or may cease to be held for any other reason; or
 - 7.1.9 any of the Finance Documents are varied or novated in any way; and/or
 - 7.1.10 any other act, event or omission which, but for this clause 7, might operate or might otherwise have operated to discharge, impair or otherwise affect any of the obligations of the Cedent herein contained or any of the rights, powers or remedies conferred upon the Cessionaries, whether by the First Ranking Guarantee, the other Finance Documents or by law.
- 7.2 The liabilities and obligations of the Cedent under this Agreement shall remain in force notwithstanding any settlement of account, act, omission, neglect, event or matter whatsoever, and in particular but without limitation, shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the liabilities and obligations of the Cedent under the First Ranking Guarantee or any other Finance Document. Without prejudice to its generality, the foregoing shall apply in relation to anything which would have discharged the Cedent (wholly or in part) or which would have afforded the Cedent with any legal or equitable defence, and in relation to any winding up or dissolution of, or any change in constitution or corporate identity or loss of corporate identity by the Cedent or any other person.
- 7.3 The Cedent shall render to the Cessionaries and/or the Preference Share Agent such assistance as the Cessionaries and/or the Preference Share Agent may require for the purposes of enforcing their rights in respect of the Collateral.

8. APPLICATION OF MONEYS AND PROCEEDS

- 8.1 After the security hereby constituted becomes enforceable, the Cedent shall, forthwith upon being so required by the Preference Share Agent, or the Preference Share Agent may, if the Cedent fails to comply with the Preference Share Agent's requirement, give notice to any person obliged to make payment of any moneys forming part of the Collateral directing such person to make all future payments of any monies forming part of the Collateral to such account as the Preference Share Agent may specify in writing notwithstanding anything to the contrary contained in the Account Bank and Agency Agreement. If the Cedent receives any payments on account of the Collateral after the security hereby constituted becomes enforceable, it shall forthwith pay such sums to the Preference Share Agent to be applied by the Preference Share Agent in accordance with clause 8.2 and until so paid such monies shall be held upon trust by the Cedent for the Preference Share Agent.
- 8.2 The Preference Share Agent shall apply all moneys it receives under this Agreement in or towards satisfaction of the Secured Obligations in accordance with the BFC2 Priority of Payments.

- 8.3 The Preference Share Agent has been appointed as the agent of the Cessionaries. Where this Agreement makes reference to the Preference Share Agent performing any function, exercising or enforcing any right, requiring the performance of any obligation or in any other manner whatsoever, such reference shall be to the Preference Share Agent acting as agent on behalf of the Cessionaries. Accordingly, the Cedent shall be entitled to rely on any written instructions received from the Preference Share Agent and on any written waivers, consents and approvals given by the Preference Share Agent as being that of the Cessionaries.

9. RELEASE

- 9.1 Notwithstanding anything to the contrary herein contained:

- 9.1.1 the relevant Collateral will be released when required pursuant to a Permitted Disposal or otherwise in accordance with the Account Bank and Agency Agreement; and
- 9.1.2 all the Collateral shall be released on the date, and in the manner provided for in clause 14.10 (*Payment of Indemnified Amount and/or SARS Amount and Release of Security*) of the BIC2 Preference Share Subscription Agreement.

- 9.2 The original of this Agreement shall be kept by the Preference Share Agent. Upon the release of the Cedent from liability under this Agreement, the original of this Agreement shall be delivered to the Cedent; provided that if at any time thereafter any of the Secured Obligations are reinstated, the original Agreement shall be returned forthwith to the Preference Share Agent.

10. AVOIDANCE OF PAYMENTS

Any settlement, discharge or release between the Cedent and the Cessionaries shall be conditional upon no security or payment granted or made to the Cessionaries by the Cedent or any other person being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, business rescue or liquidation for the time being in force and, in the event of such security or payment being so avoided or reduced, the Cessionaries shall be entitled to recover the value or amount of such security or payment from the Cedent and from the security created by or pursuant to this Agreement subsequently as if such settlement, discharge or release had not occurred. The Cedent agrees that, in such circumstances, this Agreement and the security hereby constituted shall be deemed to have remained in full force and effect notwithstanding any such assurance, security, guarantee, payment, release, settlement, discharge or arrangement.

11. CERTIFICATE

A certificate signed by any representative of the Preference Share Agent reflecting the amount of:

- 11.1 the Cedent's indebtedness to the Cessionaries in respect of the Secured Obligations; and

- 11.2 any costs or expenses incurred by the Cessionaries and/or the Preference Share Agent in the exercise of their rights herein and the net proceeds of any realisation of the Collateral,

shall, in the absence of manifest error, be prima facie evidence of the Cedent's indebtedness to the Cessionaries for the purpose of provisional sentence or summary judgment proceedings or for any other purpose.

12. RENUNCIATION OF LEGAL EXCEPTIONS

The Cedent hereby renounces the legal benefits and exceptions of excussion, division, non numeratae pecuniae (no money paid) and *non causa debiti* (no cause of debt), the Cedent declaring itself to be fully acquainted with the full meaning and effect of such legal benefits and exceptions and of this renunciation.

13. REMEDIES AND WAIVERS

- 13.1 The rights, powers and remedies provided by this Agreement are cumulative and are not, nor are they to be construed as, exclusive of any right of set-off or other rights, powers and remedies provided by law.
- 13.2 No failure on the part of the Cessionaries and/or the Preference Share Agent to exercise, or delay on the part of the Cessionaries and/or the Preference Share Agent in exercising, any of the rights, powers and remedies provided by this Agreement or by law shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise thereof or the exercise of any other such right, power or remedy.

14. FURTHER ASSURANCES

Without in any way limiting or derogating from any other provision of this Agreement, the Cedent shall from time to time promptly execute, acknowledge, deliver, file and register all such additional documents, instruments, agreements, certificates, consents and assurances and do all such other lawful acts and things as may be necessary or desirable or as the Cessionaries and/or the Preference Share Agent may reasonably request from time to time in order to maintain or perfect the Security Interest intended to be constituted by this Agreement or to enable the Cessionaries to obtain the full benefits of this Agreement and to exercise and enforce their rights and remedies under this Agreement.

15. LIMITATION OF LIABILITY

- 15.1 The Cessionaries and the Preference Share Agent and their directors, officers, agents, employees and advisors shall not be liable for any loss or damage, whether direct, indirect, consequential or otherwise, suffered by the Cedent arising from any cause in connection with this Agreement (including any loss, liability, damage or expense which the Cedent may suffer as a consequence, directly or indirectly, of the Cessionaries and/or the Preference Share Agent lawfully exercising any of their rights in terms of this Agreement, failing to preserve, protect, or enforce the Collateral or failing to accept or collect any right, payment or other benefit relating to the Collateral), whether the loss or damage results from or arises in contract, delict or any other cause and whether this Agreement has been terminated or not, other than as a result of the gross negligence, wilful misconduct, dishonesty or breach of contract by the Cessionaries and/or the Preference Share Agent.

- 15.2 The Cessionaries and/or the Preference Share Agent shall have no responsibility to preserve, protect or enforce the Collateral or to accept or collect any right, payment or other benefit relating to any of the Collateral and shall not be obliged to furnish any security to the Cedent in this regard.
- 15.3 Without prejudice to the other rights in terms of this Agreement or at law of the Cessionaries and/or the Preference Share Agent, if at any time the Cessionaries and/or the Preference Share Agent takes any steps which the Cessionaries and/or the Preference Share Agent in their discretion deem necessary for the preservation, protection or enforcement of the Collateral or for the acceptance or collection of any right, payment or other benefit relating to any of the Collateral and either of the Cessionaries and/or the Preference Share Agent incur any cost or expense in so doing, then the Cedent shall forthwith upon demand reimburse the Cessionaries and/or the Preference Share Agent with the amount of such cost or expense.

16. SUCCESSORS AND ASSIGNS

- 16.1 The Cedent shall be not entitled to cede any of its rights or transfer or purport to transfer any of its obligations hereunder without the prior written consent of the Cessionaries.
- 16.2 The Preference Share Agent shall be entitled at any time to cede all or any of its rights and to delegate all or any of its obligations hereunder to any person who replaces the Preference Share Agent in accordance with the provisions of the Interfunder Agreement.
- 16.3 The Cessionaries shall be entitled at any time to cede all or any of their rights and to delegate all or any of their obligations hereunder to any third party to which each of them is entitled to cede all or any of their rights and to delegate all or any of their obligations under the BFC2 Preference Share Subscription Agreement and/or to transfer any or all of the BFC2 Preference Shares pursuant to the Finance Documents. The Cedent hereby unconditionally and irrevocably consents to the splitting of claims against it which may result from or pursuant to or in consequence of any such cession and/or delegation by the Cessionaries and/or the Preference Share Agent.

17. WHOLE AGREEMENT, NO AMENDMENT

- 17.1 This Agreement constitutes the whole Agreement between the Parties relating to the subject matter hereof.
- 17.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any Agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 17.3 No oral *pactum de non petendo* shall be of any force or effect.

- 17.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 17.5 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

18. NOTICES

- 18.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of notices or other documents or communications of whatsoever nature, the following addresses:

18.1.1 the Cessionaries:

c/o the Preference Share Agent;

18.1.2 the Cedent:

Physical: 135 Rivonia Road
Sandown
Sandton
2196
South Africa

Email: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration

with a copy to:

MTN:

Physical: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

Email: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba; and

the Preference Share Agent:

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive

Sandton
2196

Email: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management: Investment
Banking,

or at such other address, not being a post office box or *poste restante*, of which the Party concerned may notify the other in writing.

- 18.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice only by hand delivery, electronic mail or by courier.
- 18.3 Any Party may by notice to the other parties change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address, provided that the change shall become effective vis-à-vis that addressee on the 14th (fourteenth) Business Day from the deemed receipt of the notice by the addressee.
- 18.4 Any notice to a Party:
- 18.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery or if such delivery is not during ordinary business hours or such date is not a Business Day, on the immediately succeeding Business Day; or
- 18.4.2 sent by e-mail to its chosen e-mail address stipulated in clause 18.1 during ordinary business hours, shall be deemed to have been received on the date of despatch or if such delivery is not during ordinary business hours or such date is not a Business Day, on the immediately succeeding Business Day (unless the contrary is proved).
- 18.5 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 it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

19. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

20. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, all of which shall together constitute one and the same instrument.

21. LAW AND JURISDICTION

21.1 This Agreement shall be governed by and construed in accordance with the laws of South Africa.

21.2 The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

21.3 The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle Disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

21.4 Clauses 21.2 and 21.3 are for the benefit of the Cessionaries and the Preference Share Agent only. As a result, none of the Cessionaries nor the Preference Share Agent shall be prevented from taking proceedings relating to a Dispute in any other court with jurisdiction. To the extent allowed by law, the Cessionaries and/or the Preference Share Agent may take concurrent proceedings in any number of jurisdictions.

22. INDEPENDENT ADVICE

The Cedent acknowledges, in favour of the Cessionaries and the Preference Share Agent, that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Cedent acknowledges that all of the provisions of this Agreement have been negotiated as between the Parties and are part of the overall intention of the Parties in connection with this Agreement.

[SIGNATURE PAGES INTENTIONALLY LEFT BLANK]

To: FirstRand Bank Limited (acting through its Rand Merchant Bank Division)
14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196

[◆] 2021

Cession of all of the rights, title and interests in and to the BIC2 Accounts, as defined in the account cession dated 21 August 2016 entered into between MTN Zakhele Futhi (RF) Limited (the "Cedent") (as cedent), and the BFC2 Preference Shareholders (as defined therein) (as cessionary) and Nedbank Limited (acting through its Corporate and Investment Bank division) (as the Preference Share Agent) as amended and restated from time to time (the "Account Cession")

We hereby give you notice that by way of the Account Cession, a copy of which is attached hereto, we have ceded and agreed to cede by way of first priority legal cession in *securitatem debiti* to the Cessionaries (as such term is defined in the Account Cession) as cessionary, all of the right, title and interest in and to each BIC2 Account and all net cash balances held therein.

Terms defined in the Account Cession, or defined therein by reference to another document, and not otherwise defined herein, shall have the same meaning in this notice and acknowledgement attached hereto (the "**Acknowledgement**").

All payments under or arising from any BIC2 Account shall be made in accordance with the Account Cession and the Finance Documents and following the security constituted by the Account Cession becoming enforceable in accordance with the provisions of clause 6.1 of the Account Cession and notification from the Preference Share Agent to you of such enforcement, otherwise only to (or with the prior approval of) the Preference Share Agent.

Please –

1. acknowledge receipt of this notice;
2. confirm the interest of the Preference Share Agent and that you have received no other notice of any prior cessions or charge or other encumbrance whatsoever in relation to the BIC2 Accounts,

and, for this purpose, we would be obliged if you would execute the Acknowledgment of this notice, in the form of such Acknowledgement enclosed and deliver same to the Preference Share Agent, and we hereby authorise you to comply with terms of this notice.

for and on behalf of

MTN Zakhele Futhi (RF) LIMITED

[To be typed on bank's letterhead]

To: FirstRand Bank Limited
(acting through its Rand Merchant Bank Division)
14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
(the "**Preference Share Agent**")

[◆] 2021

At the request of **MTN Zakhele Futhi (RF) Limited** we acknowledge receipt of the notice of cession dated [◆] 2021 (the "**Notice**") in respect of the BIC2 Accounts (as defined in the Notice).

We hereby acknowledge and agree to abide by the Account Cession (as defined in the Notice) notified to us by way of the Notice and confirm that we have not previously received any notice of any other cession or charges over or trust or encumbrance whatsoever in respect of any BIC2 Account.

We irrevocably undertake that, until receipt of notice by us from you confirming that you no longer have any interest in the BIC2 Accounts, we shall only permit moneys to be drawn, or debited to, the BIC2 Accounts in accordance with the provisions of the Account Bank and Agency Agreement (as such term is defined by way of incorporation by reference in the Notice).

For and on behalf of

FirstRand Bank Limited

(acting through its Rand Merchant Bank Division)

**SCHEDULE 13: AMENDED AND RESTATED BIC2 REVERSIONARY PLEDGE AND
CESSION**

AMENDED AND RESTATED BIC2 REVERSIONARY PLEDGE AND CESSION

in respect of certain Transaction Documents

entered into between

MTN ZAKHELE FUTHI (RF) LIMITED

(Registration No. 2016/268837/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa

and

MTN GROUP LIMITED

(Registration No. 1994/009584/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa (in its capacity as Cessionary)

and

MTN GROUP LIMITED

(Registration No. 1994/009584/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa (in its capacity as Agent)

and

MOBILE TELEPHONE NETWORKS HOLDINGS LIMITED

(Registration No. 1993/001411/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa (in its capacity as Cessionary)

IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

1.1. words importing:

1.1.1. any one gender include the other two genders;

1.1.2. the singular include the plural and *vice versa*; and

1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2. Save as defined herein, terms defined in the BIC2 MOI (as defined below) or the BIC2 Preference Share Subscription Agreement (whether directly or by means of incorporation by reference) , as the case may be, shall bear the same meanings when used herein (and shall continue to bear such meanings notwithstanding that the rights and obligations of the parties to the BIC2 Preference Share Subscription Agreement may terminate prior to termination of this Agreement). The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1. "**Agent**" means MTN, acting as agent on behalf of the Cessionaries in relation to this Agreement;

1.2.2. "**Agreement**" means this pledge and cession agreement together with all annexures hereto;

1.2.3. "**BIC2**" means MTN Zakhele Futhi (RF) Limited (Registration No. 2016/268837/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;

1.2.4. "**BIC2 MOI**" means the memorandum of incorporation of BIC2 from time to time;

1.2.5. "**BIC2 Preference Share Subscription Agreement**" means the preference share subscription agreement dated on or about the Original Signature Date between the Cedent, BFC2 and the Preference Share Agent pursuant to which, *inter alia*, BFC2 agreed to subscribe for the BIC2 Preference Shares in the issued share capital of the Cedent, all on the terms and subject to the conditions contained therein;

1.2.6. "**Cedent**" means BIC2;

- 1.2.7. **"Cessionaries"** means MTN, MTN Holdings, each Subordinated MTN Acceded Nominee and each Call Option MTN Acceded Nominee (it being recorded that provisions in favour of the Cessionaries constitute a *stipulatio alteri* in favour of all Subordinated MTN Acceded Nominees, all Call Option MTN Acceded Nominees and upon any person becoming a Subordinated MTN Acceded Nominee or a Call Option MTN Acceded Nominee, such person shall be deemed to have accepted the benefits under this Agreement);
- 1.2.8. **"Collateral"** means the Primary Reversionary Rights to the Subject Shares and any other assets designated as Collateral in terms of this Agreement;
- 1.2.9. **"Discharge Date"** means the date on which all obligations whatsoever (including any contingent obligations) owing to the Cessionaries under the Specified Transaction Documents have been irrevocably and unconditionally discharged in full;
- 1.2.10. **"Financial Markets Act"** means the Financial Markets Act (Act No. 19 of 2012);
- 1.2.11. **"MTN"** means MTN Group Limited (Registration No. 1994/009584/06), a public limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.12. **"Original Signature Date"** means 21 August 2016;
- 1.2.13. **"Parties"** means the Cessionaries, the Agent and the Cedent, and **"Party"** shall mean any one of them;
- 1.2.14. **"Primary Reversionary Rights"** means the primary reversionary right, title and interest of the Cedent in and to all and any of the assets granted as security under the BIC2 Pledge and Cession upon their release on the Security Release Date;
- 1.2.15. **"Secured Obligations"** means all moneys, liabilities and obligations which are now or at any time hereafter may be due, owing or payable by the Cedent, actually or contingently, to the Cessionaries or any of them under or pursuant to the Specified Transaction Documents, or as a consequence of any breach, non-performance, disclaimer or repudiation by the Cedent (or by any liquidator, trustee, executor, curator, administrator or any similar officer of the Cedent) of any of its obligations under such Specified Transaction Documents and (except as expressly otherwise provided) references to the Secured Obligations include references to any of them;
- 1.2.16. **"Security Interest"** means any agreement or arrangement having the effect of creating a security interest or right of possession, including any mortgage,

pledge, cession, cession in *securitatem debiti*, lien, lease, right of retention, right of set-off or claim, hypothecation, assignment, security interest, title retention, trust arrangement, preferential arrangement or encumbrance whatever, however created or arising;

- 1.2.17. **"Security Release Date"** means, in relation to the Subject Shares, the corresponding date on which the Subject Shares are released from the BIC2 Pledge and Cession (other than pursuant to a Permitted Disposal) in accordance with the provisions of such BIC2 Pledge and Cession;
- 1.2.18. **"Specified Transaction Documents"** means the Transaction Documents to which the Cedent and any Cessionary/ies are party or in respect of which a *stipulatio alteri* is given by the Cedent in favour of any Cessionary and such Cessionary has accepted the benefit thereof;
- 1.2.19. **"Subject Shares"** has the meaning ascribed thereto in the BIC2 MOI, and includes any and all of the Cedent's rights, title and interests therein and thereto of whatsoever nature and howsoever arising, whether actual, prospective or contingent, direct or indirect, arising under common law, contract or statute, whether a claim for the payment of money (whether in respect of principal or otherwise) or for the performance of another obligation, including (i) voting rights in relation to the Subject Shares, all rights and benefits in respect of any agreement for the Disposal or realisation thereof and all contracts, warranties, remedies, security, indemnities and other undertakings in respect thereof; and (ii) all rights to any monies, proceeds, shares issued in exchange or substitution of the Subject Shares, dividends and/or Distributions made or realised in respect of the Subject Shares (or any of them), whether or not those rights and interests were within the contemplation of the Parties at the Original Signature Date) and, individually, any property forming part thereof; and
- 1.2.20. **"Subject Shares Securities Account"** has the meaning ascribed thereto in the BIC2 MOI;
- 1.3. any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted or replaced from time to time;
- 1.4. any reference in this Agreement to any other Agreement or document copy shall be construed as a reference to such other Agreement as same may have been, or may from time to time be, amended, restated, varied, novated or supplemented;
- 1.5. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;

- 1.6. where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;
- 1.7. in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day;
- 1.8. any reference to a Party includes that Party's successors-in-title and permitted assigns;
- 1.9. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.10. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.11. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.12. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.13. the Specified Transaction Documents shall to the extent permitted by Applicable Laws be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed the Specified Transaction Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted assigns or liquidators, as the case may be; and
- 1.14. the use of any expression in any Specified Transaction Document covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the parties to the Specified Transaction Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2. **PLEDGE AND CESSION IN SECURITY**

- 2.1. The Cedent hereby with effect from the Issue Date, pledged and ceded in *securitatem debiti* the Primary Reversionary Rights to the Subject Shares to and in favour of the Cessionaries as a continuing general covering collateral security for the due, proper and timely payment

and performance in full of all the Secured Obligations on the terms and conditions set out in this Agreement, which pledge and cession in security the Cessionaries accepted.

- 2.2. It is the intention of the parties that the pledge and cession in security in clause 2.1 shall operate as a primary reversionary pledge and cession in security of each part and all of the Subject Shares, analogous to a pledge, and not as an out-and-out cession and transfer thereof.

3. THE SUBJECT SHARES

- 3.1. It is recorded that on or prior to the Refinancing Date, the Subject Shares were dematerialised.
- 3.2. The Parties record that upon the Security Release Date, the Agent shall hold the Subject Share Documents on behalf of the Cessionaries, and the Security Custodian shall deliver the Subject Share Documents to the Agent.
- 3.3. On the Refinancing Date and in accordance with the provisions of the Refinancing Agreement, the Cedent shall deliver to the Agent, in respect of the Subject Shares:
- 3.3.1. a copy of a letter from the Cedent to the Security Custodian, in substantially the form contained in **Annexure A** hereto; and
 - 3.3.2. an original letter from the Security Custodian, in substantially the form contained in **Annexure B** hereto.
- 3.4. To the extent that, at any time after the Original Signature Date and after the Security Release Date in relation to the Subject Shares, the Subject Shares at any time comprise any securities which have not been dematerialised:
- 3.4.1. the Cedent shall forthwith after becoming the holder of such securities, deliver the certificates in respect of such securities to the Agent, together with a valid transfer form for the transfer of such securities, duly executed by or on behalf of the transferor and in blank as to transferee; and
 - 3.4.2. the Agent shall be entitled to retain possession of such certificates and transfer forms and to deal with them in accordance with the terms of this Agreement, until such time as this Agreement terminates in accordance with its terms, at which time the certificates and the transfer forms shall be returned to the Cedent (or its nominee).
- 3.5. Save for the Subject Shares issued on the Issue Date, which are governed by the provisions of clause 3.3, should any of the Subject Shares which are certificated as of the date of delivery be dematerialised at any time thereafter, the Cedent shall (prior to the Security Release Date in relation to such Subject Shares) ensure that such shares are held in an

account with the Security Custodian in accordance with the BIC2 Pledge and Cession and shall (after the Security Release Date) ensure that such shares are held in an account with Nedbank Limited (acting through its Nedbank Investor Services division) (or any other person approved in writing by the Agent) ("**Approved Custodian**") and the Cedent shall forthwith, upon the happening of that event at any time after the Security Release Date, deliver to the Agent a written acknowledgement signed by or on behalf of the Approved Custodian, confirming and specifying (to the Agent's satisfaction):

- 3.5.1. the Cedent's ownership of the relevant Subject Shares and that such shares are held by the Approved Custodian;
 - 3.5.2. the entry, in accordance with section 39 of the Financial Markets Act and the applicable rules of the relevant central securities depository, of the Security Interest over the Subject Shares in the Subject Shares Securities Account created by this Agreement in favour of the Agent in the securities account held by the Cedent with the Approved Custodian of the Cessionaries' interest in accordance with this Agreement;
 - 3.5.3. that the Approved Custodian will not remove the entry referred to in clause 3.5.2 nor will the relevant Subject Shares be transferred to a third party without the written consent of the Agent first having been obtained; and
 - 3.5.4. save for the BIC2 Pledge and Cession, no other Security Interest was noted against the relevant Subject Shares at the time that the entry referred to in clause 3.5.2 was made.
- 3.6. Without in any way limiting or derogating from any other provision hereof, if at any time hereafter, any Additional Shares are issued to or acquired by the Cedent for any reason whatsoever after the Security Release Date, then:
- 3.6.1. if such further shares are dematerialised, they shall be subject to this Agreement and the Cedent hereby irrevocably nominates, constitutes and appoints the Agent as its lawful attorney and agent, with full power and authority, to forthwith instruct the Approved Custodian to hold them in the securities account held by the Cedent with the Approved Custodian in accordance with this Agreement; or
 - 3.6.2. if such shares are materialised, then the Cedent shall deliver the corresponding share certificates and share transfer forms to the Agent, accompanied by undated share transfer declarations in respect thereof duly signed by or on behalf of the transferor as registered holder/s thereof and in blank as to transferee, together with certified copies of such other irrevocable resolutions, consents and authorities as may be required for the transfer of such Subject Shares.

4. REPRESENTATIONS AND WARRANTIES

4.1. The Cedent warrants and represents:

- 4.1.1. that, with effect from the Issue Date and on each day thereafter, it is a limited liability company, duly incorporated and validly existing under the laws of South Africa and has the power to own its assets and carry on its business as it is being conducted;
- 4.1.2. that, as at the Issue Date and on each day thereafter it is and will remain the sole and beneficial owner of the Collateral to the exclusion of all others and no person (other than the cessionaries under the BIC2 Pledge and Cession) has an option or right of refusal over the Collateral;
- 4.1.3. that, as at the Issue Date and on each day thereafter, and other than pursuant to the BIC2 Pledge and Cession, the Cedent's right, title and interest in and to the Collateral has not been pledged and/or ceded (either outright or as security), discounted, factored, mortgaged under notarial bond or otherwise, or otherwise disposed of or hypothecated, nor is it subject to any other rights in favour of any person (including, without limitation, any rights of pre-emption) and the Cedent's Primary Reversionary Rights have not been pledged and/or ceded (either outright or as security), discounted, factored, mortgaged under notarial bond or otherwise, or otherwise disposed of or hypothecated, nor is it subject to any other rights in favour of any person (including, without limitation, any rights of pre-emption) other than pursuant to the BIC2 Pledge and Cession;
- 4.1.4. that, on the Original Signature Date and the Refinancing Date, it has the power, authority and legal right to sign and perform this Agreement, that all obligations undertaken by it and the pledge and cession in security created under this Agreement have been authorised by all necessary corporate action required by it and constitute its legal, valid and binding obligations enforceable against it in accordance with the terms of this Agreement and that the memorandum of incorporation of the Cedent does not place any limitations or restrictions on the Cedent to pledge and cede the Collateral as provided for in this Agreement;
- 4.1.5. that, with effect from the Issue Date and on each day thereafter, it is required to give notice to or obtain consents or waivers from any person in connection with the pledge and cession of any of the Subject Shares, all such notices have been given and consents or waivers have been obtained before the Issue Date and are in full force and effect; and
- 4.1.6. that, on the Original Signature Date and on each day thereafter, its entry into the Specified Transaction Documents and this Agreement and the fulfilment of

its obligations in accordance with the terms thereof and hereof do not contravene any law, regulation or any contractual obligation binding on it.

- 4.2. Save as expressly contemplated by, and subject to the provisions of, the Specified Transaction Documents, the Cedent acknowledges that it may not pledge, cede, assign or transfer or in any other manner create any Encumbrance whatsoever, or allow any Encumbrance whatsoever to be created, over or deal with the Collateral without the prior written consent of the Agent.
- 4.3. Without prejudice to any other rights that the Cessionaries may have, to the extent the Collateral has been pledged and/or ceded (either outright or as security), discounted, factored, mortgaged under notarial bond or otherwise, or otherwise disposed of or hypothecated, or is subject to any other rights in favour of any person in breach of the representation and warranty in clause 4.1.3 then, without limitation, any reversionary or other interests the Cedent may have in and to the Collateral are also ceded in security to the Cessionaries and if the holder of that cession or right is entitled to possession of any of the documents referred to in clause 3, and it exercises that right, then the Cedent shall deliver photocopies of the documents to the Agent, and as soon as the holder of that cession or right ceases to be entitled to possession or gives up possession, the Cedent shall deliver the relevant documents to the Agent. Without in any way limiting or derogating from the foregoing, the Cedent acknowledges and agrees that the Agent and/or the Cessionaries shall be entitled to receive payment from such prior cessionary of such amounts as such prior cessionary shall receive in excess of the sums due to it by the Cedent.
- 4.4. It is agreed that the Cessionaries have entered into the Specified Transaction Documents on the strength of and relying on the warranties and representations in this clause 4, each of which shall be deemed to be separate warranties and representations, given without prejudice to any other warranty or representation, and deemed to be material representations inducing the Cessionaries to enter into the Specified Transaction Documents.
- 4.5. This Agreement is in addition to and not in substitution for any other security held or hereafter to be held by the Cessionaries and/or the Agent from any party in connection with the Secured Obligations, or otherwise and the Cessionaries shall, without prejudice to their rights hereunder, be entitled to release any such additional security held by them.

5. UNDERTAKINGS BY THE CEDENT

- 5.1. The undertakings in this clause 5 shall remain in force from and after the Original Signature Date and until the performance and irrevocable payment and discharge in full of the Secured Obligations.

5.2. The Cedent undertakes in favour of the Agent and the Cessionaries that it shall, subject to the Finance Documents:

- 5.2.1. at its cost do or permit to be done each and every act or thing which the Agent may from time to time require to be done for the purposes of enforcing and preserving the Cessionaries' rights hereunder and in respect of the Collateral, and will allow its name to be used as and when required by the Agent for that purpose;
- 5.2.2. not knowingly take or omit to take any action the taking or omission of which will in any way adversely affect the interests of the Cessionaries in and to the Collateral;
- 5.2.3. save in respect of the Security Interests created in terms of the BIC2 Pledge and Cession and this Agreement, not create any Security Interest or permit any Security Interest to exist over the Subject Shares, other than pursuant to this Agreement and the BIC2 Pledge and Cession and not, save as expressly permitted under the Specified Transaction Documents, sell, assign, transfer or otherwise dispose of any of the Collateral;
- 5.2.4. not, save as expressly permitted under the Specified Transaction Documents, give any consent, waiver or approval nor make any decision, demand or determination nor exercise any discretion nor exercise any option or election in relation to or in connection with the Collateral without the express prior written consent of the Agent;
- 5.2.5. furnish to the Agent from time to time such information and reports regarding the Collateral as the Agent may request and which information shall be provided promptly upon delivery of a request from the Agent; and
- 5.2.6. procure that all amounts due and payable to it in respect of the Subject Shares or the Collateral (or part thereof) are paid directly into the BIC2 Collection Account, via STRATE and the Security Custodian if the Subject Shares are dematerialised at the relevant time, or otherwise in accordance with the written instructions of the Preference Share Agent and the Account Bank and Agency Agreement or, after the Security Release Date, in accordance with the instructions of the Agent.

6. EXERCISE OF RIGHTS

- 6.1. If, at any time during the currency of this Agreement, the Secured Obligations become due and payable in accordance with the provisions of any of the Specified Transaction Documents to which the Cedent and any Cessionary are party and are not paid when due in accordance with the terms thereof (taking into account any applicable grace period), the

Agent on behalf of the Cessionaries shall be entitled, and the Cedent hereby authorises the Agent on behalf of the Cessionaries irrevocably and *in rem suam* without reference to the Cedent and, unless required by law, without first obtaining an order of court, to, at any time after the Security Release Date:

- 6.1.1. procure the registration of all or any of the Subject Shares into its name or the names of its nominees, or any other person, or to attend any general meeting of shareholders or members of any issuer of any Subject Shares as the Cedent's proxy or representative, to exercise any voting rights attaching to the Subject Shares or any of them in such manner as it may in its sole and absolute discretion deem fit, and to represent the Cedent in all respects at any such meeting;
- 6.1.2. require from the Cedent all information necessary in the Agent's opinion to effect recovery of any amounts contemplated in terms of this Agreement including, without limitation, the right to inspect the books and records of the Cedent and to make copies thereof;
- 6.1.3. demand, collect, recover, compromise and give a good discharge for any and all moneys received by the Agent or the Cessionaries and/or payable in relation to the Collateral;
- 6.1.4. exercise in relation to the Collateral all such rights as the Cedent might then exercise in relation to the same or might, but for the terms of this Cession, so exercise;
- 6.1.5. obtain any additional and/or other Security Interest from the Cedent and/or from any other person whomsoever as security for the Secured Obligations (with the Cedent's concurrence or that of the third party, as the case may be);
- 6.1.6. receive all Distributions or payments paid from time to time on account of the Collateral, which payments and Distributions shall, if irrevocably received and retained by the Cessionaries, be applied *pro tanto* in discharge of the Cedent's liability to the Cessionaries in respect of the Secured Obligations;
- 6.1.7. to realise the Collateral or any part thereof (in relation to the Subject Shares, whether after registration of the Subject Shares into its name or the names of its nominees or any other person or without such registration) either by:
 - 6.1.7.1. public auction; or
 - 6.1.7.2. private treaty at fair value;
- 6.1.8. to take over the Collateral or any part thereof at a fair market value which, in the event of the Cedent disputing such value, shall be determined by the managing

director (or equivalent) of an independent merchant bank agreed to by the Parties or, failing agreement within 5 Business Days, appointed by the President for the time being of the South African Institute of Chartered Accountants (or the successor body thereto) (which managing director (or equivalent) shall (i) act as an expert and not as an arbitrator and (ii) be instructed to make his determination within 10 (ten) Business Days after being requested to do so, and whose decision shall be final and binding and who shall determine the liability for his charges which shall be paid accordingly);

- 6.1.9. to apply the net proceeds of any sale (after all expenses of realisation) to, or set off the purchase price payable by it/them for the Collateral (or the relevant part thereof) against, the Cedent's indebtedness to the Cessionaries in respect of the Secured Obligations on the basis that any excess on realisation will be paid to the Cedent and any shortfall will remain as a debt due by the Cedent to the Cessionaries;
 - 6.1.10. convey valid title in and to the Collateral (or any part thereof) to any purchaser thereof;
 - 6.1.11. settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Collateral or in any way relating to this Agreement and execute releases or other discharges in relation thereto;
 - 6.1.12. bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever, civil or criminal, in relation to the Collateral;
 - 6.1.13. institute such legal proceedings or other action as the Cessionaries may deem reasonably necessary on behalf and in the name of the Cedent in respect of the Collateral (or any part thereof), and to proceed to the final determination thereof; and
 - 6.1.14. execute and do all such acts and things as the Agent may consider necessary or proper for or in relation to any of the purposes aforesaid.
- 6.2. If at any time the Agent on behalf of the Cessionaries becomes entitled to exercise its rights under clause 6.1, the Cedent hereby authorises and appoints the Agent irrevocably and *in rem suam* with power of substitution as the Cedent's attorney and agent in the Cedent's name, place and stead to sign and execute:
- 6.2.1. any proxy in favour of the Cessionaries or their nominee to enable the Cessionaries to exercise any voting rights attaching to the Subject Shares or any of them;

- 6.2.2. such documents as may be necessary:
 - 6.2.2.1. in order to render the Subject Shares or any of them negotiable including, without limitation, the signature of share transfer declarations;
 - 6.2.2.2. to receive payment of the purchase price of the Collateral (or any part thereof); and/or
 - 6.2.2.3. to enable the Cessionaries to exercise any of the rights granted to them herein; and
- 6.2.3. all such documents and do all such things as may be necessary or desirable to give effect to this Agreement and to take any steps in pursuance of the rights and powers which the Agent and/or Cessionaries may have in terms of this Agreement.
- 6.3. Notwithstanding anything to the contrary contained herein, no payment obligations of the Cedent under any Finance Documents shall become due or payable prior to the Issue Date.

7. CONTINUING SECURITY

- 7.1. The provisions of this Agreement shall be and continue to be of full force and effect and binding on the Cedent notwithstanding:
 - 7.1.1. the Agent and/or the Cessionaries agreeing with the Cedent any variation or departure (however substantial) of or from any of the Specified Transaction Documents so that any such variation or departure shall, whatever its nature, be binding upon the Cedent in all circumstances, notwithstanding that it may increase or otherwise affect the liability of the Cedent; or
 - 7.1.2. the Agent and/or the Cessionaries releasing or granting any time or any indulgence whatsoever to the Cedent under any of the Specified Transaction Documents to which the Cedent and any Cessionary are party or any contravention by the Cedent of any of the Specified Transaction Documents to which the Cedent and any Cessionary are party, or entering into any transaction or arrangements whatsoever with or in relation to the Cedent and/or any third party; or
 - 7.1.3. the Agent and/or the Cessionaries taking, accepting, varying, dealing with, enforcing, abstaining from enforcing, surrendering or releasing any security for the obligations secured hereby in such manner as it thinks fit, or claiming, proving for, accepting or transferring any payment in respect of such obligations in any composition by, or winding up of, the Cedent and/or any third party or abstaining from so claiming, proving, accepting or transferring; or

- 7.1.4. the winding up, dissolution, administration or reorganisation of the Cedent and/or any of the Cessionaries or the Agent or any change in their status, function, control or ownership; or
 - 7.1.5. any of the obligations of the Cedent under any of the Specified Transaction Documents to which the Cedent and any Cessionary are party being or becoming illegal, invalid, unenforceable or ineffective in any manner or respect whatsoever; or
 - 7.1.6. any time or other indulgence being granted or agreed to be granted to the Cedent under any of the Specified Transaction Documents to which the Cedent and any Cessionary are party; or
 - 7.1.7. any amendment to, or any variation, waiver or release of any of the obligations of the Cedent under any of the Specified Transaction Documents to which the Cedent and any Cessionary are party; or
 - 7.1.8. any additional security from the Cedent or any other person for the Secured Obligations may not be obtained or protected or may be released or may cease to be held for any other reason; or
 - 7.1.9. any of the Specified Transaction Documents are varied or novated in any way; and/or
 - 7.1.10. any other act, event or omission which, but for this clause 7, might operate or might otherwise have operated to discharge, impair or otherwise affect any of the obligations of the Cedent herein contained or any of the rights, powers or remedies conferred upon the Agent and/or the Cessionaries, whether by the Specified Transaction Documents to which the Cedent and any Cessionary are party or by law.
- 7.2. The liabilities and obligations of the Cedent under this Agreement shall remain in force notwithstanding any settlement of account, act, omission, neglect, event or matter whatsoever, and in particular but without limitation, shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the liabilities and obligations of the Cedent under the Specified Transaction Documents to which the Cedent and any Cessionary are party. Without prejudice to its generality, the foregoing shall apply in relation to anything which would have discharged the Cedent (wholly or in part) or which would have afforded the Cedent with any legal or equitable defence, and in relation to any winding up or dissolution of, or any change in constitution or corporate identity or loss of corporate identity by the Cedent or any other person.

- 7.3. Subject to the Finance Documents, the Cedent shall render to the Agent and/or the Cessionaries such assistance as the Agent and/or the Cessionaries may require for the purposes of enforcing their rights in respect of the Collateral.

8. APPLICATION OF MONEYS AND PROCEEDS

- 8.1. After the security hereby constituted becomes enforceable, the Cedent shall, forthwith upon being so required by the Agent, or the Agent may, if the Cedent fails to comply with the Agent's requirement, give notice to any person obliged to make payment of any moneys forming part of the Collateral directing such person to make all future payments of any monies forming part of the Collateral to such account as the Agent may specify in writing. If the Cedent receives any payments on account of the Collateral after the security hereby constituted becomes enforceable, it shall forthwith pay such sums to the Agent to be applied by the Agent in accordance with clause 8.2 and until so paid such monies shall be held upon trust by the Cedent for the Cessionaries.
- 8.2. The Agent shall apply all moneys it receives under this Agreement in or towards satisfaction of the Secured Obligations in such order as it deems fit and any surplus after the full, final and irrevocable satisfaction of the Secured Obligations shall be paid to the Cedent.

9. RELEASE

- 9.1. Notwithstanding anything to the contrary herein contained:
- 9.1.1. the relevant Collateral will be released when required pursuant to a Permitted Disposal;
 - 9.1.2. all the Collateral shall be released upon the irrevocable discharge in full of the Cedent's obligations under the Specified Transaction Documents.
- 9.2. The original of this Agreement shall be kept by the Agent. Upon the release of the Cedent from liability under this Agreement, the original of this Agreement shall be delivered to the Cedent; provided that if at any time thereafter any of the Secured Obligations are reinstated, the original Agreement shall be returned forthwith to the Agent.

10. AVOIDANCE OF PAYMENTS

Any settlement, discharge or release between the Cedent and the Cessionaries shall be conditional upon no security or payment granted or made to the Cessionaries by the Cedent or any other person being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, business rescue or liquidation for the time being in force and, in the event of such security or payment being so avoided or reduced, the Cessionaries shall be entitled to recover the value or amount of such security or payment from the Cedent and from the security created by or pursuant to this Agreement subsequently as if such settlement, discharge or release had not occurred. The Cedent agrees that, in such circumstances, this Agreement and the security hereby

constituted shall be deemed to have remained in full force and effect notwithstanding any such assurance, security, guarantee, payment, release, settlement, discharge or arrangement.

11. CERTIFICATE

A certificate signed by the Agent reflecting the amount of:

11.1. the Cedent's indebtedness to the Cessionaries in respect of the Secured Obligations; and

11.2. any costs or expenses incurred by the Agent and/or the Cessionaries in the exercise of their rights herein and the net proceeds of any realisation of the Collateral,

shall, in the absence of manifest error, be *prima facie* evidence of the Cedent's indebtedness to the Cessionaries for the purpose of provisional sentence or summary judgment proceedings or for any other purpose.

12. RENUNCIATION OF LEGAL EXCEPTIONS

The Cedent hereby renounces the legal benefits and exceptions of excussion, division, *non numeratae pecuniae* (no money paid) and *non causa debiti* (no cause of debt), the Cedent declaring itself to be fully acquainted with the full meaning and effect of such legal benefits and exceptions and of this renunciation.

13. REMEDIES AND WAIVERS

13.1. The rights, powers and remedies provided by this Agreement are cumulative and are not, nor are they to be construed as, exclusive of any right of set-off or other rights, powers and remedies provided by law.

13.2. No failure on the part of the Cessionaries and/or the Agent to exercise, or delay on the part of the Cessionaries and/or the Agent in exercising, any of the rights, powers and remedies provided by this Agreement or by law shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise thereof or the exercise of any other such right, power or remedy.

14. FURTHER ASSURANCES

Subject to the Finance Documents, without in any way limiting or derogating from any other provision of this Cession, the Cedent shall from time to time promptly execute, acknowledge, deliver, file and register all such additional documents, instruments, agreements, certificates, consents and assurances and do all such other lawful acts and things as may be necessary or desirable or as the Agent may reasonably request from time to time in order to maintain or perfect the Security Interest intended to be constituted by this Agreement or to enable the Cessionaries to obtain the full benefits of this Agreement and to exercise and enforce their rights and remedies under this Agreement.

15. LIMITATION OF LIABILITY

- 15.1. Neither the Agent nor the Cessionaries and their directors, officers, agents, employees and advisors shall be liable for any loss or damage, whether direct, indirect, consequential or otherwise, suffered by the Cedent arising from any cause in connection with this Agreement (including any loss, liability, damage or expense which the Cedent may suffer as a consequence, directly or indirectly, of the Cessionaries and/or the Agent lawfully exercising any of their rights in terms of this Agreement, failing to preserve, protect, or enforce the Collateral or failing to accept or collect any right, payment or other benefit relating to the Collateral), whether the loss or damage results from or arises in contract, delict or any other cause and whether this Agreement has been terminated or not, other than as a result of the gross negligence, wilful misconduct, dishonesty or breach of contract by the Cessionaries and/or the Agent.
- 15.2. Neither the Cessionaries nor the Agent shall have any responsibility to preserve, protect or enforce the Collateral or to accept or collect any right, payment or other benefit relating to any of the Collateral and shall not be obliged to furnish any security to the Cedent in this regard.
- 15.3. Without prejudice to the other rights in terms of this Agreement or at law of the Cessionaries and/or the Agent, if at any time the Agent and/or the Cessionaries takes any steps which the Agent and/or the Cessionaries in their reasonable discretion deem necessary for the preservation, protection or enforcement of the Collateral or for the acceptance or collection of any right, payment or other benefit relating to any of the Collateral and either of the Agent and/or the Cessionaries incur any direct cost or expense in so doing, then the Cedent shall forthwith upon demand reimburse the Agent and/or the Cessionaries with the reasonable amount of such cost or expense.

16. SUCCESSORS AND ASSIGNS

- 16.1. The Cedent shall be not entitled to cede any of its rights or transfer or purport to transfer any of its obligations hereunder without the prior written consent of the Cessionaries.
- 16.2. Each Cessionary shall be entitled at any time to cede all or any of its rights and to delegate all or any of its obligations hereunder to any third party to which each of them is entitled to transfer any or all of its rights under any Specified Transaction Document. The Cedent hereby unconditionally and irrevocably consents to the splitting of claims against it which may result from or pursuant to or in consequence of any such cession and/or delegation by the Cessionaries.

17. WHOLE AGREEMENT, NO AMENDMENT

- 17.1. This Agreement constitutes the whole Agreement between the Parties relating to the subject matter hereof.

- 17.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any Agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 17.3. No oral *pactum de non petendo* shall be of any force or effect.
- 17.4. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 17.5. To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

18. NOTICES

- 18.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Cession, whether in respect of notices or other documents or communications of whatsoever nature, the following addresses:

18.1.1. the Agent and the Cessionaries:

Physical:	216 14 th Avenue Fairland Roodepoort 2195 South Africa
E-mail:	Kholekile.Ndamase@mtn.com Thobeka.Sishuba@mtn.com LegalNotices@mtn.com
Attention:	Kholekile Ndamase Thobeka Sishuba

18.1.2. the Cedent:

Physical: 135 Rivonia Road
Sandown
Sandton
2196
South Africa

Email: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration

or at such other address, not being a post office box or *poste restante*, of which the Party concerned may notify the other in writing.

18.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice only by hand delivery, electronic mail or by courier.

18.3. Either Party may by notice to the other parties change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address, provided that the change shall become effective vis-à-vis that addressee on the 14th (fourteenth) Business Day from the deemed receipt of the notice by the addressee.

18.4. Any notice to a Party:

18.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery or if such delivery is not during ordinary business hours or such date is not a Business Day, the immediately succeeding Business Day; or

18.4.2. sent by e-mail to its chosen e-mail address stipulated in clause 18.1 during ordinary business hours, shall be deemed to have been received on the date of despatch or if such delivery is not during ordinary business hours or such date is not a Business Day, on the immediately succeeding Business Day (unless the contrary is proved).

18.5. 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 it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

19. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the

balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

20. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, all of which shall together constitute one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.

21. LAW AND JURISDICTION

21.1. This Agreement shall be governed by and construed in accordance with the laws of South Africa.

21.2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

21.3. The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle Disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

21.4. Clauses 21.2 and 21.3 are for the benefit of the Cessionaries and Agent only. As a result, none of the Cessionaries nor the Agent shall be prevented from taking proceedings relating to a Dispute in any other court with jurisdiction. To the extent allowed by law, the Cessionaries and/or the Agent may take concurrent proceedings in any number of jurisdictions.

22. INDEPENDENT ADVICE

The Cedent acknowledges, in favour of the Cessionaries and the Agent, that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Cedent acknowledges that all of the provisions of this Agreement have been negotiated as between the Parties and are part of the overall intention of the Parties in connection with this Agreement.

[SIGNATURE PAGES INTENTIONALLY LEFT BLANK]

Annexure A

[TO BE PLACED ONTO THE CEDENT'S LETTERHEAD]

To: [•] [Insert details of Security Custodian]

Date: [•]

Dear Sirs

CESSION AND PLEDGE OF SHARES

1. You currently hold the following securities ("**Subject Shares**") as Central Securities Depository Participant in your respective sub-register(s) pertaining to the issuers of the Subject Shares:

[•] [Insert details of the Subject Shares.]

2. You are hereby notified that we have ceded and pledged all our right, title and interest in and to the Subject Shares:

- 2.1. as a first ranking security interest to Momentum Metropolitan Life Limited (Registration No. 1904/002186/06), United Towers Proprietary Limited (Registration number 1968/01555/07) and FirstRand Bank Limited, acting through its Rand Merchant Bank division (Registration No. 1929/001225/06), in their capacity as holders of the BFC2 Preference Shares ("**BIC2 Pledge and Cession**"); and

- 2.2. as a reversionary security interest (pursuant to an amended and restated Reversionary Pledge and Cession dated [•] and initially between us, MTN Group Limited (Registration No. 1994/009584/06) ("**MTN**") and Mobile Telephone Networks Holdings Limited (Registration No. 1993/001411/06) ("**MTN Holdings**") (as such agreement may have been amended and restated from time to time) ("**Reversionary Pledge and Cession**") to MTN, MTN Holdings, each Subordinated MTN Acceded Nominee (as this term is incorporated by reference into the Reversionary Pledge and Cession) and each Call Option MTN Acceded Nominee for the proper and punctual performance of all our obligations in terms of written agreements designated as "Specified Transaction Documents" as defined in the Reversionary Pledge and Cession.

3. You are hereby instructed to make the appropriate entries in the relevant securities account(s) to record the reversionary cession and pledge pursuant to the Reversionary Pledge and Cession the Subject Shares in favour of MTN (as initial Cessionary and Agent appointed to act on behalf of the Cessionaries in accordance with the Reversionary Pledge and Cession), as contemplated in section 39 of the Financial Markets Act, it being recorded that such rights arise only upon the release of the Subject Shares in accordance with the terms of the BIC2 Pledge and Cession.

4. Please note that we shall, prior to any exercise by the relevant cessionaries under any of the BIC2 Pledge and Cession, or by the Cessionaries of their rights in terms of the Reversionary Pledge and Cession, be entitled to exercise the voting rights in respect of the Subject Shares at any general meeting of the issuers thereof.
5. Please provide MTN with written confirmation that you have made such entries, substantially in accordance with the draft confirmation annexed hereto.

Yours faithfully

[•] [*Insert name of the Cedent.*]

(duly authorised)

Annexure B

[TO BE PLACED ONTO THE LETTERHEAD OF THE SECURITY CUSTODIAN.]

To: MTN Group Limited

And to: [•] [Insert details of the Cedent.]

Date: [•]

Dear Sirs

CESSION AND PLEDGE OF SHARES

1. We refer to the letter ("**Letter**") from MTN Zakhele Futhi (RF) Limited (Registration No. 2016/268837/06) ("**Cedent**"), received together with a *pro forma* confirmation and a copy of the written cession and pledge agreement concluded between *inter alios* yourselves, as the Cessionaries, the Cedent, MTN Group Limited (Registration No. 1994/009584/06) ("**MTN**") and Mobile Telephone Networks Holdings Limited (Registration No. 1993/001411/06) ("**MTN Holdings**") on [•] (as such agreement may have been amended and restated from time to time) ("**Reversionary Pledge and Cession**").
2. We acknowledge that, in terms of the Reversionary Pledge and Cession, the Cedent cedes and pledges to MTN, MTN Holdings, each Subordinated MTN Acceded Nominee and each Call Option MTN Acceded Nominee (each as defined by reference in the Reversionary Pledge and Cession), that shall be deemed to have accepted the benefits under the Reversionary Pledge and Cession upon becoming a Subordinated MTN Acceded Nominee or a Call Option MTN Acceded Nominee ("**Cessionaries**") as security for the proper and punctual performance by the Cedent of its obligations in terms of written agreements designated as "**Specified Transaction Documents**" (as defined in the Reversionary Pledge and Cession), the reversionary rights, after the release thereof under the terms of each of the BIC2 Pledge and Cession, the following securities ("**Subject Shares**"):

[•] [Note: Insert details of the Subject Shares.]

3. We confirm that:
 - 3.1. we are a "**participant**" as defined in the Financial Markets Act ("**Act**");
 - 3.2. an appropriate entry has been made in the relevant trading account in accordance with section 39 of the Financial Markets Act, to record the relevant security created under this Revisionary Pledge and Cession, specifying MTN as the second reversionary pledgee and cessionary, the interest of MTN in the Subject Shares and the date of [•] on which the Reversionary Pledge and Cession was concluded;

3.3. at the time of making such entries, save in relation to the first ranking pledge and cession and second ranking pledge and cession referred to in the Letter, no other pledge and/or cession entries had been made in respect of the Subject Shares in the respective sub-registers.

4. We further confirm that:

4.1. should, prior to the Cessionaries exercising any of its rights in terms of the Reversionary Pledge and Cession, any of the Subject Shares be sub-divided, consolidated or converted into any other shares, the reversionary rights to the sub-divided, consolidated or converted shares shall automatically be subject to the terms of the Reversionary Pledge and Cession;

4.2. the Cedent shall, prior to any exercise by the relevant cessionaries under the BIC2 Pledge and Cession, or by the Cessionaries of its rights in terms of the Reversionary Pledge and Cession, be entitled to exercise the voting rights in respect of the Subject Shares at any general meeting of the issuers thereof; and

4.3. we shall hold the Subject Shares subject to the terms of the Act and, after the release thereof in accordance with the BIC2 Pledge and Cession, in terms of the Reversionary Pledge and Cession and we shall not transfer any of the Subject Shares or any interest therein, except pursuant to the BIC2 Pledge and Cession referred to in the Letter, or (following a release of the Subject Shares from the first ranking pledge and cession referred to in the Letter) as instructed by MTN (as agent of the Cessionaries).

Yours faithfully

For: [●] *[Insert details of the Security Custodian]*
(duly authorised)

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**SCHEDULE 14: AMENDED AND RESTATED BIC2 REVERSIONARY ACCOUNT
CESSION**

AMENDED AND RESTATED BIC2 REVERSIONARY ACCOUNT CESSION

in respect of certain Transaction Documents

entered into between

MTN ZAKHELE FUTHI (RF) LIMITED

(Registration No. 2016/268837/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa

and

MTN GROUP LIMITED

(Registration No. 1994/009584/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa (in its capacity as Cessionary)

and

MTN GROUP LIMITED

(Registration No. 1994/009584/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa (in its capacity as Agent)

and

MOBILE TELEPHONE NETWORKS HOLDINGS LIMITED

(Registration No. 1993/001411/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa (in its capacity as Cessionary)

IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

1.1. words importing:

1.1.1. any one gender include the other two genders;

1.1.2. the singular include the plural and *vice versa*; and

1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2. Save otherwise as defined herein, terms defined in the BIC2 MOI (as defined below) or the BIC2 Preference Share Subscription Agreement (whether directly or by means of incorporation by reference), as the case may be, shall bear the same meanings when used herein (and shall continue to bear such meanings notwithstanding that the rights and obligations of the parties to the BIC2 Preference Share Subscription Agreement may terminate prior to termination of this Agreement). The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1. "**Agent**" means MTN, acting as agent on behalf of the Cessionaries in relation to this Agreement;

1.2.2. "**Agreement**" means this account cession agreement together with all annexures hereto;

1.2.3. "**BIC2**" means MTN Zakhele Futhi (RF) Limited (Registration No. 2016/268837/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;

1.2.4. "**BIC2 Account Rights**" means all the Cedent's Reversionary Rights in and to the BIC2 Accounts, including the rights, and reversionary rights, as applicable, to all amounts standing to the credit of each such account from time to time;

1.2.5. "**BIC2 Accounts**" means, collectively, the BIC2 Collection Account, the BIC2 Security Account, the BIC2 Provisions Account, the BIC2 Tax Provisions Account, the BIC2 Top-Up Loan Account, the Subject Share Securities Account, the BIC2 Subscriptions Account and any other bank account the Cedent may open from time to time in accordance with the Transaction Documents, excluding the BIC2 Public Offer Accounts and the BIC2 Unclaimed Funds Account;

1.2.6. "**BIC2 MOI**" means the memorandum of incorporation of BIC2 from time to time;

1.2.7. "**BIC2 Preference Share Subscription Agreement**" means the preference share subscription agreement dated on or about 21 August 2016 between the

Cedent, BFC2 and the Preference Share Agent pursuant to which, *inter alia*, BFC2 agreed to subscribe for the BIC2 Preference Shares in the issued share capital of the Cedent, all on the terms and subject to the conditions contained therein;

- 1.2.8. **"BIC2 Unclaimed Funds Account"** means the bank account held by BIC2 with Nedbank Limited having the following account details:

Account Name: BEECO Unclaimed Account

Bank: Nedbank Limited

Branch Code: 198 765

Account Number: 1119 098 165;

- 1.2.9. **"Cedent"** means BIC2;

- 1.2.10. **"Cessionaries"** means MTN, MTN Holdings, each Subordinated MTN Acceded Nominee and each Call Option MTN Acceded Nominee (it being recorded that provisions in favour of the Cessionaries constitute a *stipulatio alteri* in favour of all Subordinated MTN Acceded Nominees and Call Option MTN Acceded Nominees and upon any person becoming a Subordinated MTN Acceded Nominee or a Call Option MTN Acceded Nominee, such person shall be deemed to have accepted the benefits under this Agreement);

- 1.2.11. **"Collateral"** means the BIC2 Account Rights and any other assets designated as Collateral in terms of this Agreement;

- 1.2.12. **"Discharge Date"** means the date on which all obligations whatsoever (including any contingent obligations) owing to the Cessionaries under the Specified Transaction Documents have been irrevocably and unconditionally discharged in full;

- 1.2.13. **"MTN"** means MTN Group Limited (Registration No. 1994/009584/06), a public limited liability company duly registered and incorporated in accordance with the laws of South Africa;

- 1.2.14. **"Original Signature Date"** means 21 August 2016;

- 1.2.15. **"Parties"** means the Cessionaries, the Agent and the Cedent, and **"Party"** shall mean any one of them;

- 1.2.16. **"Reversionary Rights"** means the reversionary right, title and interest of the Cedent in and to all and any of the assets granted as security under the BIC2 Account Cession upon its release on the Security Release Date;

- 1.2.17. **"Secured Obligations"** means all moneys, liabilities and obligations which are now or at any time hereafter may be due, owing or payable by the Cedent, actually or contingently, to the Cessionaries or any of them under or pursuant to

the Specified Transaction Documents, or as a consequence of any breach, non-performance, disclaimer or repudiation by the Cedent (or by any liquidator, trustee, executor, curator, administrator, business rescue practitioner or any similar officer of the Cedent) of any of its obligations under such Specified Transaction Documents and (except as expressly otherwise provided) references to the Secured Obligations include references to any of them;

- 1.2.18. **"Security Interest"** means any agreement or arrangement having the effect of creating a security interest or right of possession, including any mortgage, pledge, cession, cession in *securitatem debiti*, lien, lease, right of retention, right of set-off or claim, hypothecation, assignment, security interest, title retention, trust arrangement, preferential arrangement or encumbrance whatever, however created or arising;
- 1.2.19. **"Security Release Date"** means, in relation to the BIC2 Account Rights, the corresponding date on which the last of such BIC2 Account Rights are released from the BIC2 Account Cession (other than pursuant to a Permitted Disposal) in accordance with the provisions of the BIC2 Account Cession;
- 1.2.20. **"Specified Transaction Documents"** means the Transaction Documents to which the Cedent and any Cessionary/ies are party or in respect of which a *stipulatio alteri* is given by the Cedent in favour of any Cessionary and such Cessionary has accepted the benefit thereof;
- 1.2.21. **"Subject Shares"** has the meaning ascribed thereto in the BIC2 Preference Share Subscription Agreement, and includes any proceeds arising from the disposal of such shares;
- 1.2.22. **"Subject Shares Securities Account"** has the meaning ascribed thereto in the BIC2 MOI;
- 1.3. any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted or replaced from time to time;
- 1.4. any reference in this Agreement to any other Agreement or document copy shall be construed as a reference to such other Agreement as same may have been, or may from time to time be, amended, restated, varied, novated or supplemented;
- 1.5. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.6. where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;

- 1.7. in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day;
- 1.8. any reference to a Party includes that Party's successors-in-title and permitted assigns;
- 1.9. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.10. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.11. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.12. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.13. the Specified Transaction Documents shall to the extent permitted by Applicable Laws be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed the Specified Transaction Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted assigns or liquidators, as the case may be; and
- 1.14. the use of any expression in any Specified Transaction Document covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the parties to the Specified Transaction Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

2. **CESSION IN SECURITY**

- 2.1. The Cedent hereby and with effect from the Issue Date, cedes in *securitatem debiti* the BIC2 Account Rights to and in favour of the Cessionaries as a continuing general covering collateral security, for the due, proper and timely payment and performance in full of all the Secured Obligations on the terms and conditions set out in this Agreement, which cession in security the Cessionaries hereby accept.
- 2.2. It is the intention of the parties that the cession in security in clause 2.1 shall operate as a reversionary cession in security of each part and all of the Cedent's right, title and interest in and to the BIC2 Accounts, analogous to a pledge, and not as an out-and-out cession and transfer thereof.

3. **BIC2 ACCOUNT**

The Cedent shall, by no later than 1 (one) Business Day following the date on which any BIC2 Account is opened, deliver to the Security Custodian all and any documents evidencing such BIC2 Accounts.

4. **REPRESENTATIONS AND WARRANTIES**

4.1. The Cedent warrants and represents:

- 4.1.1. that, with effect from the Original Signature Date and on each day thereafter, it is a limited liability company, duly incorporated and validly existing under the laws of South Africa and has the power to own its assets and carry on its business as it is being conducted;
- 4.1.2. that, as at the Issue Date and on each day thereafter it is and will remain the sole and beneficial owner of the Collateral to the exclusion of all others and no person (other than the cessionaries under the BIC2 Account Cession) has an option or right of refusal over the Collateral;
- 4.1.3. that, as at the Original Signature Date and on each day thereafter, and other than pursuant to the BIC2 Account Cession, the Cedent's right, title and interest in and to the Collateral has not been pledged and/or ceded (either outright or as security), or otherwise disposed of or hypothecated, nor is it subject to any other rights in favour of any person and the Cedent's Reversionary Rights have not been pledged and/or ceded (either outright or as security), or otherwise disposed of or hypothecated, nor is it subject to any other rights in favour of any person (including, without limitation, any rights of pre-emption) other than pursuant to the BIC2 Account Cession and the Security Interest created pursuant to this Agreement will have first ranking priority in respect of the BIC2 Accounts;
- 4.1.4. that, on the Original Signature Date and the Refinancing Date, it has the power, authority and legal right to sign and perform this Agreement, that all obligations undertaken by it and the cession in security created under this Agreement have been authorised by all necessary corporate action required by it and constitute its legal, valid and binding obligations enforceable against it in accordance with the terms of this Agreement and that the memorandum of incorporation of the Cedent does not place any limitations or restrictions on the Cedent to pledge and cede the Collateral as provided for in this Agreement; and
- 4.1.5. that, on the Original Signature Date and on each day thereafter, its entry into the Specified Transaction Documents and this Agreement and the fulfilment of its obligations in accordance with the terms thereof and hereof do not contravene any law, regulation or any contractual obligation binding on it.

4.2. Save as expressly contemplated by, and subject to the provisions of, the Specified Transaction Documents, the Cedent acknowledges that it may not pledge, cede, assign or transfer or in any other manner create any Encumbrance whatsoever, or allow any

Encumbrance whatsoever to be created, over or deal with the Collateral without the prior written consent of the Agent.

- 4.3. Without prejudice to any other rights that the Cessionaries may have, to the extent the Collateral has been pledged and/or ceded (either outright or as security), discounted, factored, mortgaged under notarial bond or otherwise, or otherwise disposed of or hypothecated, or is subject to any other rights in favour of any person in breach of the representation and warranty in clause 4.1.3 then, without limitation, any reversionary or other interests the Cedent may have in and to the Collateral are also ceded in security to the Cessionaries and if the holder of that cession or right is entitled to possession of any of the documents referred to in clause 3, and it exercises that right, then the Cedent shall deliver photocopies of the documents to the Agent, and as soon as the holder of that cession or right ceases to be entitled to possession or gives up possession, the Cedent shall deliver the relevant documents to the Agent. Without in any way limiting or derogating from the foregoing, the Cedent acknowledges and agrees that the Agent and/or the Cessionaries shall be entitled to receive payment from such prior cessionary of such amounts as such prior cessionary shall receive in excess of the sums due to it by the Cedent.
- 4.4. It is agreed that the Cessionaries have entered into the Specified Transaction Documents on the strength of and relying on the warranties and representations in this clause 4, each of which shall be deemed to be separate warranties and representations, given without prejudice to any other warranty or representation, and deemed to be material representations inducing the Cessionaries to enter into the Specified Transaction Documents.
- 4.5. This Agreement is in addition to and not in substitution for any other security held or hereafter to be held by the Cessionaries and/or the Agent from any party in connection with the Secured Obligations, or otherwise and the Cessionaries shall, without prejudice to their rights hereunder, be entitled to release any such additional security held by them.

5. **UNDERTAKINGS BY THE CEDENT**

- 5.1. The undertakings in this clause 5 shall remain in force from and after the Original Signature Date and until the performance and irrevocable payment and discharge in full of the Secured Obligations.
- 5.2. The Cedent undertakes in favour of the Agent and the Cessionaries that it shall, subject to the Finance Documents:
 - 5.2.1. at its cost do or permit to be done each and every act or thing which the Agent may from time to time require to be done for the purposes of enforcing and preserving the Cessionaries' rights hereunder and in respect of the Collateral, and will allow its name to be used as and when required by the Agent for that purpose;

- 5.2.2. not knowingly take or omit to take any action the taking or omission of which will in any way adversely affect the interests of the Cessionaries in and to the Collateral;
- 5.2.3. save in respect of the Security Interests created in terms of the BIC2 Account Cession and this Agreement, not create any Security Interest or permit any Security Interest to exist over the BIC2 Accounts, other than pursuant to this Agreement and the BIC2 Account Cession and not, save as expressly permitted under the Specified Transaction Documents, sell, assign, transfer or otherwise dispose of any of the Collateral;
- 5.2.4. not, save as expressly permitted under the Specified Transaction Documents, give any consent, waiver or approval nor make any decision, demand or determination nor exercise any discretion nor exercise any option or election in relation to or in connection with the Collateral without the express prior written consent of the Agent;
- 5.2.5. furnish to the Agent from time to time such information and reports regarding the Collateral as the Agent may request, including, without limitation, information in relation to balances in and transactions in respect of any of the BIC2 Accounts, which information shall be provided promptly upon delivery of a request from the Agent;
- 5.2.6. procure that all amounts due and payable to it in respect of the Collateral (or part thereof) are paid directly into the BIC2 Collection Account or otherwise in accordance with the instructions of the Preference Share Agent and the Account Bank and Agency Agreement or, after the Security Release Date, in accordance with the instructions of the Agent; and
- 5.2.7. at any time after the Security Release Date, sign all documents and do all things as may be required in order to appoint MTN as a joint signatory on any one or more BIC2 Accounts for so long as there is no breach by the Cedent of any Specified Transaction Document and to appoint MTN as sole signatory on any one or more BIC2 Account following any such breach.

6. **EXERCISE OF RIGHTS**

- 6.1. If, at any time during the currency of this Agreement, the Secured Obligations become due and payable in accordance with the provisions of any of the Specified Transaction Documents to which the Cedent and any Cessionary are party and are not paid when due in accordance with the terms thereof (taking into account any applicable grace period), the Agent on behalf of the Cessionaries shall be entitled to declare the security hereby constituted to be enforceable whereupon it shall become enforceable and the Agent on behalf of the Cessionaries may take any steps to enforce the security constituted by this Agreement.

- 6.2. The Cedent hereby declares that, upon the security constituted by this Cession becoming enforceable in accordance with the provisions of clause 6.1, the Cedent will hold the Collateral upon trust to convey, assign or otherwise deal with the Collateral in such manner, at such time and to such person as the Agent shall direct for application in or towards the discharge of the Secured Obligations in accordance with the instructions of the Agent. The Cessionaries shall be entitled, without limitation, without first seeking recourse against the Cedent in any court and without any notice to the Cedent, to take over the Collateral for their own benefit and account and to apply the amount standing to the credit of the BIC2 Accounts against the Secured Obligations in such order as the Cessionaries may determine.
- 6.3. If at any time the Agent on behalf of the Cessionaries becomes entitled to exercise its rights under clause 6.1, the Cedent hereby authorises and appoints the Agent irrevocably and *in rem suam* with power of substitution as the Cedent's attorney and agent in the Cedent's name, place and stead to sign and execute:
- 6.3.1. such documents as may be necessary:
- 6.3.1.1. to receive payment of the purchase price of the Collateral (or any part thereof); and/or
- 6.3.1.2. to enable the Cessionaries to exercise any of the rights granted to them herein; and
- 6.3.2. all such documents and do all such things as may be necessary or desirable to give effect to this Agreement and to take any steps in pursuance of the rights and powers which the Agent and/or Cessionaries may have in terms of this Agreement.
- 6.4. Notwithstanding anything to the contrary contained herein, no payment obligations of the Cedent under any Finance Documents shall become due or payable prior to the Issue Date.

7. CONTINUING SECURITY

- 7.1. The provisions of this Agreement shall be and continue to be of full force and effect and binding on the Cedent notwithstanding:
- 7.1.1. the Agent and/or the Cessionaries agreeing with the Cedent any variation or departure (however substantial) of or from any of the Specified Transaction Documents so that any such variation or departure shall, whatever its nature, be binding upon the Cedent in all circumstances, notwithstanding that it may increase or otherwise affect the liability of the Cedent;
- 7.1.2. the Agent and/or the Cessionaries releasing or granting any time or any indulgence whatsoever to the Cedent under any of the Specified Transaction Documents to which the Cedent and any Cessionary are party or any contravention by the Cedent of any of the Specified Transaction Documents to which the Cedent and any Cessionary are party, or entering into any transaction

or arrangements whatsoever with or in relation to the Cedent and/or any third party;

- 7.1.3. the Agent and/or the Cessionaries taking, accepting, varying, dealing with, enforcing, abstaining from enforcing, surrendering or releasing any security for the obligations secured hereby in such manner as it thinks fit, or claiming, proving for, accepting or transferring any payment in respect of such obligations in any composition by, or winding up of, the Cedent and/or any third party or abstaining from so claiming, proving, accepting or transferring;
 - 7.1.4. the winding up, dissolution, administration, merger, amalgamation or reorganisation of the Cedent and/or any of the Cessionaries or the Agent or any change in their status, function, control or ownership;
 - 7.1.5. any of the obligations of the Cedent under any of the Specified Transaction Documents to which the Cedent and any Cessionary are party being or becoming illegal, invalid, unenforceable or ineffective in any manner or respect whatsoever;
 - 7.1.6. any time or other indulgence being granted or agreed to be granted to the Cedent under any of the Specified Transaction Documents to which the Cedent and any Cessionary are party;
 - 7.1.7. any amendment to, or any variation, waiver or release of any of the obligations of the Cedent under any of the Specified Transaction Documents to which the Cedent and any Cessionary are party;
 - 7.1.8. any additional security from the Cedent or any other person for the Secured Obligations may not be obtained or protected or may be released or may cease to be held for any other reason;
 - 7.1.9. any of the Specified Transaction Documents are varied or novated in any way; and/or
 - 7.1.10. any other act, event or omission which, but for this clause 7, might operate or might otherwise have operated to discharge, impair or otherwise affect any of the obligations of the Cedent herein contained or any of the rights, powers or remedies conferred upon the Agent and/or the Cessionaries, whether by the Specified Transaction Documents to which the Cedent and any Cessionary are party or by law.
- 7.2. The liabilities and obligations of the Cedent under this Agreement shall remain in force notwithstanding any settlement of account, act, omission, neglect, event or matter whatsoever, and in particular but without limitation, shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the liabilities and obligations of the Cedent under the Specified Transaction Documents to which the Cedent and any Cessionary are party. Without prejudice to its generality, the foregoing shall apply in relation to anything which would have discharged the Cedent (wholly or in part) or which would have afforded the Cedent with any

legal or equitable defence, and in relation to any winding up or dissolution of, or any change in constitution or corporate identity or loss of corporate identity by the Cedent or any other person.

- 7.3. Subject to the Finance Documents, the Cedent shall render to the Agent and/or the Cessionaries such assistance as the Agent and/or the Cessionaries may require for the purposes of enforcing their rights in respect of the Collateral.

8. APPLICATION OF MONEYS AND PROCEEDS

- 8.1. After the security hereby constituted becomes enforceable, the Cedent shall, forthwith upon being so required by the Agent, or the Agent may, if the Cedent fails to comply with the Agent's requirement, give notice to any person obliged to make payment of any moneys forming part of the Collateral directing such person to make all future payments of any monies forming part of the Collateral to such account as the Agent may specify in writing. If the Cedent receives any payments on account of the Collateral after the security hereby constituted becomes enforceable, it shall forthwith pay such sums to the Agent to be applied by the Agent in accordance with clause 8.2 and until so paid such monies shall be held upon trust by the Cedent for the Cessionaries.
- 8.2. The Agent shall apply all moneys it receives under this Agreement in or towards satisfaction of the Secured Obligations in such order as it deems fit and any surplus after the full, final and irrevocable satisfaction of the Secured Obligations shall be paid to the Cedent.

9. RELEASE

- 9.1. Notwithstanding anything to the contrary herein contained:
- 9.1.1. the relevant Collateral will be released when required pursuant to a Permitted Disposal;
- 9.1.2. all the Collateral shall be released upon the irrevocable discharge in full of the Cedent's obligations under the Specified Transaction Documents.
- 9.2. The original of this Agreement shall be kept by the Agent. Upon the release of the Cedent from liability under this Agreement, the original of this Agreement shall be delivered to the Cedent; provided that if at any time thereafter any of the Secured Obligations are reinstated, the original Agreement shall be returned forthwith to the Agent.

10. AVOIDANCE OF PAYMENTS

Any settlement, discharge or release between the Cedent and the Cessionaries shall be conditional upon no security or payment granted or made to the Cessionaries by the Cedent or any other person being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, business rescue or liquidation for the time being in force and, in the event of such security or payment being so avoided or reduced, the Cessionaries shall be entitled to recover the value or amount of such security or payment from the Cedent and from the security created by or pursuant to this Agreement subsequently as if such settlement, discharge or release had not occurred. The Cedent agrees that,

in such circumstances, this Agreement and the security hereby constituted shall be deemed to have remained in full force and effect notwithstanding any such assurance, security, guarantee, payment, release, settlement, discharge or arrangement.

11. **CERTIFICATE**

A certificate signed by the Agent reflecting the amount of:

- 11.1. the Cedent's indebtedness to the Cessionaries in respect of the Secured Obligations; and
- 11.2. any costs or expenses incurred by the Agent and/or the Cessionaries in the exercise of their rights herein and the net proceeds of any realisation of the Collateral,

shall, in the absence of manifest error, be *prima facie* evidence of the Cedent's indebtedness to the Cessionaries for the purpose of provisional sentence or summary judgment proceedings or for any other purpose.

12. **RENUNCIATION OF LEGAL EXCEPTIONS**

The Cedent hereby renounces the legal benefits and exceptions of excussion, division, *non numeratae pecuniae* (no money paid) and non causa debiti (no cause of debt), the Cedent declaring itself to be fully acquainted with the full meaning and effect of such legal benefits and exceptions and of this renunciation.

13. **REMEDIES AND WAIVERS**

- 13.1. The rights, powers and remedies provided by this Agreement are cumulative and are not, nor are they to be construed as, exclusive of any right of set-off or other rights, powers and remedies provided by law.
- 13.2. No failure on the part of the Cessionaries and/or the Agent to exercise, or delay on the part of the Cessionaries and/or the Agent in exercising, any of the rights, powers and remedies provided by this Agreement or by law shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise thereof or the exercise of any other such right, power or remedy.

14. **FURTHER ASSURANCES**

Subject to the Finance Documents, without in any way limiting or derogating from any other provision of this Agreement, the Cedent shall from time to time promptly execute, acknowledge, deliver, file and register all such additional documents, instruments, agreements, certificates, consents and assurances and do all such other lawful acts and things as may be necessary or desirable or as the Agent may reasonably request from time to time in order to maintain or perfect the Security Interest intended to be constituted by this Agreement or to enable the Cessionaries to obtain the full benefits of this Agreement and to exercise and enforce their rights and remedies under this Agreement.

15. **LIMITATION OF LIABILITY**

- 15.1. Neither the Agent nor the Cessionaries and their directors, officers, agents, employees and advisors shall be liable for any loss or damage, whether direct, indirect, consequential or

otherwise, suffered by the Cedent arising from any cause in connection with this Agreement (including any loss, liability, damage or expense which the Cedent may suffer as a consequence, directly or indirectly, of the Cessionaries and/or the Agent lawfully exercising any of their rights in terms of this Agreement, failing to preserve, protect, or enforce the Collateral or failing to accept or collect any right, payment or other benefit relating to the Collateral), whether the loss or damage results from or arises in contract, delict or any other cause and whether this Agreement has been terminated or not, other than as a result of the gross negligence, wilful misconduct, dishonesty or breach of contract by the Cessionaries and/or the Agent.

- 15.2. Neither the Cessionaries nor the Agent shall have any responsibility to preserve, protect or enforce the Collateral or to accept or collect any right, payment or other benefit relating to any of the Collateral and shall not be obliged to furnish any security to the Cedent in this regard.
- 15.3. Without prejudice to the other rights in terms of this Agreement or at law of the Cessionaries and/or the Agent, if at any time the Agent and/or the Cessionaries takes any steps which the Agent and/or the Cessionaries in their reasonable discretion deem necessary for the preservation, protection or enforcement of the Collateral or for the acceptance or collection of any right, payment or other benefit relating to any of the Collateral and either of the Agent and/or the Cessionaries incur any direct cost or expense in so doing, then the Cedent shall forthwith upon demand reimburse the Agent and/or the Cessionaries with the reasonable amount of such cost or expense.

16. **SUCCESSORS AND ASSIGNS**

- 16.1. The Cedent shall be not entitled to cede any of its rights or transfer or purport to transfer any of its obligations hereunder without the prior written consent of the Cessionaries.
- 16.2. Each Cessionary shall be entitled at any time to cede all or any of its rights and to delegate all or any of its obligations hereunder to any third party to which each of them is entitled to transfer any or all of its rights under any Specified Transaction Document. The Cedent hereby unconditionally and irrevocably consents to the splitting of claims against it which may result from or pursuant to or in consequence of any such cession and/or delegation by the Cessionaries.

17. **WHOLE AGREEMENT, NO AMENDMENT**

- 17.1. This Agreement constitutes the whole Agreement between the Parties relating to the subject matter hereof.
- 17.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any Agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed

by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- 17.3. No oral *pactum de non petendo* shall be of any force or effect.
- 17.4. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 17.5. To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

18. NOTICES

- 18.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of notices or other documents or communications of whatsoever nature, the following addresses:

- 18.1.1. the Agent and the Cessionaries:

Physical:	216 14th Avenue Fairland Roodepoort 2195 South Africa
E-mail:	Kholekile.Ndamase@mtn.com Thobeka.Sishuba@mtn.com LegalNotices@mtn.com
Attention:	Kholekile Ndamase Thobeka Sishuba

- 18.1.2. the Cedent:

Physical:	135 Rivonia Road Sandown Sandton 2196 South Africa
Email:	ssa-zakhelefuthi@nedbank.co.za
Attention:	Nedbank Share Administration

or at such other address, not being a post office box or *poste restante*, of which the Party concerned may notify the other in writing.

- 18.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice only by hand delivery, electronic mail or by courier.
- 18.3. Either Party may by notice to the other parties change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address, provided that the change shall become effective vis-à-vis that addressee on the 14th (fourteenth) Business Day from the deemed receipt of the notice by the addressee.
- 18.4. Any notice to a Party:
- 18.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery or if such delivery is not during ordinary business hours or such date is not a Business Day, the immediately succeeding Business Day; or
 - 18.4.2. sent by e-mail to its chosen e-mail address stipulated in clause 18.1 during ordinary business hours, shall be deemed to have been received on the date of despatch or if such delivery is not during ordinary business hours or such date is not a Business Day, on the immediately succeeding Business Day (unless the contrary is proved).
- 18.5. 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 it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

19. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

20. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, all of which shall together constitute one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.

21. LAW AND JURISDICTION

- 21.1. This Agreement shall be governed by and construed in accordance with the laws of South Africa.
- 21.2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in regard to all matters arising from this Agreement (including a dispute relating

to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

21.3. The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle Disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

21.4. Clauses 21.2 and 21.3 are for the benefit of the Cessionaries and the Agent only. As a result, none of the Cessionaries nor the Agent shall be prevented from taking proceedings relating to a Dispute in any other court with jurisdiction. To the extent allowed by law, the Cessionaries and/or the Agent may take concurrent proceedings in any number of jurisdictions.

22. **INDEPENDENT ADVICE**

The Cedent acknowledges, in favour of the Cessionaries and the Agent, that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Cedent acknowledges that all of the provisions of this Agreement have been negotiated as between the Parties and are part of the overall intention of the Parties in connection with this Agreement.

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**SCHEDULE 15: SECOND AMENDED AND RESTATED MTN SUBORDINATION AND
UNDERTAKING AGREEMENT**



(1) FIRSTRAND BANK LIMITED
(ACTING THROUGH ITS RAND MERCHANT BANK DIVISION)
(as BFC2 Preference Shareholder and Preference Share Agent)

(2) MOMENTUM METROPOLITAN LIFE LIMITED
(as BFC2 Preference Shareholder)

(3) UNITED TOWERS PROPRIETARY LIMITED
(as BFC2 Preference Shareholder)

(4) JABISAN 04 (RF) PROPRIETARY LIMITED

(5) MTN ZAKHELE FUTHI (RF) LIMITED

(6) MTN GROUP LIMITED

and

(7) MOBILE TELEPHONE NETWORKS HOLDINGS LIMITED

SECOND AMENDED AND RESTATED
MTN SUBORDINATION AND UNDERTAKING AGREEMENT

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THIS SECOND AMENDED AND RESTATED MTN SUBORDINATION AND UNDERTAKING AGREEMENT IS MADE BETWEEN:

- (1) **FIRSTRAND BANK LIMITED** (acting through its Rand Merchant Bank division), a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1929/001225/06) ("**RMB**") (as BFC2 Preference Shareholder and Preference Share Agent);
- (2) **MOMENTUM METROPOLITAN LIFE LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1904/002186/06) ("**MML**") (as BFC2 Preference Shareholder);
- (3) **UNITED TOWERS PROPRIETARY LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1968/015550/07) ("**United Towers**") (as BFC2 Preference Shareholder);
- (4) **JABISAN 04 (RF) PROPRIETARY LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 2014/021122/07) ("**BFC2**");
- (5) **MTN ZAKHELE FUTHI (RF) LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 2016/268837/06) ("**BIC2**");
- (6) **MTN GROUP LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1994/009584/06) ("**MTN**"); and
- (7) **MOBILE TELEPHONE NETWORKS HOLDINGS LIMITED**, a limited liability company duly registered and incorporated in accordance with the laws of South Africa (registration number 1993/001411/06) ("**MTN Holdings**").

IT IS AGREED:

1. INTERPRETATION AND PRELIMINARY

1.1 Definitions

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

- (a) words importing:
 - (i) any one gender include the other two genders;
 - (ii) the singular include the plural and *vice versa*; and
 - (iii) natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;
- (b) words and expressions defined in the BIC2 Memorandum of Incorporation or the BIC2 Preference Share Subscription Agreement (as defined below) respectively shall, unless the context dictates otherwise, bear the same meanings where used in this Agreement.

In addition, unless the context dictates otherwise, words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

"Accession Undertaking" means an undertaking to be executed by any MTN Nominee who wishes to become an MTN Acceded Nominee, substantially in the form of schedule 1 hereto, in terms of which such MTN Nominee accedes to this Agreement and agrees to be bound by the provisions of this Agreement in all respects;

"Adjusted Consolidated EBITDA" means, in relation to a Measurement Period, Consolidated EBITDA for that period adjusted as follows:

- (a) including the operating profit before interest, tax, depreciation, amortisation and impairment charges (EBITDA) of a member of the Group or attributable to a business or assets acquired during the Measurement Period for that part of the Measurement Period when it was not a member of the Group and/or the business or assets were not owned by a member of the Group; and
- (b) excluding the EBITDA attributable to any member of the Group or to any business or assets sold during that Measurement Period;
- (c) excluding any non-cash IFRS expense incurred by the Group arising out of or in connection with the Transaction; and
- (d) in relation to the Measurement Periods ending 31 December 2016 and 30 June 2017 only, excluding any amount (up to a maximum amount of NGN330 000 000 000,00 (three hundred and thirty billion Naira) included in the relevant audited consolidated financial statements of MTN in relation to any liability to pay the fine imposed on MTN Nigeria Communications Limited by the Nigerian Communications Commission in relation to the timing of the disconnection of MTN Nigeria subscribers, who were disconnected in August and September 2015;

"Administration Costs" means, on any date during the Term, any Administration Costs that may be owed or which may become owing by BIC2 as contemplated in, and subject to the limits stipulated in, clause 3.1.2 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation as at such date and for either (i) the immediately succeeding 12 (twelve) month period or (ii) the period up to the next BIC2 Priority of Payments Date, as determined by BIC2, in its discretion;

"Agreement" means this subordination and undertaking agreement (together with all schedules thereto);

"BFC2 Discharge Date" means the later of:

- (a) date on which all the BFC2 Preference Shares have been fully, finally and irrevocably redeemed; and
- (b) the BIC2 Discharge Date,

and MTN shall be entitled to request the Preference Share Agent to confirm in writing that the BFC2 Discharge Date has occurred, which the Preference Share Agent shall be obliged to do within five Business Days after receipt of such written request, provided that the Preference Share Agent is satisfied, acting reasonably, that the BFC2 Discharge Date has occurred;

"BFC2 Enforcement Action" means:

- (a) the acceleration of any BFC2 Subordinated Claim or any declaration that any BFC2 Subordinated Claim is prematurely due and payable or payable on demand;
- (b) the making of any claim on BFC2 in respect of or arising from any BFC2 Subordinated Claim, including the giving of instructions to BFC2 in relation to the taking of any steps to enforce or require the enforcement of any BFC2 Subordinated Claim (including the taking of any steps which are required to convert security interests into real security);
- (c) the making of any demand against BFC2 in relation to or in respect of any BFC2 Subordinated Claim;
- (d) the exercise of any right of set-off against BFC2 in respect of any BFC2 Subordinated Claim;
- (e) the suing for, commencing or joining of any legal or arbitration proceedings against BFC2 to recover or enforce any BFC2 Subordinated Claim;
- (f) the entering into of any composition, assignment or arrangement with BFC2 in respect of the BFC2 Subordinated Claims or any of them;
- (g) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator, business rescue practitioner or similar officer) in relation to the winding up, dissolution, bankruptcy, administration, or reorganisation of BFC2 or taking any steps to place BFC2 under supervision for business rescue proceedings or any suspension of payments or moratorium of any indebtedness of BFC2, or any analogous procedure or step in any jurisdiction; and/or
- (h) voting to amend, approve or reject a proposed business rescue plan in relation to such business rescue proceedings in respect of BFC2 in accordance with the provisions of section 152 of the Companies Act, proposing the development of an alternative business rescue plan in the manner contemplated in section 153 of the Companies Act and/or presenting an offer to acquire the interests of any or all of the other creditors of BFC2 in the manner contemplated in section 153 of the Companies Act;

"BFC2 Permitted Enforcement Action" means:

- (a) in circumstances where BFC2 is obliged, in terms of this Agreement or the BFC2 Priority of Payments, to repay a BFC2 Subordinated Loan or make payment of any other amount on account of a BFC2 Subordinated Loan and BFC2 has failed to make payment thereof on the due date therefor, the making of a written demand on BFC2 to make payment thereof within a period of not less than two Business Days from the date of receipt of such written demand (or such shorter period as may be agreed by the Preference Share Agent) and, if such failure to pay is not remedied by BFC2 within such two Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant payment obligation from BFC2, provided that the Preference Share Agent:
 - (i) is simultaneously provided with a copy of such written demand for payment;
 - (ii) is given prior written notice of all steps proposed to be taken against BFC2 in order to obtain specific performance of the relevant payment obligation from

BFC2, and written notification of any such steps which are in fact taken against BFC2 promptly after such steps are taken;

- (iii) is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BFC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BFC2 in respect of such steps or other action;
 - (iv) is satisfied, acting reasonably, that the steps proposed to be taken against BFC2 in order to obtain specific performance of the relevant payment obligation from BFC2 will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and
 - (v) has not, in accordance with its rights under any Finance Document, made a written demand on BFC2 to remedy such failure to pay and/or is not otherwise taking steps in order to obtain performance of the relevant payment obligation from BFC2;
- (b) subject to the provisions of clause (e) below, if applicable, in circumstances where BFC2 breaches any material term or condition of any of the Finance Documents to which it and MTN is a party, the making of a written demand on BFC2 to remedy such breach within the grace period specified in the relevant Finance Document and, if such breach is not remedied within such grace period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant obligation from BFC2, provided that the Preference Share Agent:
- (i) is simultaneously provided with a copy of such written demand;
 - (ii) is given prior written notice of all steps proposed to be taken against BFC2 in order to obtain specific performance of the relevant obligation from BFC2, and written notification of any such steps which are in fact taken against BFC2 promptly after such steps are taken;
 - (iii) is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BFC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BFC2 in respect of such steps or other action;
 - (iv) is satisfied, acting reasonably, that the steps proposed to be taken against BFC2 in order to obtain specific performance of the relevant obligation from BFC2 will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and
 - (v) has not, in accordance with its rights under any Finance Document, made a written demand on BFC2 to remedy such breach and/or is not otherwise taking steps in order to obtain specific performance of the relevant obligation from BFC2;
- (c) subject to the provisions of clause (e) below, if applicable, in circumstances where BFC2 threatens to breach any material term or condition of any of the Finance Documents to which it and MTN is a party, the making of a written demand on BFC2 to unconditionally withdraw such threat of breach within a period of not less than

two Business Days from the date of receipt of such written demand (or such shorter period as the Preference Share Agent may consent to in writing) and, if such breach is not unconditionally withdrawn within such two Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to obtain an interdict against BFC2 in respect of the threatened breach, or any other appropriate order against BFC2 to restrain such threatened breach, provided that the Preference Share Agent:

- (i) is simultaneously provided with a copy of such written demand;
 - (ii) is given prior written notice of all steps proposed to be taken against BFC2 in order to interdict or obtain any other appropriate order against BFC2 in respect of the breach or threatened breach of the relevant obligation by BFC2, and written notification of any such steps which are in fact taken against BFC2 promptly after such steps are taken;
 - (iii) is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BFC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BFC2 in respect of such steps or other action;
 - (iv) is satisfied, acting reasonably, that the steps proposed to be taken against BFC2 in order to interdict or obtain any other appropriate order against BFC2 will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and
 - (A) has not, in accordance with its rights under any Finance Document, made a written demand on BFC2 to remedy such breach or threatened breach and/or is not otherwise taking steps in order to prevent a breach or threatened breach of the relevant obligation by BFC2;
- (d) subject to the provisions of clause (e) below, if applicable, any action for the purposes of obtaining declaratory relief against BFC2 in respect of any Finance Document to which it and MTN is a party, provided that the Preference Share Agent:
- (i) is given prior written notice of all steps proposed to be taken against BFC2 in order to obtain such declaratory relief against BFC2 in respect of any Finance Document to which it is a party, and written notification of any such steps which are in fact taken against BFC2 promptly after such steps are taken;
 - (ii) is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BFC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BFC2 in respect of such steps or other action;
 - (iii) is satisfied, acting reasonably, that the steps proposed to be taken against BFC2 in order to obtain such declaratory relief against BFC2 will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and
 - (iv) is not, in accordance with its rights under any Finance Document, otherwise taking steps in order to obtain such declaratory relief against BFC2 in respect of any Finance Document to which it is a party;

- (e) any BFC2 Enforcement Action which is taken against BFC2 by MTN or any MTN Acceded Nominee, in its capacity as Holder of all or any BFC2 Preference Shares, in respect of any MTN BFC2 Preference Shareholder Claim, pursuant to a decision having been duly taken to do so by the relevant BFC2 Preference Shareholders in accordance with the relevant provisions of the Interfunder Agreement; and/or
- (f) any BFC2 Enforcement Action which is taken against BFC2 with the prior written consent of the Preference Share Agent;

"BFC2 Preference Share Terms" means the terms, rights and privileges attaching to the BFC2 Preference Shares from time to time as incorporated into the memorandum of incorporation of BFC2;

"BFC2 Proposed Payment" means, at any relevant time, the amount of any BFC2 Subordinated Loan (and interest thereon, if any) which is proposed by MTN or the applicable MTN Acceded Nominee, as the case may be, to the Preference Share Agent, to be repaid to MTN or such MTN Acceded Nominee, as the case may be, in terms of clauses 4.2(c)(ii) or 4.3(c)(ii) as the case may be, provided that such amount shall not be greater than the amount standing to the credit of the BFC2 Top-Up Loan Account at such time;

"BFC2 Redemption Amount Shortfall" means, on the BFC2 Redemption Date, the amount by which the BFC2 Redemption Amount exceeds the redemption amount actually received by the BFC2 Preference Shareholders on such BFC2 Redemption Date;

"BFC2 Redemption Date" shall bear the meaning ascribed thereto in the BFC2 Preference Share Terms;

"BFC2 Subordinated Claims" means all present and future amounts, claims, liabilities and obligations, of whatsoever nature and howsoever arising, which are owed or may be owing by BFC2 to MTN and/or the MTN Acceded Nominees (both actual or contingent and whether incurred solely or jointly or in any other capacity) from time to time prior to the BFC2 Discharge Date and includes, without limitation:

- (a) all and any claims of MTN and/or the MTN Acceded Nominees against BFC2 arising out of or in connection with or under any Transaction Document;
- (b) all and any claims of MTN and/or the MTN Acceded Nominees against BFC2 arising out of or in connection with or under the BFC2 Subordinated Loans, whether in respect of the repayment of any interest, capital or other amount payable by BFC2 to MTN and/or the MTN Acceded Nominees or otherwise; and
- (c) any claim of whatsoever nature and howsoever arising of MTN and/or the MTN Acceded Nominees against BFC2 as a result of or in connection with any repudiation, cancellation, termination, voidness, voidability of or misrepresentation (whether innocent, negligent or fraudulent) or breach of representation, warranty or undertaking in relation to any claims contemplated above;

"BFC2 Subordinated Loans" means subordinated loans advanced by MTN and/or any MTN Acceded Nominee to BFC2 with the prior written consent of the Preference Share Agent, and subject to any amendments required to be made to the Transaction Documents as a result thereof having been made to the satisfaction of the Preference Share Agent, in accordance with the provisions of clause 3 hereof;

"BFC2 Top-Up Loan Account" means, if the Preference Share Agent has consented to MTN or an MTN Acceded Nominee making a BFC2 Subordinated Loan to BFC2, an account to be opened by BFC2 with the Account Bank into which such BFC2 Subordinated Loan shall be paid;

"BFC2 Total Share Cover Ratio Relevant Period" shall bear the meaning ascribed thereto in clause 4.2(c)(iii);

"BFC2 Volatility Protection Share Cover Ratio Relevant Period" shall bear the meaning ascribed thereto in clause 4.3(c)(iii);

"BIC2 Administration Costs Loan" means any subordinated loan advanced by MTN or an MTN Acceded Nominee to BIC2 in terms of clause 4.5 below for the purposes of paying or providing for Administration Costs and a reference to **"BIC2 Administration Costs Loans"** shall be a reference to all of them;

"BIC2 Administration Costs Loan Balance" shall have the meaning ascribed thereto in clause 4.5(h) below;

"BIC2 Administration Costs Loan Top-Up Amount" means, on any BIC2 Priority of Payments Date contemplated in clause 3.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation, an amount that is equal to the lower of:

- (a) the aggregate of:
 - (i) Administration Costs required to be paid or provided for in terms of clause 3.1.2 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation; plus
 - (ii) the amount of any outstanding Administration Costs Loans (together with interest thereon) which BIC2 wishes to repay or which MTN or the applicable MTN Acceded Nominee has requested be repaid, pursuant to clause 4.5(h)(ii), on such BIC2 Priority of Payments Date; and
- (b) the annual aggregate limit in respect of Administration Costs set out in clause 3.1.2 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation from time to time;

"BIC2 Administration Costs Loan Repayment Amount" shall have the meaning ascribed thereto in clause 4.5(k)(iii)(C) below;

"BIC2 Anticipated Administration Costs" shall have the meaning ascribed thereto in clause 4.5(k)(iii)(A) below;

"BIC2 Costs and Indemnity Amounts" means any amount required to be paid by BIC2 in terms of clause 13 and clause 14 of the BIC2 Preference Share Subscription Agreement (other than the Indemnified Amount and/or the SARS Amount) as at the applicable BIC2 Priority of Payments Date in accordance with clause 3.1.3 of Annex A to the BIC2 MOI;

"BIC2 Enforcement Action" means:

- (a) the acceleration of any BIC2 Subordinated Claim or any declaration that any BIC2 Subordinated Claim is prematurely due and payable or payable on demand;
- (b) the making of any claim on BIC2 in respect of or arising from any BIC2 Subordinated Claim, including the giving of instructions to BIC2 in relation to the taking of any steps to enforce or require the enforcement of any BIC2 Subordinated Claim (including the taking of any steps which are required to convert security interests into real security);
- (c) the making of any demand against BIC2 in relation to or in respect of any BIC2 Subordinated Claim;
- (d) the exercise of any right of set-off against BIC2 in respect of any BIC2 Subordinated Claim;
- (e) the suing for, commencing or joining of any legal or arbitration proceedings against BIC2 to recover or enforce any BIC2 Subordinated Claim;
- (f) the entering into of any composition, assignment or arrangement with BIC2 in respect of the BIC2 Subordinated Claims or any of them;
- (g) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator, business rescue practitioner or similar officer) in relation to the winding up, dissolution, bankruptcy, administration, or reorganisation of BIC2 or taking any steps to place BIC2 under supervision for business rescue proceedings or any suspension of payments or moratorium of any indebtedness of BIC2, or any analogous procedure or step in any jurisdiction; and/or
- (h) voting to amend, approve or reject a proposed business rescue plan in relation to such business rescue proceedings in respect of BIC2 in accordance with the provisions of section 152 of the Companies Act, proposing the development of an alternative business rescue plan in the manner contemplated in section 153 of the Companies Act and/or presenting an offer to acquire the interests of any or all of the other creditors of BIC2 in the manner contemplated in section 153 of the Companies Act;

"BIC2 Initial Subordinated Loan" means any subordinated loan advanced by MTN or an MTN Acceded Nominee to BIC2 in terms of, and on the terms and conditions set out in, clause 4.1 below for the purposes of complying with any Initial Subordinated Loan Undertaking;

"BIC2 Permitted Enforcement Action" means:

- (a) in circumstances where BIC2 is obliged, in terms of this Agreement or the BIC2 Priority of Payments, to repay a BIC2 Subordinated Loan or make payment of any other amount on account of a BIC2 Subordinated Loan and BIC2 has failed to make payment thereof on the due date therefor, the making of a written demand on BIC2 to make payment thereof within a period of not less than two Business Days from the date of receipt of such written demand (or such shorter period as may be agreed by the Preference Share Agent) and, if such failure to pay is not remedied by BIC2 within such two Business Day period, the taking of such steps as may be reasonable in the

circumstances in order only to claim specific performance of the relevant payment obligation from BIC2, provided that the Preference Share Agent is:

- (i) simultaneously provided with a copy of such written demand for payment;
 - (ii) given prior written notice of all steps proposed to be taken against BIC2 in order to obtain specific performance of the relevant payment obligation from BIC2, and written notification of any such steps which are in fact taken against BIC2 promptly after such steps are taken;
 - (iii) is satisfied, acting reasonably, that the steps proposed to be taken against BIC2 in order to obtain specific performance of the relevant payment obligation from BIC2 will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and
 - (iv) provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BIC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BIC2 in respect of such steps or other action;
- (b) subject to the provisions of clause (e) below, if applicable, in circumstances where BIC2 breaches any material term or condition of any of the Key Transaction Documents to which it and MTN is a party, the making of a written demand on BIC2 to remedy such breach within the grace period specified in the relevant Key Transaction Document and, if such breach is not remedied within such grace period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant obligation from BIC2, provided that the Preference Share Agent is:
 - (i) simultaneously provided with a copy of such written demand;
 - (ii) given prior written notice of all steps proposed to be taken against BIC2 in order to obtain specific performance of the relevant obligation from BIC2, and written notification of any such steps which are in fact taken against BIC2 promptly after such steps are taken;
 - (iii) is satisfied, acting reasonably, that the steps proposed to be taken against BIC2 in order to obtain specific performance of the relevant obligation from BIC2 will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and
 - (iv) provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BIC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BIC2 in respect of such steps or other action;
- (c) subject to the provisions of clause (e) below, if applicable, in circumstances where BIC2 threatens to breach any material term or condition of any of the Transaction Documents to which it and MTN is a party, the making of a written demand on BIC2 to unconditionally withdraw such threat of breach within a period of not less than two Business Days from the date of receipt of such written demand (or such shorter period as the Preference Share Agent may consent to in writing) and, if such breach is

not unconditionally withdrawn within such two Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to obtain an interdict against BIC2 in respect of the threatened breach or any other appropriate order against BIC2 to restrain such threatened breach, provided that the Preference Share Agent is:

- (i) simultaneously provided with a copy of such written demand;
 - (ii) given prior written notice of all steps proposed to be taken against BIC2 in order to interdict or obtain any other appropriate order against BIC2 in respect of the breach or threatened breach of the relevant obligation by BIC2, and written notification of any such steps which are in fact taken against BIC2 promptly after such steps are taken;
 - (iii) is satisfied, acting reasonably, that the steps proposed to be taken against BIC2 in order to interdict or obtain any other appropriate order against BIC2 will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and
 - (iv) provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BIC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BIC2 in respect of such steps or other action;
- (d) subject to the provisions of clause (e) below, if applicable, any action for the purposes of obtaining declaratory relief against BIC2 in respect of any Transaction Document to which it and MTN is a party, provided that the Preference Share Agent:
- (i) is given prior written notice of all steps proposed to be taken against BIC2 in order to obtain such declaratory relief against BIC2 in respect of any Transaction Document to which it is a party, and written notification of any such steps which are in fact taken against BIC2 promptly after such steps are taken;
 - (ii) is satisfied, acting reasonably, that the steps proposed to be taken against BIC2 in order to obtain such declaratory relief against BIC2 will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted by BIC2 to the BFC2 Preference Shareholders; and
 - (iii) is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BIC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BIC2 in respect of such steps or other action;
- (e) any BIC2 Enforcement Action which is taken against BIC2 by MTN or any MTN Acceded Nominee, in its capacity as Holder of BFC2 Preference Shares, in respect of any MTN BFC2 Preference Shareholder Claim, pursuant to a decision having been duly taken to do so by the relevant BFC2 Preference Shareholders in accordance with the relevant provisions of the Interfunder Agreement; and/or
- (f) any BIC2 Enforcement Action which is taken against BIC2 with the prior written consent of the Preference Share Agent;

"BIC2 POP Taxes" means, on any date during the Term, any Tax that may be owed or which may become owing by BIC2 and any Tax that may be owed or which may become owing by

BFC2 in relation to any Transaction Document (in each case, as contemplated in clause 3.1.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation) as at such date and for either (i) the immediately succeeding 12 (twelve) month period or (ii) the period up to the next BIC2 Priority of Payments Date, as determined by BIC2, in its discretion;

"BIC2 Preference Shareholder" means BFC2 in its capacity as the subscriber for the BIC2 Preference Shares;

"BIC2 Preference Share Subscription Agreement" means the preference share subscription agreement entered into between BFC2 (as subscriber), BIC2 (as issuer) and the Preference Share Agent in terms of which BFC2 subscribed for and BIC2 issued the BIC2 Preference Shares to BFC2 on the Issue Date, all on the terms and conditions contained therein;

"BIC2 Proposed Payment" means, at any relevant time, the amount of any BIC2 Total Share Cover Ratio Loan, any BIC2 Volatility Protection Share Cover Ratio Loan and/or any BIC2 Scheduled Preference Dividend Shortfall Loan (and interest thereon, if any) which is proposed in writing by MTN or the applicable MTN Acceded Nominee, as the case may be, to the Preference Share Agent, to be repaid to MTN or such MTN Acceded Nominee, as the case may be, from the BIC2 Top-Up Loan Account in terms of clauses 4.2(b)(ii), 4.3(b)(ii) or 4.7(i) (as the case may be), provided that such amount shall not be greater than the amount standing to the credit of the BIC2 Top-Up Loan Account on account of any such BIC2 Total Share Cover Ratio Loan, any BIC2 Volatility Protection Share Cover Ratio Loan and/or any BIC2 Scheduled Preference Dividend Shortfall Loan at such time;

"BIC2 Scheduled Preference Dividend Shortfall Loan" means any subordinated loan advanced by MTN or an MTN Acceded Nominee to BIC2 in terms of, and on the terms and conditions set out in, clause 4.7 below for the purposes of funding the payment of all or any part of:

- (a) any BIC2 Costs and Indemnity Amounts; and/or
- (b) any BIC2 Scheduled Preference Dividend required to be paid on any BIC2 Scheduled Preference Dividend Date,

and a reference to **"BIC2 Scheduled Preference Dividend Shortfall Loans"** shall be a reference to all of them;

"BIC2 Subordinated Claims" means all present and future amounts, claims, liabilities and obligations, of whatsoever nature and howsoever arising, which are owed or may be owing by BIC2 to MTN and/or the MTN Acceded Nominees (both actual or contingent and whether incurred solely or jointly or in any other capacity) from time to time during the Term and includes, without limitation:

- (a) all and any claims of MTN against BIC2 and/or the MTN Acceded Nominees arising out of or in connection with or under any Transaction Document;
- (b) all and any claims of MTN and/or the MTN Acceded Nominees against BIC2 arising out of or in connection with or under the BIC2 Subordinated Loans, whether in respect of the repayment of any interest, capital or other amount payable by BIC2 to MTN and/or the MTN Acceded Nominees or otherwise; and

- (c) any claim of whatsoever nature and howsoever arising of MTN and/or the MTN Acceded Nominees against BIC2 as a result of or in connection with any repudiation, cancellation, termination, voidness, voidability of or misrepresentation (whether innocent, negligent or fraudulent) or breach of representation, warranty or undertaking in relation to any claims contemplated above;

"BIC2 Subordinated Loans" means subordinated loans advanced by MTN and/or any MTN Acceded Nominee to BIC2 in accordance with the provisions of clause 4 hereof, being all:

- (a) BIC2 Initial Subordinated Loans;
- (b) BIC2 Total Share Cover Ratio Loans;
- (c) BIC2 Volatility Protection Share Cover Ratio Loans;
- (d) BIC2 Taxes Shortfall Loans;
- (e) BIC2 Administration Costs Loans;
- (f) BIC2 Trading Platform Losses Differential Loans; and
- (g) BIC2 Scheduled Preference Dividend Shortfall Loans,

and a reference to a **"BIC2 Subordinated Loan"** shall be a reference to any of them;

"BIC2 Taxes Shortfall Loan" means any subordinated loan advanced by MTN or an MTN Acceded Nominee to BIC2 in terms of clause 4.4 below for the purposes of paying or providing for any BIC2 POP Taxes and a reference to **"BIC2 Taxes Shortfall Loans"** shall be a reference to all of them;

"BIC2 Taxes Shortfall Loan Balance" shall bear the meaning ascribed thereto in clause 4.4(g);

"BIC2 Taxes Shortfall Loan Repayment Amount" shall bear the meaning ascribed thereto in clause 4.4(j)(iii)(C);

"BIC2 Taxes Shortfall Loan Top-Up Amount" means, on any BIC2 Priority of Payments Date contemplated in clause 3.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation, an amount that is equal to the aggregate of:

- (a) BIC2 POP Taxes;
- (b) the amount of any outstanding BIC2 Taxes Shortfall Loans (together with interest thereon) which BIC2 wishes to repay or which MTN or the applicable MTN Acceded Nominee has requested be repaid, on such BIC2 Priority of Payments Date;

"BIC2 Total Share Cover Loan" means any subordinated loan advanced by MTN or an MTN Acceded Nominee to BIC2 in terms of, and on the terms and conditions set out in, clause 4.2(b) below for the purposes of complying with any Total Share Cover Ratio Cure Loan Undertaking from time to time and a reference to **"BIC2 Total Share Cover Loans"** shall be a reference to all of them;

"BIC2 Total Share Cover Ratio Relevant Period" shall bear the meaning ascribed thereto in clause 4.2(b)(iii);

"BIC2 Trading Platform Losses Differential Loan" means any subordinated loan advanced by MTN or an MTN Acceded Nominee to BIC2 in terms of, and on the terms and conditions set out in, clause 4.6 below for the purposes of funding all or any Trading Platform Losses Differentials from time to time, and a reference to **"BIC2 Trading Platform Losses Differential Loans"** shall be a reference to all of them;

"BIC2 Volatility Protection Share Cover Loan" means any subordinated loan advanced by MTN or an MTN Acceded Nominee to BIC2 in terms of, and on the terms and conditions set out in, clause 4.3(b) below for the purposes of complying with any Volatility Protection Share Cover Cure Loan Undertaking from time to time, and a reference to **"BIC2 Volatility Protection Share Cover Loans"** shall be a reference to all of them;

"BIC2 Volatility Protection Share Cover Ratio Relevant Period" shall bear the meaning ascribed thereto in clause 4.3(b)(iii);

"Compliance Certificate" means the compliance certificate required to be delivered by MTN to the Preference Share Agent substantially in the form of schedule 2 hereto, delivered in accordance with clause 11.3 hereof;

"Consolidated EBITDA" means, in relation to the Measurement Period, the aggregate of the consolidated operating profits of MTN (including the results from discontinued operations) before finance costs and tax for the Measurement Period, adjusted by:

- (a) taking no account of any material items which represent gains or losses arising on:
 - (i) restructurings of the activities of any entity and reversals of any provisions for the costs of restructuring;
 - (ii) disposals of non-current assets;
 - (iii) the disposal of assets associated with discontinued operations; or
 - (iv) reversals of any provision;
- (b) taking no account of any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- (c) taking no account of any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme; and
- (d) adding back any depreciation and amortisation and taking no account of any change for impairment or any reversal of any previous impairment charge made in the period;

"Consolidated Eligible Cash and Cash Equivalents" means, at any time, the cash and the cash equivalents included as cash, in each case calculated in accordance with the most recent consolidated balance sheet of MTN excluding, for the avoidance of doubt, Restricted Cash;

"Consolidated Total Borrowings" means at any time and without double counting, the aggregate of the following liabilities calculated at the nominal, principal or other amount at

which the liabilities would be carried in a consolidated balance sheet of MTN drawn up at that time:

- (a) any moneys borrowed;
- (b) any redeemable preference shares;
- (c) any acceptance under any acceptance credit (including any dematerialised equivalent);
- (d) any bond, note, debenture, loan stock or other similar instrument;
- (e) any indebtedness under a finance or capital lease;
- (f) any moneys owing in connection with the sale or discounting of receivables (except to the extent that there is no recourse);
- (g) any indebtedness arising from any deferred payment agreements arranged primarily as a method of raising finance or financing the acquisition of an asset in circumstances where payment is deferred for any period in excess of six months;
- (h) any indebtedness arising in connection with any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; and
- (i) any indebtedness of any person of a type referred to in the above clauses which are the subject of a guarantee, indemnity or similar assurance against financial loss given by a member of the Group;

"Consolidated Total Net Borrowings" means at any time Consolidated Total Borrowings less Consolidated Eligible Cash and Cash Equivalents;

"Continuing", in the context of:

- (a) a BIC2 Trigger Event or BIC2 Potential Trigger Event, means:
 - (i) where the BIC2 Trigger Event or BIC2 Potential Trigger Event is incapable of remedy that BIC2 Trigger Event or BIC2 Potential Trigger Event, as the case may be, is deemed to be continuing unless it has been expressly waived in writing by the Preference Share Agent and any conditions of such waiver have been fulfilled to the satisfaction of the Preference Share Agent;
 - (ii) in any other case, that BIC2 Trigger Event or BIC2 Potential Trigger Event, as the case may be, is deemed to be continuing unless and until it has been remedied or expressly waived in writing by the Preference Share Agent and any conditions of such waiver have been fulfilled to the satisfaction of the Preference Share Agent;
- (b) a BFC2 Trigger Event or BFC2 Potential Trigger Event, means:
 - (i) where the BFC2 Trigger Event or BFC2 Potential Trigger Event is incapable of remedy that BFC2 Trigger Event or BFC2 Potential Trigger Event, as the case may be, is deemed to be continuing unless it has been expressly waived in writing by the Preference Share Agent and any conditions of such waiver have been fulfilled to the satisfaction of the Preference Share Agent;

- (ii) in any other case, that BFC2 Trigger Event or BFC2 Potential Trigger Event, as the case may be, is deemed to be continuing unless and until it has been remedied or expressly waived in writing by the Preference Share Agent and any conditions of such waiver have been fulfilled to the satisfaction of the Preference Share Agent;

"Determination Date" the date on which the board of directors of MTN meets, in accordance with clause 9.3.1 of the Implementation Agreement;

"Determination Delivery Date" shall bear the meaning ascribed thereto in the Implementation Agreement;

"Environment" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water);

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) harm to or the protection of human health;
- (c) the conditions of the workplace; or
- (d) the generation, handling, storage, use, release, emission or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste;

"Environmental Permits" means any permit and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of MTN or any MTN Acceded Nominee conducted on or from the properties owned or used by MTN or any MTN Acceded Nominee;

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a); or

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

"FATCA Application Date" means:

- (a) in relation to a "*withholdable payment*" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "*withholdable payment*" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a "*passthru payment*" described in section 1471(d)(7) of the Code not falling within paragraph (a) or (b), 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement;

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA;

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction;

"Financial Covenant" means Consolidated Total Net Borrowings to Adjusted Consolidated EBITDA at the end of any Measurement Period, on the basis that:

- (a) an accounting term used in the calculation of the Financial Covenant is to be construed in accordance with the principles applied in connection with the Original Financial Statements;
- (b) any amount in a currency other than ZAR is to be taken into account as its ZAR equivalent calculated on the basis of:
 - (i) the Preference Share Agent's spot rate of exchange for the purchase of the relevant currency in the Johannesburg foreign exchange market ZAR at or about 11.00am on the day the relevant amount falls to be calculated; or
 - (ii) if the amount is to be calculated on the last day of a financial period of MTN, the relevant rates of exchange used by MTN in, or in connection with, its financial statements for that period;
- (c) companies which are not members of the Group, but which are proportionately consolidated in the consolidated financial statements of MTN, will be included as members of the Group, on a proportionate basis to the same extent as such proportionate consolidation, in the calculation of Adjusted Consolidated EBITDA, Consolidated EBITDA and Consolidated Total Borrowings; and
- (d) no item must be credited or deducted more than once in any calculation in respect of the Financial Covenant;

"Financial Covenant Measurement Date" means, at any relevant time, the date of the most recent Compliance Certificate;

"Group" means MTN and its Subsidiaries;

"Guarantee Due Date" means the fifth Business Day after a Notice Date;

"Guarantee Event" means any event in terms of which:

- (a) on the BFC2 Redemption Date, there is a BFC2 Redemption Amount Shortfall; and/or
- (b) on the tenth Business Day following the Final Senior Counsel Determination Date or, in the circumstances contemplated in clause 14.9.1.1 of the BIC2 Preference Share Subscription Agreement, the Exit Senior Counsel Determination Date, as the case may be, there is a Post Redemption Amount Shortfall;

"Guarantee Limit" means the difference between:

- (a) the sum of each and every JSE Loss incurred by BIC2 less the aggregate JSE Trading Platform Expenses paid or payable by BIC2; and
- (b) the sum of:
 - (i) the proceeds of each BIC2 Subordinated Loan made by MTN Holdings (or MTN or an MTN Acceded Nominee) on account of a JSE Loss; and
 - (ii) the sum of each net after Tax amount actually recovered by BIC2 from any JSE Trading Platform Third Party on account of any JSE Loss;

"Guarantee Notice" shall bear the meaning ascribed thereto in clause 8.1(c);

"Guaranteed Amount" means:

- (a) in respect of the Guarantee Event referred to in paragraph (a) above, the BFC2 Redemption Amount Shortfall;
- (b) in respect of the Guarantee Event referred to in paragraph (b) above, the Post Redemption Amount Shortfall,

in aggregate, up to the Guarantee Limit;

"Holders" means the holders of the BFC2 Preference Shares from time to time;

"Initial Subordinated Loan Undertaking" shall bear the meaning ascribed thereto in clause 4.1;

"Loan Undertaking" means an Initial Subordinated Loan Undertaking, a Total Share Cover Ratio Cure Loan Undertaking or a Volatility Protection Share Cover Cure Loan Undertaking;

"Material Adverse Effect" means a material adverse effect on:

- (a) the ability of MTN to perform its obligations under the Transaction Documents to which it is a party;

- (b) the validity or enforceability of this Agreement or MTN's obligations under any other Transaction Document to which it is a party; or
- (c) any right or remedy against MTN of any other party to a Transaction Document to which MTN is a party in respect of such Transaction Document;

"Material Subsidiary" means, at any time, an Operating Subsidiary of MTN if the gross assets, pre-tax profits or turnover of that Operating Subsidiary then equal or exceeds 10% (ten per cent) of either the gross assets, pre-tax profits or turnover of the Group. For this purpose:

- (a) subject to paragraph (b):
 - (i) the contribution of an Operating Subsidiary of MTN will be determined from its financial statements which were consolidated into the latest audited consolidated financial statements of MTN; and
 - (ii) the gross assets, pre-tax profits and/or turnover of the Group will be determined from the latest audited consolidated financial statements of MTN;
- (b) if an Operating Subsidiary of MTN becomes a member of the Group after the date on which the latest audited consolidated financial statements of MTN were prepared:
 - (i) the contribution of the Operating Subsidiary will be determined from its latest financial statements; and
 - (ii) the gross assets, pre-tax profits and/or turnover of the Group will be determined from the latest audited consolidated financial statements of MTN but adjusted to take into account any subsequent acquisition or disposal of a business or a company (including that Operating Subsidiary);
- (c) the contribution of an Operating Subsidiary will, if it has Subsidiaries, be determined from its consolidated financial statements;
- (d) if a Material Subsidiary disposes of all or substantially all of its assets to another member of the Group, it will immediately cease to be a Material Subsidiary and the other member of the Group (if it is not MTN or already a Material Subsidiary) will immediately become a Material Subsidiary;
- (e) an Operating Subsidiary of MTN (if it is not already a Material Subsidiary) will become a Material Subsidiary on completion of any other intra-Group transfer or reorganisation if it would have been a Material Subsidiary had the intra-Group transfer of reorganisation occurred on the date of the latest audited consolidated financial statements of MTN; and
- (f) except as specifically mentioned in paragraph (d), a member of the Group will remain a Material Subsidiary until the next audited consolidated financial statements of MTN indicate otherwise under paragraph (a).

If there is a dispute as to whether or not a member of the Group is a Material Subsidiary, a certificate of the auditors of MTN will be, in the absence of manifest error, conclusive;

"Measurement Period" means a period of 12 months ending on the last day of a financial year and financial half year of MTN;

"MTN Acceded Nominee" means, at any relevant time:

- (a) MTN Holdings; and
- (b) each MTN Nominee,

that has acceded to the provisions of this Agreement by executing an Accession Undertaking and **"MTN Acceded Nominees"** shall mean all of them;

"MTN BFC2 Preference Share Claims" means:

- (a) if MTN or any Call Option MTN Acceded Nominee exercises any call option in respect of some of the BFC2 Preference Shares in accordance with the provisions of clauses 5 and/or 6 of the Call Option Agreement and pursuant thereto acquires any BFC2 Preference Shares, from the date on which MTN or any Call Option MTN Acceded Nominee so acquires such BFC2 Preference Shares in accordance with the relevant provisions of the Call Option Agreement; or
- (b) in the circumstances contemplated in clause 14.7.1.2 of the BIC2 Preference Share Subscription Agreement pursuant to which:
 - (i) MTN or any Call Option MTN Acceded Nominee exercises the Trigger Event Call Option in respect of all the BFC2 Preference Shares in accordance with the provisions of clause 4 of the Call Option Agreement; and
 - (ii) MTN or any Call Option MTN Acceded Nominee accordingly acquires all the unredeemed BFC2 Preference Shares; and
 - (iii) provided that either:
 - (A) the Final Senior Counsel Opinion or the Exit Senior Counsel Opinion, as the case may be, provides that there is no reasonable prospect that a Determination Issue has occurred or will occur; or
 - (B) the Final Senior Counsel Opinion or the Exit Senior Counsel Opinion, as the case may be, provides that there is a reasonable prospect that a Determination Issue has occurred or will occur and BIC2 has paid the applicable Indemnified Amount and/or the SARS Amount into the BIC2 Security Account,

all amounts, claims, liabilities and obligations which are owed by BFC2 and/or BIC2 to MTN or that Call Option MTN Acceded Nominee (in its capacity as Holder of such BFC2 Preference Shares) directly and solely on account of such BFC2 Preference Shares, and shall exclude (for the avoidance of doubt) all and any claims of MTN and/or any MTN Acceded Nominees against BFC2 and BIC2 arising out of or in connection with or under (i) all and any BFC2 Subordinated Loans and BIC2 Subordinated Loans and (ii) the Material Agreements;

"MTN Call Option" means the call option granted to MTN or any MTN Nominee in terms of the MTN Tranche 1 Subscription and Call Option Agreement;

"MTN International" means MTN International Proprietary Limited (Registration No. 1998/002351/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;

"MTN Nominee" means, at any time at which:

- (a) a Subordinated Loan is or may be advanced to BIC2 (or to BFC2 with the prior written consent of the Preference Share Agent) in accordance with the provisions of paragraph (c); and/or
- (b) the MTN Call Option may be exercised in terms of the MTN Tranche 1 Subscription and Call Option Agreement,

any one of the following:

- (c) any Material Subsidiary which is duly registered and incorporated in accordance with the laws of South Africa;
- (d) MTN Holdings;
- (e) MTN International; or
- (f) any other entity approved by the Preference Share Agent in writing,

provided that such entity is a Subsidiary of MTN at such time and is not a Sanctioned Entity;

"MTN Related Entity" shall bear the meaning ascribed thereto in clause 17(a)(vi);

"MTN Warranty Date" means, in respect of MTN, the Original Signature Date, the Issue Date and each date thereafter (including the Refinancing Date) until:

- (a) in respect of any BIC2 Subordinated Claim, the BIC2 Discharge Date; and
- (b) in respect of any BFC2 Subordinated Claim, the BFC2 Discharge Date;

"Nominee Material Adverse Effect" means, in respect of any MTN Acceded Nominee, a material adverse effect on:

- (a) the ability of such MTN Acceded Nominee to perform its obligations under this Agreement;
- (b) the validity or enforceability of this Agreement; or
- (c) any right or remedy against such MTN Acceded Nominee of any other Party to this Agreement in respect hereof;

"Nominee Warranty Date" means, in respect of any MTN Acceded Nominee:

- (a) that has or intends to advance a BIC2 Subordinated Loan to BIC2, the date on which such MTN Acceded Nominee executes an Accession Undertaking and each date thereafter until the BIC2 Discharge Date;
- (b) that has or intends to advance a BFC2 Subordinated Loan to BFC2, the date on which such MTN Acceded Nominee executes an Accession Undertaking and each date thereafter until the BFC2 Discharge Date; and
- (c) that has or intends to exercise the MTN Call Option under the MTN Tranche 1 Subscription and Call Option Agreement, the date on which such MTN Acceded

Nominee executes an Accession Undertaking and each date thereafter until the later of the BIC2 Discharge Date and the BFC2 Discharge Date;

"Notice Date" means the date of receipt by MTN Holdings from the Preference Share Agent of a Guarantee Notice;

"Operating Subsidiary" means any Subsidiary of MTN which generates its revenue directly from telecommunication services, including offering cellular network and access and business solutions;

"Original Financial Statements" means the audited consolidated financial statements of MTN for the financial year ended on 31 December 2015;

"Original Signature Date" means 21 August 2016;

"Parties" means:

- (a) RMB, United Towers and MML in their capacity as BFC2 Preference Shareholders;
- (b) BIC2;
- (c) BFC2;
- (d) MTN;
- (e) each MTN Acceded Nominee; and
- (f) the Preference Share Agent,

and **"Party"** means, as the context requires, any of them;

"Permanent Initial Subordinated Loan" shall bear the meaning ascribed thereto in clause 4.1(a)(i) hereof;

"Post Redemption Amount Shortfall" means, on the date that falls 10 Business Days of the Final Senior Counsel Determination Date or, in the circumstances contemplated in clause 14.9.1.1 of the BIC2 Preference Share Subscription Agreement, Exit Senior Counsel Determination Date, as applicable, the amount which:

- (a) is required pursuant to clause 14.10 of the BIC2 Preference Share Subscription Agreement to be deposited into the BIC2 Security Account,

exceeds

- (b) the amount actually deposited by BIC2 in the BIC2 Security Account in accordance with the provisions of clause 14.10 of the BIC2 Preference Share Subscription Agreement;

"Preference Share Agent" means RMB or such other Preference Share Agent as may be appointed from time to time to act on behalf of the Holders in accordance with the terms of the Interfunder Agreement;

"Restricted Cash" means *"Restricted Cash"* as defined in the most recent audited consolidated financial statements of MTN;

"Sanctioned Country" means a country or territory which is subject to:

- (a) general trade, economic or financial sanctions embargoes imposed, administered or enforced by:
 - (i) the US government and administered by OFAC;
 - (ii) the United Nations Security Council;
 - (iii) the European Union; or
 - (iv) Her Majesty's Treasury of the United Kingdom; or
- (b) general economic or financial sanctions embargoes imposed by the US government and administered by the US State Department, the US Department of Commerce or the US Department of the Treasury;

"Sanctions" means:

- (a) economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by:
 - (i) the US government and administered by the Foreign Assets Control for the US Department of Treasury ("**OFAC**");
 - (ii) the United Nations Security Council;
 - (iii) the European Union; or
 - (iv) Her Majesty's Treasury of the United Kingdom; and
- (b) economic or financial sanctions imposed, administered or enforced from time to time by the US State Department, the US Department of Commerce or the US Department of the Treasury;

"Sanctions List" means any of the lists of specifically designated nationals and blocked persons (or equivalent) held by:

- (a) the US government and administered by OFAC the US State Department, the US Department of Commerce or the US Department of Treasury;
- (b) the United Nations Security Council;
- (c) the European Union;
- (d) the government of France; or
- (e) Her Majesty's Treasury of the United Kingdom,

each as amended, supplemented or substituted from time to time;

"Security Interest" means any agreement or arrangement having the effect of creating a security interest or right of possession, including any mortgage, charge (whether fixed or floating), pledge, security cession, lien, lease, right of retention, right of set-off or claim,

hypothecation, assignment, security interest, title retention, trust arrangement, preferential arrangement or encumbrance whatever, however created or arising;

"STRATE" means Strate Limited (Registration No. 1998/022242/06);

"Subordinated Claims" means collectively the BIC2 Subordinated Claims and the BFC2 Subordinated Claims;

"Subordinated Loans" means the BIC2 Subordinated Loans and the BFC2 Subordinated Loans and a **"Subordinated Loan"** shall be a reference to any of them;

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% of the voting capital or similar right of ownership and "control", for this purpose, means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise;

"Term" means the period from and including the Issue Date, to and including the BIC2 Discharge Date;

"Total Share Cover Ratio Cure Loan Undertaking" shall bear the meaning ascribed thereto in clause 4.2(a);

"Trading Day" means any day that is a trading day on the JSE and does not include a day on which trading on the JSE is scheduled to close prior to its regular weekday closing time;

"US Tax Obligor" means MTN or any MTN Acceded Nominee:

- (a) if it becomes resident for tax purposes in the US; or
- (b) if some or all of its payments under the Finance Documents are from sources within the US for US federal income tax purposes;

"Utilisation Request" means the notice substantially in the form set out in schedule 3 (*Form of Utilisation Request*);

"Volatility Protection Share Cover Cure Loan Undertaking" shall bear the meaning ascribed thereto in clause 4.3(a); and

"ZAR" means the lawful currency of South Africa.

1.2 Interpretation

In this Agreement:

- (a) any reference to an enactment is to that enactment as at the Original Signature Date and as amended or re-enacted from time to time;
- (b) if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- (c) subject to clause 1.2(f), where any number of days is to be calculated from a particular day, such number shall be calculated as including such particular day and excluding the last day of such number. If the last day of the number so calculated falls on a day

which is not a Business Day, the last day shall be deemed to be the next succeeding Business Day;

- (d) unless a contrary indication appears, any reference in this Agreement to any "**BFC2 Preference Shareholder**", any "**BIC2 Preference Shareholder**", any "**Holder**" and the "**Preference Share Agent**" shall be construed so as to include its successors in title, permitted cessionaries and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (e) any reference to any consent or approval being given by, or any other action to be taken by, the Preference Share Agent, means the Preference Share Agent acting upon the instructions of the relevant BFC2 Preference Shareholders in accordance with the relevant provisions of the Interfunder Agreement;
- (f) in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the preceding Business Day;
- (g) any reference to a Party includes that Party's successors-in-title and permitted assigns;
- (h) expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- (i) where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- (j) the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- (k) the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- (l) any reference in this Agreement to a Party shall, if such party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- (m) the words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;
- (n) the words "**other**" and "**otherwise**" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible; and
- (o) any reference in this Agreement to this Agreement or to any other Finance Document shall include a reference to each such agreement as the same may be amended, replaced, novated, restated or supplemented from time to time.

2. INTRODUCTION

- (a) BIC2 wishes to raise funding in order to subscribe for the Subscription Shares, and accordingly BIC2 wishes to issue the BIC2 Preference Shares for these purposes.
- (b) BFC2 in turn wishes to raise funding in order to subscribe to the BIC2 Preference Shares by issuing the BFC2 Preference Shares, and each BFC2 Investor is willing to subscribe for its BFC2 Preference Shares, all on the terms and conditions set out in the BFC2 Preference Share Subscription Agreement.
- (c) It is a condition to the BFC2 Investor subscribing for its BFC2 Preference Shares in terms of the BFC2 Preference Share Subscription Agreement, that MTN and each MTN Acceded Nominee:
 - (i) subordinates all:
 - (A) its BIC2 Subordinated Claims (except, in certain circumstances, its MTN BFC2 Preference Share Claims) against BIC2 in favour of:
 - (1) the claims of BFC2 against BIC2 under the Finance Documents to which BIC2 and BFC2 are a party; and
 - (2) the claims of the Holders against BIC2 under the Finance Documents to which the Holders and BIC2 are a party; and
 - (B) its BFC2 Subordinated Claims (except, in certain circumstances, its MTN BFC2 Preference Share Claims) against BFC2 in favour of the claims of the Holders against BFC2 under the Finance Documents to which the Holders and BFC2 are a party;
 - (ii) provides certain representations, warranties and undertakings to the other Parties to this Agreement.
- (d) In addition, MTN wishes it and/or any MTN Acceded Nominee to have the right to make Subordinated Loans to BIC2 (or, with the prior written consent of the Preference Share Agent, to BFC2) from time to time.
- (e) MTN Holdings has agreed to guarantee the payment to each Holder any BFC2 Redemption Amount Shortfall and the Post Redemption Amount Shortfall, in aggregate up to the Guarantee Limit, all on the terms and conditions contained herein.
- (f) The Parties wish to enter into this Agreement to record their agreement in respect thereof.

3. INTENTIONALLY LEFT BLANK

4. SUBORDINATED LOANS

4.1 Initial Subordinated Loan

- (a) MTN or an MTN Acceded Nominee shall be entitled to irrevocably and unconditionally undertake in writing (an "**Initial Subordinated Loan Undertaking**") on the Determination Delivery Date, to advance a BIC2 Subordinated Loan to BIC2 on the Issue Date, and to advance such BIC2 Subordinated Loan to BIC2 on the Issue Date

for the purposes of:

- (i) ensuring that the Inception Total Share Cover Ratio is no less than 4:1 (four to one), the amount of such BIC2 Subordinated Loan to be:
 - (A) determined by the board of directors of MTN as contemplated in clause 9.3.7.2.2(a) of the Implementation Agreement; and
 - (B) at least sufficient to procure that the Inception Total Share Cover Ratio is not less than 4:1 (a "**Permanent Initial Subordinated Loan**"); and/or
 - (ii) supporting the equity structure of the Transaction, the amount of such BIC2 Subordinated Loan to be determined by the board of directors of MTN as contemplated in clause 9.3.5.2 of the Implementation Agreement.
- (b) If MTN or an MTN Acceded Nominee, as the case may be, gives an Initial Subordinated Loan Undertaking, then MTN and/or such MTN Acceded Nominee shall be obliged to advance such BIC2 Subordinated Loan in accordance with the provisions of clause 9.4.9.1 of the Implementation Agreement.
- (c) Notwithstanding anything to the contrary contained herein:
- (i) any Initial Subordinated contemplated in clause 4.1(a)(ii) may be repaid by the Company in accordance with the provisions of clause 4.3(b)(ii) hereof;
 - (ii) no Permanent Initial Subordinated Loan shall be repaid by BIC2 to MTN or the applicable MTN Acceded Nominee (as the case may be) for the duration of the Term; and
 - (iii) the full amount of any Permanent Initial Subordinated Loan (and all interest thereon, if any) shall remain in the BIC2 Top-Up Loan Account until the BIC2 Discharge Date.

4.2 Total Share Cover Ratio Cures

- (a) If on any day during the Term the Total Share Cover Ratio falls below:
- (i) 2x (if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x); or
 - (ii) 2.2x (if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x),

then MTN and/or any MTN Acceded Nominee, as the case may be, shall be entitled, within a period of one Business Day of the date on which the Total Share Cover Ratio falls below 2x or 2.2x, as the case may be, and/or within a period of one Business Day of the date on which the Preference Share Agent gives BIC2 notice to remedy any breach of the Total Share Cover Ratio, to irrevocably and unconditionally undertake in writing (a "**Total Share Cover Ratio Cure Loan Undertaking**") that MTN and/or any MTN Acceded Nominee, as the case may be, shall advance a subordinated loan to BIC2 (or to BFC2, with the prior written consent of the Preference Share Agent, and subject to any amendments required to be made to the Transaction Documents as a

result thereof having been made to the satisfaction of the Preference Share Agent) in at least an amount sufficient to restore the Total Share Cover Ratio:

- (iii) to not less than 2.9x if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x; or
- (iv) to not less than 3.2x if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x,

provided that MTN and/or any MTN Acceded Nominee shall not be entitled to advance:

- (v) more than two such Subordinated Loans in terms of this clause 4.2(a) to BIC2 (or to BFC2, with the prior written consent of the Preference Share Agent and subject to any amendments required to be made to the Transaction Documents as a result thereof having been made to the satisfaction of the Preference Share Agent) during the Term; and
- (vi) more than one Subordinated Loan in terms of this clause 4.2(a) within any period of 12 consecutive calendar months during the Term,

save as may otherwise be agreed in writing in advance by the Preference Share Agent.

(b) **BIC2 Subordinated Loans**

- (i) If MTN or an MTN Acceded Nominee, as the case may be, gives a Total Share Cover Ratio Cure Loan Undertaking in respect of BIC2 in terms of clause 4.2(a), then MTN or such MTN Acceded Nominee, as the case may be, shall be obliged, within five Business Days of the date on which the Total Share Cover Ratio falls below 2x or 2.2x, as the case may be, and/or within a period of one Business Day of the date on which the Preference Share Agent gives BIC2 notice to remedy any breach of the Total Share Cover Ratio, to advance a BIC2 Total Share Cover Ratio Loan (in respect of which such Total Share Cover Ratio Cure Loan Undertaking is made) into the BIC2 Top-Up Loan Account, and the proceeds of such BIC2 Total Share Cover Ratio Loan shall be held in the BIC2 Top-Up Loan Account until:
 - (A) repaid in accordance with the provisions of clause 4.2(b)(ii);
 - (B) applied in accordance with clause 3.2 of the BIC2 Priority of Payments (*Special Priority of Payments*) as contemplated in clause 4.2(b)(iii);
 - (C) applied in accordance with clause 3.3.4 of the BIC2 Priority of Payments (*Post Trigger Event Priority of Payments*) as a result of the occurrence of a BIC2 Trigger Event; or
 - (D) otherwise repaid as agreed in writing between the Preference Agent and MTN.
- (ii) The amount standing to the credit of the BIC2 Top-Up Loan Account on account of any BIC2 Total Share Cover Ratio Loan which is equal to the amount of any applicable BIC2 Proposed Payment shall be applied directly by BIC2 from the BIC2 Top-Up Loan Account to the repayment of all or part of such BIC2 Total Share Cover Ratio Loan (and interest thereon, if any) without

such cash flowing in accordance with the applicable BIC2 Priority of Payments, if so required by MTN or the relevant MTN Acceded Nominee, subject to the provisions of clauses 4.2(b)(iii) and 4.2(b)(iv):

- (A) if, for a period of three consecutive months, the Total Share Cover Ratio (measured as if such BIC2 Proposed Payment had been repaid to MTN or the relevant MTN Acceded Nominee, as the case may be) is:
 - (1) 3.2x or greater on each day of such three month period if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x (two times); or
 - (2) 2.9x or greater on each day of such three month period if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x;
 - (B) at any other time, with the prior written consent of the Preference Share Agent, on written request from MTN or the relevant MTN Acceded Nominee.
- (iii) If, after the advance of a BIC2 Total Share Cover Ratio Loan to BIC2, for a period of 12 consecutive months from the date of advance of the applicable BIC2 Subordinated Loan to BIC2 (or such shorter period as may be agreed in writing between the Preference Share Agent and MTN) (the "**BIC2 Total Share Cover Ratio Relevant Period**"), the Total Share Cover Ratio is not:
- (A) 3.2x or more on each day for a period of three consecutive months during such BIC2 Total Share Cover Ratio Relevant Period, if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x; or
 - (B) 2.9x or more on each day for a period of three consecutive months during such BIC2 Total Share Cover Ratio Relevant Period, if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x,
- then, save as otherwise agreed in writing by the Preference Share Agent and MTN, then the amount standing to the credit of the BIC2 Top-Up Loan Account on account of such BIC2 Total Share Cover Ratio Loan shall be applied in accordance with clause 3.2 of the BIC2 Priority of Payments (*Special Priority of Payments*) on the first Business Day following the expiry of the BIC2 Total Share Cover Ratio Relevant Period, or as otherwise agreed in writing between the Preference Share Agent and MTN.
- (iv) No amount standing to the credit of the BIC2 Top-Up Loan Account on account of any BIC2 Total Share Cover Ratio Loan shall be applied to repay any BIC2 Total Share Cover Ratio Loan made in accordance with the provisions of this clause 4.2(b) if a BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing, save as otherwise agreed to by the Preference Share Agent.

(c) **BFC2 Subordinated Loans**

- (i) If MTN or an MTN Acceded Nominee, as the case may be gives a Total Share Cover Ratio Cure Loan Undertaking in respect of BFC2 in terms of clause 4.2(a) (with the prior written consent of the Preference Share Agent, and subject to any amendments required to be made to the Transaction Documents as a result thereof having been made to the satisfaction of the Preference Share Agent), then MTN or such MTN Acceded Nominee, as the case may be, shall be obliged, within five Business Days of the date on which the Total Share Cover Ratio falls below 2x or 2.2x, as the case may be, and/or within a period of one Business Day of the date on which the Preference Share Agent gives BIC2 notice to remedy any breach of the Total Share Cover Ratio, to advance the BFC2 Subordinated Loan (in respect of which such Total Share Cover Ratio Cure Loan Undertaking is made) into the BFC2 Top-Up Loan Account, and the proceeds of such BFC2 Subordinated Loan shall be held in the BFC2 Top-Up Loan Account until:
 - (A) repaid in accordance with the provisions of clause 4.2(c)(ii);
 - (B) applied in accordance with the BFC2 Priority of Payments; or
 - (C) otherwise repaid as agreed in writing between the Preference Share Agent and MTN.
- (ii) The amount standing to the credit of the BFC2 Top-Up Loan Account which is equal to the amount of the applicable BFC2 Proposed Payment, if any, shall be applied directly by BFC2 from the BFC2 Top-Up Loan Account to the repayment of all or part of any applicable BFC2 Subordinated Loan (together with interest thereon, if any) without such cash flowing in accordance with the BFC2 Priority of Payments if so required by MTN or the relevant MTN Acceded Nominee, subject to the provisions of clauses 4.2(c)(iii) and 4.2(c)(iv):
 - (A) if, for a period of three consecutive months, the Total Share Cover Ratio (measured as if such BFC2 Proposed Payment had been repaid to MTN or the relevant MTN Acceded Nominee, as the case may be) is:
 - (1) 3.2x or greater on each day of such three month period if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x; or
 - (2) 2.9x or greater on each day of such three month period if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x,
 - (B) at any other time, with the prior written consent of the Preference Share Agent, on written request from MTN.
- (iii) If, after the advance of a BFC2 Subordinated Loan to BFC2, for a period of twelve consecutive months from the date of advance of the BFC2 Subordinated Loan to BFC2 (or such shorter period as may be agreed in writing between the Preference Share Agent and MTN) (the "**BFC2 Total Share Cover Ratio**

Relevant Period"), the Total Share Cover Ratio is not:

- (A) 3.2x or more on each day for a period of three consecutive months during such BFC2 Total Share Cover Ratio Relevant Period, if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x; or
- (B) 2.9x or more on each day for a period of three consecutive months during such BFC2 Total Share Cover Ratio Relevant Period, if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x,

then, save as otherwise agreed in writing by the Preference Share Agent and MTN, the amount standing to the credit of the BFC2 Top-Up Loan Account shall be applied in accordance with the BFC2 Priority of Payments on the first Business Day following the expiry of the BFC2 Total Share Cover Ratio Relevant Period or as otherwise agreed in writing between the Preference Share Agent and MTN.

- (iv) No amount standing to the credit of the BFC2 Top-Up Loan Account shall be applied to repay any BFC2 Subordinated Loan made in accordance with the provisions of this clause 4.2(c) if a BFC2 Potential Trigger Event or BFC2 Trigger Event has occurred and is Continuing, save as otherwise agreed to by the Preference Share Agent.

4.3 Volatility Protection Share Cover Ratio Cures

- (a) If on any day during the Term the Volatility Protection Share Cover Ratio falls below:
 - (i) 2.6x (if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x); or
 - (ii) 2.3x (if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x),

for a period of 10 consecutive Trading Days, then MTN and/or any MTN Acceded Nominee, as the case may be, shall be entitled, within a period of one Business Day of the date on which the Volatility Protection Share Cover Ratio falls below 2.6x or 2.3x, as the case may be, and/or within a period of one Business Day of the date on which the Preference Share Agent gives BIC2 notice to remedy any breach of the Volatility Protection Share Cover Ratio, to irrevocably and unconditionally undertake in writing (a "**Volatility Protection Share Cover Cure Loan Undertaking**") that MTN and/or any MTN Acceded Nominee, as the case may be, shall advance a subordinated loan to BIC2 (or to BFC2, with the prior written consent of the Preference Share Agent, and subject to any amendments required to be made to the Transaction Documents as a result thereof having been made to the satisfaction of the Preference Share Agent) in at least an amount sufficient to restore the Volatility Protection Share Cover Ratio:

- (iii) to not less than 2.9x if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x;
- (iv) to not less than 2.6x if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x.

(b) **BIC2 Subordinated Loans**

- (i) If MTN or an MTN Acceded Nominee, as the case may be, gives a Volatility Protection Share Cover Cure Loan Undertaking in respect of BIC2 in terms of clause 4.3(a), then MTN or such MTN Acceded Nominee, as the case may be, shall be obliged, within ten Business Days of the date of such Volatility Protection Share Cover Cure Loan Undertaking, to advance the applicable BIC2 Volatility Protection Share Cover Ratio Loan (in respect of which the Volatility Protection Share Cover Cure Loan Undertaking is made) into the BIC2 Top-Up Loan Account, and the proceeds of such BIC2 Volatility Protection Share Cover Ratio Loan shall be held in the BIC2 Top-Up Loan Account until:
 - (A) repaid in accordance with the provisions of clause 4.3(b)(ii);
 - (B) applied in accordance with clause 3.2 of the BIC2 Priority of Payments (*Special Priority of Payments*) as contemplated in clause 4.3(b)(iii);
 - (C) applied in accordance with clause 3.3.4 of the BIC2 Priority of Payments (*Post Trigger Event Priority of Payments*) as a result of the occurrence of a BIC2 Trigger Event; or
 - (D) otherwise repaid as agreed in writing between the Preference Agent and MTN.
- (ii) The amount standing to the credit of the BIC2 Top-Up Loan Account on account of any BIC2 Volatility Protection Share Cover Ratio Loan which is equal to the amount of any applicable BIC2 Proposed Payment shall be applied directly by BIC2 from the BIC2 Top-Up Loan Account to the repayment of all or part of such BIC2 Volatility Protection Share Cover Ratio Loan (and interest thereon, if any) without such cash flowing in accordance with the applicable BIC2 Priority of Payments, if so required by MTN or the relevant MTN Acceded Nominee, subject to the provisions of clauses 4.3(b)(iii) and 4.3(b)(iv):
 - (A) if, for a period of three consecutive months, the Volatility Protection Share Cover Ratio (measured as if such BIC2 Proposed Payment had been repaid to MTN or the relevant MTN Acceded Nominee, as the case may be) is:
 - (1) 3x or greater on each day of such three month period if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x; or
 - (2) 2.8x or greater on each day of such three month period if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x;
 - (B) at any other time, with the prior written consent of the Preference Share Agent, on written request from MTN or the relevant MTN Acceded Nominee.
- (iii) If, after the advance of a BIC2 Volatility Protection Share Cover Ratio Loan to BIC2, for a period of twelve consecutive months from the date of advance

of such BIC2 Volatility Protection Share Cover Ratio Loan to BIC2 (or such shorter period as may be agreed in writing between the Preference Share Agent and MTN) (the "**BIC2 Volatility Protection Share Cover Ratio Relevant Period**"), the Volatility Protection Share Cover Ratio is not:

- (A) 3x or more on each day for a period of three consecutive months during such BIC2 Volatility Protection Share Cover Ratio Relevant Period, if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x; or
- (B) 2.8x or more on each day for a period of three consecutive months during such BIC2 Volatility Protection Share Cover Ratio Relevant Period, if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x,

then, save as otherwise agreed in writing by the Preference Share Agent and MTN, the amount standing to the credit of the BIC2 Top-Up Loan Account on account of such BIC2 Volatility Protection Share Cover Ratio Loan shall be applied in accordance with clause 3.2 of the BIC2 Priority of Payments (*Special Priority of Payments*) on the first Business Day following the expiry of the BIC2 Volatility Protection Share Cover Ratio Relevant Period, or as otherwise agreed in writing between the Preference Share Agent and MTN.

- (iv) No amount standing to the credit of the BIC2 Top-Up Loan Account on account of such BIC2 Volatility Protection Share Cover Ratio Loan shall be applied to repay any BIC2 Volatility Protection Share Cover Ratio Loan made in accordance with the provisions of clauses 4.1(a)(ii) or 4.3(b) if a BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing, save as otherwise agreed to by the Preference Share Agent.

(c) **BFC2 Subordinated Loans**

- (i) If MTN or an MTN Acceded Nominee, as the case may be gives a Volatility Protection Share Cover Cure Loan Undertaking in respect of BFC2 (with the prior written consent of the Preference Share Agent, and subject to any amendments required to be made to the Transaction Documents as a result thereof having been made to the satisfaction of the Preference Share Agent), then MTN or such MTN Acceded Nominee, as the case may be, shall be obliged, within 10 Business Days of the date of such Volatility Protection Share Cover Cure Loan Undertaking, to advance the applicable BFC2 Subordinated Loan (in respect of which such Volatility Protection Share Cover Cure Loan Undertaking is given in terms of clause 4.3(a)) into the BFC2 Top-Up Loan Account, and the proceeds of such BFC2 Subordinated Loan shall be held in the BFC2 Top-Up Loan Account until:
 - (A) repaid in accordance with the provisions of clause 4.3(c)(ii);
 - (B) applied in accordance with the BFC2 Priority of Payments; or
 - (C) otherwise repaid as agreed in writing between the Preference Share Agent and MTN.
- (ii) The amount standing to the credit of the BFC2 Top-Up Loan Account which is equal to the amount of any applicable BFC2 Proposed Payment shall be

applied directly by BFC2 from the BFC2 Top-Up Loan Account to the repayment of all or part of any applicable BFC2 Subordinated Loan (and interest thereon, if any) without such cash flowing in accordance with the BFC2 Priority of Payments, if so required by MTN or the relevant MTN Acceded Nominee, subject to the provisions of clauses 4.3(c)(iii) and 4.3(c)(iv):

- (A) if, for a period of three consecutive months, the Volatility Protection Share Cover Ratio (measured as if such BIC2 Proposed Payment had been repaid to MTN or the relevant MTN Acceded Nominee, as the case may be) is:
 - (1) 3x or greater on each day of such three month period if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x; or
 - (2) 2.8x or greater on each day of such three month period if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x;
 - (B) at any other time, with the prior written consent of the Preference Share Agent, on written request from MTN or the relevant MTN Acceded Nominee.
- (iii) If, after the advance of a BFC2 Subordinated Loan to BFC2, for a period of twelve consecutive months from the date of advance of the BFC2 Subordinated Loan to BFC2 (or such shorter period as may be agreed in writing between the Preference Share Agent and MTN) (the "**BFC2 Volatility Protection Share Cover Ratio Relevant Period**"), the Volatility Protection Share Cover Ratio is not:
- (A) 2.9x or more on each day for a period of three consecutive months during such BFC2 Volatility Protection Share Cover Ratio Relevant Period, if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is equal to or greater than 2x; or
 - (B) 2.6x or more on each day for a period of three consecutive months during such BFC2 Volatility Protection Share Cover Ratio Relevant Period, if the Financial Covenant, as at the most recent Financial Covenant Measurement Date, is less than 2x,
- then, save as otherwise agreed in writing by the Preference Share Agent and MTN, the amount standing to the credit of the BFC2 Top-Up Loan Account shall be applied in accordance with the BFC2 Priority of Payments on the first Business Day following the expiry of the BFC2 Volatility Protection Share Cover Ratio Relevant Period or as otherwise agreed in writing between the Preference Share Agent and MTN.
- (iv) No amount standing to the credit of the BFC2 Top-Up Loan Account shall be applied to repay any BFC2 Subordinated Loan made in accordance with the provisions of clause 4.3(c) if a BFC2 Potential Trigger Event or BFC2 Trigger Event has occurred and is Continuing, save as otherwise agreed to by the Preference Share Agent.

4.4 BIC2 Taxes Shortfall Loans

- (a) If, from time to time during the Term, BIC2 anticipates that it will not have sufficient funds available, on any BIC2 Priority of Payments Date or at any time up to the next BIC2 Priority of Payments Date, to pay or provide for any BIC2 POP Taxes, then BIC2 shall be entitled to request MTN or an MTN Acceded Nominee to make available one or more BIC2 Taxes Shortfall Loans to BIC2, for utilisation by BIC2 to pay or provide for such BIC2 POP Taxes. Each such request by BIC2 for a BIC2 Taxes Shortfall Loan shall be made by way of BIC2 delivering a Utilisation Request to MTN or the relevant MTN Acceded Nominee (with a copy to the Preference Share Agent) not less than 3 (three) Business Days prior to the proposed advance date of such BIC2 Taxes Shortfall Loan (or such other date as BIC2, MTN or the applicable MTN Acceded Nominee (as the case may be) may agree).
- (b) Such Utilisation Request is irrevocable and will only be regarded as having been duly completed if it:
 - (i) is addressed to MTN or the applicable MTN Acceded Nominee, with a copy to the Preference Share Agent;
 - (ii) requests that MTN or the applicable MTN Acceded Nominee make a BIC2 Taxes Shortfall Loan to BIC2, on the terms and conditions set out in this clause 4.4;
 - (iii) specifies the amount of such BIC2 Taxes Shortfall Loan which, when taken together with all other BIC2 Subordinated Loans previously made to, or proposed to be made to BIC2, shall not exceed the amount of any facility amount approved by MTN or any MTN Acceded Nominee to BIC2 from time to time;
 - (iv) confirms that the purpose of such BIC2 Taxes Shortfall Loan is to fund the payment of, or provision for, BIC2 POP Taxes;
 - (v) specifies the bank account details into which an amount equal to such BIC2 Taxes Shortfall Loan must be paid (which must be details of the BIC2 Collections Account); and
 - (vi) specifies the proposed advance date of such BIC2 Taxes Shortfall Loan.
- (c) Provided that:
 - (i) such Utilisation Request complies with the conditions set out in clause 4.4(b); and
 - (ii) BIC2 and the Preference Share Agent have been provided with copies of all director and, if any, shareholder resolutions required in order to duly authorise MTN or the applicable MTN Acceded Nominee to make such BIC2 Taxes Shortfall Loan to BIC2 on the terms and conditions hereof, in a form and substance satisfactory to the Preference Share Agent,

MTN or the applicable MTN Acceded Nominee shall be obliged to advance such BIC2 Taxes Shortfall Loan to BIC2 on the advance date specified in such Utilisation Request, by making payment thereof into the BIC2 Collections Account.

- (d) Each BIC2 Taxes Shortfall Loan shall:
 - (i) constitute a BIC2 Subordinated Claim; and
 - (ii) be used solely by BIC2 to fund the payment of, or provision for payment of, BIC2 POP Taxes.
- (e) All or any portion of a BIC2 Taxes Shortfall Loan which remains owing by BIC2 to MTN or an MTN Acceded Nominee from time to time shall bear interest at a rate of interest to be agreed between BIC2 and MTN or the applicable MTN Acceded Nominee (as the case may be) up to and including the Prime Rate (or such higher rate of interest agreed between the Preference Share Agent, MTN or the applicable MTN Acceded Nominee (as the case may be) and BIC2).
- (f) The proceeds of each BIC2 Taxes Shortfall Loan shall be used solely for the purposes of paying or providing for BIC2 POP Taxes and shall not be applied towards paying or providing for any other amounts owing by BIC2.
- (g) To the extent that, on the date of advance of any BIC2 Taxes Shortfall Loan, any part of the proceeds of such BIC2 Taxes Shortfall Loan is not used to pay such BIC2 POP Taxes (such proceeds the "**BIC2 Taxes Shortfall Loan Balance**"), then:
 - (i) the Preference Share Agent shall instruct the Account Bank to transfer the BIC2 Taxes Shortfall Loan Balance to the BIC2 Tax Provisions Account as soon as possible after such advance date, to be used for the purposes of paying or providing for the payment of any BIC2 POP Taxes;
 - (ii) the BIC2 Taxes Shortfall Loan Balance, if any, held in the BIC2 Tax Provisions Account from time to time shall be applied from time to time solely to the payment of any BIC2 POP Taxes, in accordance with the provisions of clause 13 of the Account Bank and Agency Agreement.
- (h) Subject to the provisions of clause 4.4(k), if, prior to any BIC2 Priority of Payments Date contemplated in clause 3.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation:
 - (i) there are any BIC2 Taxes Shortfall Loans (together with any accrued interest thereon) owing by BIC2 to MTN or an applicable MTN Acceded Nominee;
 - (ii) BIC2 wishes to repay all or any part of such BIC2 Taxes Shortfall Loans (together with any accrued interest thereon) or MTN or the applicable MTN Acceded Nominee has requested that all or any part of such BIC2 Taxes Shortfall Loans (together with any accrued interest thereon) be repaid;
 - (iii) BIC2 has advised the Calculation Agent of the proposed BIC2 Taxes Shortfall Loan Top-Up Amount;
 - (iv) BIC2 has received Distributions on account of its holding of the Subject Shares,
 then, provided that:
 - (v) the Calculation Agent has confirmed in writing to the Preference Share Agent

that the Distributions so received by BIC2 on account of its holding of the Subject Shares is sufficient to pay and discharge in full the aggregate of:

- (A) all BIC2 POP Taxes;
 - (B) the proposed BIC2 Taxes Shortfall Loan Top-Up Amount to be made on such BIC2 Priority of Payments Date;
 - (C) all BIC2 Anticipated Administration Costs;
 - (D) any proposed BIC2 Administration Costs Loan Top-Up Amount to be made on such BIC2 Priority of Payments Date; plus
 - (E) the BIC2 Scheduled Preference Dividends due and payable such BIC2 Priority of Payments Date;
- (vi) no BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing; and
- (vii) prior to such BIC2 Priority of Payments Date, BIC2 confirms in writing to MTN and the Preference Share Agent that:
- (A) to the best of its knowledge and belief, having made due and careful enquiry, other than any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Finance Documents and/or the Material Agreements, no BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing; and
 - (F) the transfer of an amount equal to the BIC2 Taxes Shortfall Loan Top-Up Amount into the BIC2 Tax Provisions Account would not result in a BIC2 Potential Trigger Event or BIC2 Trigger Event occurring,

then, on prior written notice to the Preference Share Agent, BIC2 shall be entitled to instruct the Account Bank to transfer an amount equal to the BIC2 Taxes Shortfall Loan Top-Up Amount into the BIC2 Tax Provisions Account on such BIC2 Priority of Payments Date. Any such notice by BIC2 to the Account Bank shall be irrevocable and unconditional. The Account Bank shall be required to transfer an amount equal to the BIC2 Taxes Shortfall Loan Top-Up Amount into the BIC2 Provisions Account on such BIC2 Priority of Payments Date, together with any other BIC2 POP Taxes required to be paid or provided for pursuant to clause 3.1.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation. The Parties agree that any BIC2 Taxes Shortfall Loan Top-Up Amount shall be construed as an amount to be paid for all purposes under and in terms of clause 3.1.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation and the Account Bank and Agency Agreement.

- (i) BIC2 Taxes Shortfall Loans (together with any accrued interest thereon, to the extent permitted) shall be repaid (subject to the provisions of clause 4.4(k) hereof):
- (i) in accordance with the provisions of clause 4.4(j) below;

- (ii) in accordance with clause 3.1.8.2 of the BIC2 Priority of Payments (*Pre BIC2 Trigger Event Priority of Payments*);
 - (iii) in accordance with clause 3.2.5.2 of the BIC2 Priority of Payments (*Special Priority of Payments*);
 - (iv) in accordance with clause 3.3.4 of the BIC2 Priority of Payments (*Post Trigger Event Priority of Payments*) as a result of the occurrence of a BIC2 Trigger Event; or
 - (v) otherwise, prior to the occurrence of the BIC2 Discharge Date, as agreed in writing between BIC2, the Preference Agent, MTN or the applicable MTN Acceded Nominee (as the case may be); and
 - (vi) after the occurrence of the BIC2 Discharge Date, on receipt by BIC2 of written demand from MTN or the applicable MTN Acceded Nominee (as the case may be).
- (j) If any time prior to the BIC2 Discharge Date (subject to the provisions of clause 4.5(k) hereof):
- (i) there are any BIC2 Taxes Shortfall Loans (together with interest thereon, if any) owing by BIC2 to MTN or an applicable MTN Acceded Nominee;
 - (ii) BIC2 wishes to repay all or any part of such BIC2 Taxes Shortfall Loans (together with interest thereon) or MTN or the applicable MTN Acceded Nominee has requested that all or any part of such BIC2 Taxes Shortfall Loans (together with interest thereon) be repaid;
 - (iii) BIC2 has advised the Calculation Agent in writing:
 - (A) of the amount of the BIC2 POP Taxes at such time;
 - (B) that it wishes to repay all or any part of such BIC2 Taxes Shortfall Loans (together with interest thereon) or that MTN or the applicable MTN Acceded Nominee has requested that all or any part of such BIC2 Taxes Shortfall Loans (together with interest thereon) be repaid; and
 - (C) of the amount of such BIC2 Taxes Shortfall Loans (together with interest thereon) which BIC2 proposes to repay or which MTN or the applicable MTN Acceded Nominee has requested be repaid (the "**BIC2 Taxes Shortfall Loan Repayment Amount**");
 - (iv) the Calculation Agent confirms to the Preference Share Agent:
 - (A) the amount standing to the credit of the BIC2 Tax Provisions Account on account of any BIC2 Taxes Shortfall Loan Balance and/or any BIC2 Taxes Shortfall Loan Top-Up Amount; and
 - (B) that (A) is equal to or greater than the sum of:
 - (1) the applicable BIC2 POP Taxes; and

- (2) BIC2 Taxes Shortfall Loan Repayment Amount; and
- (v) BIC2 confirms in writing to MTN and the Preference Share Agent that:
 - (A) it is reasonably satisfied that it has, or will have, funds available (other than any BIC2 Subordinated Loans) in order to pay or provide for BIC2 POP Taxes;
 - (B) to the best of its knowledge and belief, having made due and careful enquiry, other than any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Finance Documents and/or the Material Agreements, no BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing; and
 - (C) repayment of such BIC2 Taxes Shortfall Loan (together with any accrued interest thereon) in an amount equal to the BIC2 Taxes Shortfall Loan Repayment Amount would not result in a BIC2 Potential Trigger Event or BIC2 Trigger Event occurring,

then, on prior written notice to the Preference Share Agent, BIC2 shall be entitled to instruct the Account Bank to repay all or any part of such BIC2 Taxes Shortfall Loan (together with any accrued interest thereon) in an amount equal to the BIC2 Taxes Shortfall Loan Repayment Amount from the funds standing to the credit of the BIC2 Tax Provisions Account to MTN or the applicable MTN Acceded Nominee. Any such notice by BIC2 to the Account Bank shall be irrevocable and unconditional, and shall specify the bank account details of MTN or the applicable MTN Acceded Nominee into which such BIC2 Taxes Shortfall Loan Balance (from the funds standing to the credit of the BIC2 Provisions Account) must be paid.

- (k) No amount standing to the credit of the BIC2 Tax Provisions Account on account of any BIC2 Taxes Shortfall Loan (together with any accrued interest thereon) shall be applied to repay any BIC2 Taxes Shortfall Loan (together with any accrued interest thereon) made in accordance with the provisions of this clause 4.4 if a BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing, save as otherwise agreed to by the Preference Share Agent.

4.5 BIC2 Administration Costs Loans

- (a) If, from time to time during the Term, BIC2 anticipates that it will not have sufficient funds available, on any BIC2 Priority of Payments Date or at any time up to the next BIC2 Priority of Payments Date, to pay or provide for all its reasonably foreseeable Administration Costs as at such BIC2 Priority of Payments Date and for the period of 12 (twelve) months following such BIC2 Priority of Payments Date, then BIC2 shall be entitled to request MTN or an MTN Acceded Nominee to make available one or more BIC2 Administration Costs Loans to BIC2 for utilisation by BIC2 to pay or provide for such Administration Costs. Each such request for a BIC2 Administration Costs Loan by BIC2 shall be made by way of BIC2 delivering a Utilisation Request to MTN or the relevant MTN Acceded Nominee (with a copy to the Preference Share Agent) not less than 3 (three) Business Days prior to the proposed advance date of such BIC2 Administration Costs Loan (or such other date as BIC2, MTN or the applicable MTN Acceded Nominee (as the case may be) may agree).

- (b) Such Utilisation Request is irrevocable and will only be regarded as having been duly completed if it:
- (i) is addressed to MTN or the relevant MTN Acceded Nominee, with a copy to the Preference Share Agent;
 - (ii) requests that MTN or the relevant MTN Acceded Nominee make a BIC2 Administration Costs Loan to BIC2, on the terms and conditions set out in this clause 4.4;
 - (iii) specifies the amount of such BIC2 Administration Costs Loan which, when taken together with all other BIC2 Subordinated Loans previously made to, or proposed to be made to BIC2, shall not exceed the amount of any facility amount approved by MTN or any MTN Acceded Nominee to BIC2 from time to time;
 - (iv) confirms that the purpose of such BIC2 Administration Costs Loan is to fund the payment of, or provision for, Administration Costs;
 - (v) specifies the bank account details into which an amount equal to such BIC2 Administration Costs Loan must be paid (which must be details of the BIC2 Collections Account); and
 - (vi) specifies the proposed advance date of such BIC2 Administration Costs Loan.
- (c) Provided that:
- (i) such Utilisation Request complies with the conditions set out in clause 4.5(b); and
 - (ii) BIC2 and the Preference Share Agent have been provided with copies of all director and, if any, shareholder resolutions required in order to duly authorise MTN or the applicable MTN Acceded Nominee to make such BIC2 Administration Costs Loan to BIC2 on the terms and conditions hereof, in a form and substance satisfactory to the Preference Share Agent,
- MTN or the applicable MTN Acceded Nominee shall be obliged to advance such BIC2 Administration Costs Loan to BIC2 on the advance date specified in such Utilisation Request, by making payment thereof into the BIC2 Collections Account.
- (d) Each BIC2 Administration Costs Loan shall:
- (i) constitute a BIC2 Subordinated Claim; and
 - (ii) be used solely by BIC2 to fund the payment of, or provision for payment of, Administration Costs.
- (e) All or any portion of a BIC2 Administration Costs Loan which remains owing by BIC2 to MTN or an MTN Acceded Nominee from time to time shall bear interest at a rate of interest to be agreed between BIC2 and MTN or the applicable MTN Acceded Nominee (as the case may be) up to and including the Prime Rate (or such higher rate of interest agreed between the Preference Share Agent, MTN or the applicable MTN Acceded Nominee (as the case may be) and BIC2).

- (f) For the purposes hereof it is recorded that:
- (i) with effect from the date on which this Amended and Restated Agreement becomes effective, the amount of R15,000,000 (fifteen million Rand) advanced by MTN Holdings to BIC2 during or about September 2020 (pursuant to a letter agreement agreed between *inter alios* BIC2, the Preference Share Agent and MTN) constitutes a BIC2 Administration Costs Loan and bears interest at the Prime Rate;
 - (ii) in a letter addressed by MTN to BIC2 dated 28 September 2020, MTN committed to provide a further R15,000,000 (fifteen million Rand) to BIC2, all on the terms and conditions contained therein, which at the date on which this Amended and Restated Agreement becomes effective has not yet been advanced by MTN or an MTN Acceded Nominee to BIC2 (the "**MTN Further Commitment**");
 - (iii) MTN and MTN Holdings have, pursuant to shareholder resolutions and directors resolutions duly passed during or about April 2021, approved the provision of funding to BIC2 in an aggregate amount not exceeding R75,000,000 (seventy million Rand) for the purposes of providing BIC2 Taxes Shortfall Loans, BIC2 Administration Costs Loans and/or BIC2 Scheduled Preference Dividend Shortfall Loans from time to time (the "**MTN R75 Million Commitment**") and shall bear interest at the Prime Rate; and
 - (iv) the MTN R75 Million Commitment includes, and is not in addition to, the MTN Further Commitment.
- (g) The proceeds of each BIC2 Administration Costs Loan shall be used solely by BIC2 for the purposes of paying or providing for Administration Costs and shall not be applied towards paying or providing for any other amounts owing by BIC2.
- (h) To the extent that, on the date of advance of any BIC2 Administration Costs Loan, any part of the proceeds of such BIC2 Administration Costs Loan is not used to pay any Administration Costs (such proceeds the "**BIC2 Administration Costs Loan Balance**"), then:
- (i) the Preference Share Agent shall instruct the Account Bank to transfer the BIC2 Administration Costs Loan Balance to the BIC2 Provisions Account as soon as possible after such advance date, to be used by BIC2 for the purposes of paying or providing for the payment of any Administration Costs;
 - (ii) the BIC2 Administration Costs Loan Balance, if any, held in the BIC2 Provisions Account from time to time shall be applied from time to time solely to the payment of any Administration Costs in accordance with the provisions of clause 12 of the Account Bank and Agency Agreement.
- (i) Subject to the provisions of clause 4.5(l), if, prior to any BIC2 Priority of Payments Date contemplated in clause 3.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation:
- (viii) there are any BIC2 Administration Costs Loans (together with any accrued interest thereon) owing by BIC2 to MTN or an applicable MTN Acceded Nominee;

- (ix) BIC2 wishes to repay all or any part of such BIC2 Administration Costs Loans (together with any accrued interest thereon) or MTN or the applicable MTN Acceded Nominee has requested that all or any part of such BIC2 Administration Costs Loans (together with any accrued interest thereon) be repaid;
- (x) BIC2 has advised the Calculation Agent of:
 - (A) the proposed BIC2 Administration Costs Loan Top-Up Amount;
 - (B) all BIC2 POP Taxes required to be paid or provided by BIC2 as at such BIC2 Priority of Payments Date;
 - (C) all Administration Costs required to be paid or provided by BIC2 as at such BIC2 Priority of Payments Date;
- (xi) BIC2 has received Distributions on account of its holding of the Subject Shares,

then, provided that:

- (xii) the Calculation Agent has confirmed in writing to the Preference Share Agent that the Distributions so received by BIC2 on account of its holding of the Subject Shares is sufficient to pay and discharge in full the aggregate of:
 - (A) all BIC2 POP Taxes required to be paid or provided by BIC2 such BIC2 Priority of Payments Date;
 - (B) all Administration Costs required to be paid or provided by BIC2 such BIC2 Priority of Payments Date;
 - (C) the proposed BIC2 Administration Costs Loan Top-Up Amount to be made on such BIC2 Priority of Payments Date; plus
 - (D) the BIC2 Scheduled Preference Dividends due and payable such BIC2 Priority of Payments Date;
- (xiii) no BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing; and
- (xiv) prior to such BIC2 Priority of Payments Date, BIC2 confirms in writing to MTN and the Preference Share Agent that:
 - (A) to the best of its knowledge and belief, having made due and careful enquiry, other than any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Finance Documents and/or the Material Agreements, no BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing; and
 - (E) the transfer of an amount equal to the BIC2 Administration Costs Loan Top-Up Amount into the BIC2 Provisions Account would not result in

a BIC2 Potential Trigger Event or BIC2 Trigger Event occurring,

then, on prior written notice to the Preference Share Agent, BIC2 shall be entitled to instruct the Account Bank to transfer an amount equal to the BIC2 Administration Costs Loan Top-Up Amount into the BIC2 Provisions Account on such BIC2 Priority of Payments Date. Any such notice by BIC2 to the Account Bank shall be irrevocable and unconditional. The Account Bank shall be required to transfer an amount equal to the BIC2 Administration Costs Loan Top-Up Amount into the BIC2 Provisions Account on such BIC2 Priority of Payments Date, together with any other Administration Costs which are required to be paid or provided for pursuant to clause 3.1.2 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation. The Parties agree that any BIC2 Administration Costs Loan Top-Up Amount shall be construed as an "Administration Cost" for all purposes under and in terms of clause 3.1.2 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation and the Account Bank and Agency Agreement.

- (j) BIC2 Administration Costs Loans (together with any accrued interest thereon, to the extent permitted) shall be repaid (subject to the provisions of clause 4.5(l) hereof):
 - (i) in accordance with the provisions of clause 4.5(k) below;
 - (ii) in accordance with clause 3.1.8.2 of the BIC2 Priority of Payments (*Pre BIC2 Trigger Event Priority of Payments*);
 - (iii) in accordance with clause 3.2.5.2 of the BIC2 Priority of Payments (*Special Priority of Payments*);
 - (iv) in accordance with clause 3.3.4 of the BIC2 Priority of Payments (*Post Trigger Event Priority of Payments*) as a result of the occurrence of a BIC2 Trigger Event; or
 - (v) otherwise, prior to the occurrence of the BIC2 Discharge Date, as agreed in writing between BIC2, the Preference Agent and MTN or the applicable MTN Acceded Nominee (as the case may be); and
 - (vi) after the occurrence of the BIC2 Discharge Date, on receipt by BIC2 of written demand from MTN or the applicable MTN Acceded Nominee (as the case may be).
- (k) If any time prior to the BIC2 Discharge Date:
 - (i) there are any BIC2 Administration Costs Loans (together with interest thereon, if any) owing by BIC2 to MTN or an applicable MTN Acceded Nominee;
 - (ii) BIC2 wishes to repay all or any part of such BIC2 Administration Costs Loans (together with interest thereon) or MTN or the applicable MTN Acceded Nominee has requested that all or any part of such BIC2 Administration Costs Loans (together with interest thereon) be repaid;

- (iii) BIC2 has advised the Calculation Agent in writing:
 - (A) of the aggregate amount of its current and reasonably anticipated Administration Costs for the immediately succeeding 12 (twelve) month period (the "**BIC2 Anticipated Administration Costs**");
 - (B) that it wishes to repay all or any part of such BIC2 Administration Costs Loans (together with interest thereon) or that MTN or the applicable MTN Acceded Nominee has requested that all or any part of such BIC2 Administration Costs Loans (together with interest thereon) be repaid; and
 - (C) the amount of such BIC2 Administration Costs Loans (together with interest thereon) which BIC2 proposes to repay or which MTN or the applicable MTN Acceded Nominee has requested be repaid (the "**BIC2 Administration Costs Loan Repayment Amount**");
- (iv) the Calculation Agent confirms to the Preference Share Agent:
 - (A) the amount standing to the credit of the BIC2 Provisions Account on account of any BIC2 Administration Costs Loan Balance and/or any BIC2 Administration Costs Loan Top-Up Amount; and
 - (B) that (A) is equal to or greater than the sum of:
 - (1) the BIC2 Anticipated Administration Costs; and
 - (2) BIC2 Administration Costs Loan Repayment Amount; and
- (v) BIC2 confirms in writing to MTN and the Preference Share Agent that:
 - (A) it is reasonably satisfied that it has, or will have, funds available (other than any BIC2 Subordinated Loans) in order to pay or provide for the BIC2 Anticipated Administration Costs;
 - (B) to the best of its knowledge and belief, having made due and careful enquiry, other than any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Finance Documents and/or the Material Agreements, no BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing; and
 - (C) repayment of such BIC2 Administration Costs Loan (together with any accrued interest thereon) in an amount equal to the BIC2 Administration Costs Loan Repayment Amount would not result in a BIC2 Potential Trigger Event or BIC2 Trigger Event occurring,

then, on prior written notice to the Preference Share Agent, BIC2 shall be entitled to instruct the Account Bank to repay all or any part of such BIC2 Administration Costs Loan (together with any accrued interest thereon) in an amount equal to the BIC2 Administration Costs Loan Repayment Amount from the funds standing to the credit of the BIC2 Provisions Account to MTN or the applicable MTN Acceded Nominee. Any such notice by BIC2 to the Account Bank shall be irrevocable and unconditional, and shall specify the bank account details of MTN or the applicable MTN Acceded

Nominee into which such BIC2 Administration Costs Loan Balance (from the funds standing to the credit of the BIC2 Provisions Account) must be paid.

- (l) No amount standing to the credit of the BIC2 Provisions Account on account of any BIC2 Administration Costs Loan (together with any accrued interest thereon) shall be applied to repay any BIC2 Administration Costs Loan made in accordance with the provisions of this clause 4.5 if a BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing, save as otherwise agreed to by the Preference Share Agent.

4.6 BIC2 Trading Platform Losses Differentials Loans

MTN or any MTN Acceded Nominee shall be entitled, but not obliged, to advance a subordinated loan to BIC2 on account of any Trading Platform Losses Differential from time to time by paying the amount of any such Trading Platform Losses Differential into the BIC2 Provisions Account. Any such amount so paid shall constitute a BIC2 Subordinated Claim and shall be repaid in accordance with clause 3.1 of the BIC2 Priority of Payments (*Ordinary Priority of Payments*) or clause 3.2 of the BIC2 Priority of Payments (*Special Priority of Payments*), as the case may be.

4.7 BIC2 Scheduled Preference Dividend Shortfall Loans

- (a) If from time to time, prior to any BIC2 Priority of Payments Date contemplated in clause 3.1 (*Pre BIC2 Trigger Event Priority of Payments*) of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation, BIC2 anticipates that it will not have sufficient funds available, on such BIC2 Priority of Payments Date, to pay (in whole or in part) the any BIC2 Costs and Indemnity Amounts, if any, and/or the BIC2 Scheduled Preference Dividends that are payable on such BIC2 Priority of Payments Date, then BIC2 shall be entitled to request MTN or an MTN Acceded Nominee to make a BIC2 Scheduled Preference Dividend Shortfall Loan to BIC2, by way of delivering a Utilisation Request to MTN or the relevant MTN Acceded Nominee (with a copy to the Preference Share Agent) not less than 3 (three) Business Days prior to the proposed advance date of such BIC2 Scheduled Preference Dividend Shortfall Loan to BIC2 (or such other date as BIC2, MTN or the applicable MTN Acceded Nominee (as the case may be) may agree).
- (b) Such Utilisation Request is irrevocable and will only be regarded as having been duly completed if it:
 - (i) is addressed to MTN or the relevant MTN Acceded Nominee, with a copy to the Preference Share Agent;
 - (ii) requests that MTN or the relevant MTN Acceded Nominee make a BIC2 Scheduled Preference Dividend Shortfall Loan to BIC2, on the terms and conditions set out in this clause 4.7;
 - (iii) the amount of any BIC2 Costs and Indemnity Amounts and/or the BIC2 Scheduled Preference Dividends that are due and payable on such BIC2 Priority of Payments Date, the details of which BIC2 Scheduled Preference Dividends BIC2 shall obtain from the Preference Share Agent;
 - (iv) specifies the amount of the available cash resources of BIC2 for the purposes of making payment of any BIC2 Costs and Indemnity Amounts and/or the BIC2 Scheduled Preference Dividends that are due and payable on such on

such BIC2 Priority of Payments Date (and having regard to any BIC2 Taxes Shortfall Loan and/or BIC2 Administration Costs Loan to be advanced by MTN or any applicable MTN Acceded Nominee) at such BIC2 Priority of Payments Date;

- (v) specifies the amount by which any BIC2 Costs and Indemnity Amounts and/or the BIC2 Scheduled Preference Dividends that are due and payable on such BIC2 Priority of Payments Date exceeds the available cash resources of BIC2 for the purposes of making payment of any BIC2 Costs and Indemnity Amounts and/or the BIC2 Scheduled Preference Dividends that are due and payable on such on such BIC2 Priority of Payments Date (the "**BIC2 Scheduled Preference Dividend Shortfall**"), as confirmed by the Calculation Agent;
 - (vi) specifies the amount of the requested BIC2 Scheduled Preference Dividend Shortfall Loan, which:
 - (A) must be for an amount of not less than the BIC2 Scheduled Preference Dividend Shortfall; and
 - (B) when taken together with any other BIC2 Subordinated Loans previously made to, or proposed to be made to BIC2, shall not exceed the amount of any facility amount approved by MTN or any MTN Acceded Nominee from time to time;
 - (vii) confirms that the purpose of such BIC2 Scheduled Preference Dividend Shortfall Loan is to fund the payment of BIC2 Scheduled Preference Dividend Shortfall on such BIC2 Priority of Payments Date;
 - (viii) specifies the bank account details into which an amount equal to such BIC2 Scheduled Preference Dividend Shortfall Loan must be paid (which must be details of the BIC2 Collections Account);
 - (ix) specifies the proposed advance date of such BIC2 Scheduled Preference Dividend Shortfall Loan.
- (c) Provided that:
- (i) such Utilisation Request complies with the conditions set out in clause 4.7(b);
 - (ii) unless otherwise agreed in writing by the Preference Share Agent, such BIC2 Scheduled Preference Dividend Shortfall Loan is for the purposes of paying all or part of any BIC2 Costs and Indemnity Amounts and/or the BIC2 Scheduled Preference Dividends that are due:
 - (A) during April 2021 and/or September 2021; or
 - (B) after 30 September 2021, provided that:
 - (1) no more than 2 (two) Utilisation Requests may be delivered on account of BIC2 Scheduled Preference Dividend Shortfall Loans; and

- (2) no more than 1 (one) BIC2 Scheduled Preference Dividend Shortfall Loan may be advanced during any period of 12 (twelve) consecutive months,

in each case, after 30 September 2021; and

- (iii) BIC2 and the Preference Share Agent have been provided with copies of all director and, if any, shareholder resolutions required in order to duly authorise MTN or the applicable MTN Acceded Nominee to make such BIC2 Scheduled Preference Dividend Shortfall Loan to BIC2 on the terms and conditions hereof, in a form and substance satisfactory to the Preference Share Agent,

MTN or the applicable MTN Acceded Nominee shall be obliged to advance such BIC2 Scheduled Preference Dividend Shortfall Loan to BIC2 on the applicable advance date specified in such Utilisation Request, by making payment thereof into the BIC2 Collections Account.

- (d) Each BIC2 Scheduled Preference Dividend Shortfall Loan shall:
 - (i) constitute a BIC2 Subordinated Claim; and
 - (ii) be used solely by BIC2 to pay all or part of any BIC2 Costs and Indemnity Amounts and/or any BIC2 Scheduled Preference Dividends that are due and payable by BIC2.
- (e) All or any portion of a BIC2 Scheduled Preference Dividend Shortfall Loan which remains owing by BIC2 to MTN or an applicable MTN Acceded Nominee from time to time shall bear interest at a rate of interest to be agreed between BIC2 and MTN or the applicable MTN Acceded Nominee (as the case may be) up to the Prime Rate (or such higher rate of interest agreed between the Preference Share Agent, MTN or the applicable MTN Acceded Nominee (as the case may be) and BIC2).
- (f) The proceeds of each BIC2 Scheduled Preference Dividend Shortfall Loan shall be applied, on the applicable BIC2 Priority of Payments Date, solely for the purposes of paying all or a portion of any BIC2 Costs and Indemnity Amounts and/or the BIC2 Scheduled Preference Dividends due and payable in accordance with the provisions of clause 3.1.4 of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation from time to time, and shall not be used to pay any other amounts due and payable or owing by BIC2.
- (g) To the extent that, on the applicable BIC2 Priority of Payments Date, any part of the proceeds of a BIC2 Scheduled Preference Dividend Shortfall Loan is not applied on such BIC2 Priority of Payments Date for the purposes of paying all or a portion of any BIC2 Costs and Indemnity Amounts and/or the BIC2 Scheduled Preference Dividends that are due and payable in accordance with the provisions of clause 3.1.4 of Annexure A (*Rights, terms and privileges attaching to the MTN Zakhele Futhi Preference Shares*) to the BIC2 Memorandum of Incorporation (such proceeds the "**BIC2 Scheduled Preference Dividend Shortfall Loan Balance**") on such BIC2 Priority of Payments Date, BIC2 hereby irrevocably and unconditionally authorises the Account Bank to transfer the BIC2 Scheduled Preference Dividend Shortfall Loan Balance to the BIC2 Top-Up Loan Account as soon as possible after such BIC2 Priority of Payments Date and in any event within 2 (two) Business Days of such BIC2 Priority of Payments Date.

- (h) BIC2 Scheduled Preference Dividend Shortfall Loans (together with any interest accrued thereon, if any) shall be repaid (subject to the provisions of clause 4.7(k) hereof):
- (i) in accordance with the provisions of clause 4.7(i) below;
 - (ii) in accordance with clause 3.1.8.2 of the BIC2 Priority of Payments (*Pre BIC2 Trigger Event Priority of Payments*);
 - (iii) in accordance with clause 3.2.5.2 of the BIC2 Priority of Payments (*Special Priority of Payments*);
 - (iv) in accordance with clause 3.3.4 of the BIC2 Priority of Payments (*Post Trigger Event Priority of Payments*) as a result of the occurrence of a BIC2 Trigger Event; or
 - (v) otherwise, prior to the occurrence of the BIC2 Discharge Date, as agreed in writing between the Preference Agent, MTN and the MTN Acceded Nominee; and
 - (vi) after the occurrence of the BIC2 Discharge Date, on receipt by BIC2 of written demand from MTN and the MTN Acceded Nominee.
- (i) Subject to the provisions of clause 4.7(k) hereof, the amount standing to the credit of the BIC2 Top-Up Loan Account on account of any BIC2 Scheduled Preference Dividend Shortfall Loan which is equal to the amount of any applicable BIC2 Proposed Payment shall be applied directly by BIC2 from the BIC2 Top-Up Loan Account to the repayment of all or part of such BIC2 Scheduled Preference Dividend Shortfall Loan (and interest thereon, if any) without such cash flowing in accordance with the applicable BIC2 Priority of Payments, if so required by MTN or the relevant MTN Acceded Nominee, provided that:
- (i) the Calculation Agent has confirmed in writing to the Preference Share Agent that there is an amount standing to the credit of the BIC2 Top-Up Loan Account on account of any BIC2 Scheduled Preference Dividend Shortfall Loan;
 - (ii) BIC2 confirms in writing to MTN and the Preference Share Agent that:
 - (A) it proposes to repay all or any part of any BIC2 Scheduled Preference Dividend Shortfall Loan;
 - (B) it is reasonably satisfied that it has, or will have, funds available (other than any BIC2 Subordinated Loan) in order to pay any BIC2 Costs and Indemnity Amounts and all BIC2 Scheduled Preference Dividends in full on the immediately succeeding BIC2 Priority of Payments Date;
 - (C) to the best of its knowledge and belief, having made due and careful enquiry, other than any non-material breach relating to ongoing administration, procedural and document delivery obligations under the Finance Documents and/or the Material Agreements, no BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing; and

- (D) repayment of such BIC2 Scheduled Preference Dividend Shortfall Loan would not result in a BIC2 Potential Trigger Event or BIC2 Trigger Event occurring,
- (iii) the Preference Share Agent has provided its prior written consent, which consent shall not be unreasonably delayed if the Preference Share Agent is satisfied with the confirmations given by BIC2 in paragraph (ii) above.
- (j) If the conditions in clause 4.7(i) above are satisfied, BIC2 shall be entitled to instruct the Account Bank to make the applicable BIC2 Proposed Payment (from the funds standing to the credit of the BIC2 Top-Up Loan Account) to MTN or the applicable MTN Acceded Nominee. Any such notice by BIC2 to the Account Bank shall be irrevocable and unconditional, and shall specify the bank account details of MTN or the applicable MTN Acceded Nominee into which such BIC2 Proposed Payment (from the funds standing to the credit of the BIC2 Top-Up Loan Account) must be paid.
- (k) Prior to the BIC2 Discharge Date, no amount standing to the credit of the BIC2 Top-Up Loan Account on account of any BIC2 Scheduled Preference Dividend Shortfall Loan (together with any accrued interest thereon) shall be applied to repay any BIC2 Scheduled Preference Dividend Shortfall Loan made in accordance with the provisions of this clause 4.7 if a BIC2 Potential Trigger Event or BIC2 Trigger Event has occurred and is Continuing, save as otherwise agreed to by the Preference Share Agent.

5. BIC2 SUBORDINATION

- (a) MTN and each MTN Acceded Nominee hereby subordinates the BIC2 Subordinated Claims (except the MTN BFC2 Preference Shareholder Claims) in favour of:
 - (i) all claims of whatsoever nature of BFC2 against BIC2 under the Finance Documents to which BIC2 and BFC2 are a party; and
 - (ii) the claims of whatsoever nature of the Holders against BIC2 under the Finance Documents to which the Holders and BIC2 are a party,

including in particular any claim for any payment of any and all amounts whatsoever that BIC2 owes or may owe or otherwise be required or scheduled to pay from time to time to the Holders and/or BFC2 in terms of the Finance Documents to which BIC2, BFC2 and/or the Holders are a party, save as otherwise expressly provided for under or in terms of the Finance Documents or save as may otherwise be agreed in writing by the Preference Share Agent.

- (b) The subordination referred to in clause 5(a) shall continue until the BIC2 Discharge Date.
- (c) Until such time as the BIC2 Discharge Date has occurred, and save as otherwise expressly permitted or provided for under or in terms of the Finance Documents (and, in particular, without limiting the generality of the foregoing, the BIC2 Priority of Payments and payments out of the BIC2 Top-Up Account or any other payments

permitted in terms of this Agreement) or as may otherwise be agreed in writing by the Preference Share Agent:

- (i) all claims of:
 - (A) BFC2 in terms of the BIC2 Preference Share Subscription Agreement and the other Transaction Documents to which BFC2 and BIC2 are a party; and
 - (B) the Holders in terms of the First Ranking Guarantee respectively and the other Finance Documents to which BIC2 and the Holders are a party,

shall rank in priority to the BIC2 Subordinated Claims (other than the MTN BFC2 Preference Shareholder Claims);

- (ii) neither MTN nor any MTN Acceded Nominee shall, in relation to any BIC2 Subordinated Claim, call an event of default (or other analogous event howsoever described) against BIC2, save for any BIC2 Permitted Enforcement Action;
- (iii) neither MTN nor any MTN Acceded Nominee shall take, accept or receive the benefit of any agreement or arrangement having the effect of creating a Security Interest or right of possession over any of BIC2's assets, save in its capacity as Holder of BFC2 Preference Shares in respect of any MTN BFC2 Preference Shareholder Claims;
- (iv) no payment (whether directly or indirectly) of any amount payable (whether it be in whole or in part) by BIC2 to MTN or any MTN Acceded Nominee in respect of or arising from any BIC2 Subordinated Claim shall be made, claimed or accepted by MTN and/or any MTN Acceded Nominee (other than any MTN BFC2 Preference Shareholder Claims which are paid in accordance with the relevant Priority of Payments);
- (v) neither MTN nor any MTN Acceded Nominee shall obtain or enforce any judgment against BIC2 arising from or in connection with any BIC2 Subordinated Claim, save in respect of any judgement obtained as a result of any BIC2 Permitted Enforcement Action;
- (vi) neither MTN nor any MTN Acceded Nominee shall take any BIC2 Enforcement Action, save for any BIC2 Permitted Enforcement Action;
- (vii) neither MTN nor any MTN Acceded Nominee shall exercise its rights or powers (or take any steps to do so) in respect of any liability arising from or in connection with any BIC2 Subordinated Claim or otherwise against BIC2, save for any BIC2 Permitted Enforcement Action;
- (viii) neither MTN nor any MTN Acceded Nominee, in its capacity as a Holder, shall exercise its rights or powers (or take any steps to do so) in respect of any liability arising from or in connection with any MTN BFC2 Preference Shareholder Claim against BIC2, save for any BIC2 Permitted Enforcement Action;

- (ix) if BIC2 is placed in liquidation (whether provisional or final) or under supervision for business rescue, then MTN and each MTN Acceded Nominee shall, on prior written notice to the Preference Share Agent, be entitled to prove a claim for the BIC2 Subordinated Claims in the estate of BIC2 provided that MTN and each MTN Acceded Nominee hereby undertakes, in respect of any such claim proved by it against BIC2, that it shall hold any amount or assets received by it in respect of such proven claim (save for any amount or assets received by it in respect of any proven claim in respect of any MTN BFC2 Preference Share Claims), in trust on behalf of and to the order of BFC2, and shall pay all such amounts or deliver all such assets to the Preference Share Agent (for and on behalf of BFC2) immediately on written demand by the Preference Share Agent to the extent required in order to *pro tanto* discharge the claims of BFC2 against BIC2 arising out of the BIC2 Preference Shares and the other Finance Documents to which BFC2 and BIC2 are a party, and the Preference Share Agent shall be entitled to Dispose of such assets in order to *pro tanto* discharge such claims of BFC2 against BIC2 (and the excess, if any, of the amount required in order to *pro tanto* discharge the claims of BFC2 against BIC2 arising out of the BIC2 Preference Shares and the other Finance Documents to which BFC2 and BIC2 are a party shall be repaid by the Preference Share Agent to MTN or the relevant MTN Acceded Nominee, as the case may be);
- (x) neither MTN nor any MTN Acceded Nominee shall be entitled to pledge, assign, cede or otherwise Encumber or transfer any BIC2 Subordinated Claims (other than MTN BFC2 Preference Share Claims) to any person which is not an MTN Nominee and it shall be a suspensive condition of such pledge, assignment, cession or other Encumbrance that such MTN Nominee becomes an MTN Acceded Nominee prior to such pledge, assignment, cession or other Encumbrance becoming effective;
- (xi) neither MTN nor any MTN Acceded Nominee shall be entitled to pledge, assign, cede or otherwise Encumber or transfer any MTN BFC2 Preference Share Claims to any person which is not (a) an MTN Nominee or (b) an Assignment Party (as such term is defined in the BFC2 Preference Share Subscription Agreement), on the terms and conditions set out in in clause 12.1 of the BFC2 Preference Share Subscription Agreement and the applicable provisions of the BFC2 MOI, and, in the case of sub-clause (a), it shall be a suspensive condition of such pledge, assignment, cession or other Encumbrance that (i) such MTN Nominee becomes an MTN Acceded Nominee prior to such pledge, assignment, cession or other Encumbrance becoming effective and (ii) if there is more than one BFC2 Preference Shareholder, such MTN Acceded Nominee has also acceded to the Interfunder Agreement;
- (xii) without limiting the rights of BFC2 and/or any of the Holders in any way, any payment (whether in cash or otherwise) accepted by MTN or any MTN Acceded Nominee from BIC2 in contravention, whether intentional or unintentional, of the terms of this Agreement and/or the other Finance Documents, shall be repaid (together with interest actually accrued thereon, if any) and/or delivered, as the case may be, by MTN or an MTN Acceded Nominee to the Preference Share Agent (for and on behalf of BFC2) immediately on written demand by the Preference Share Agent to the extent required in order to *pro tanto* discharge the claims of BFC2 against BIC2

arising out of the BIC2 Preference Shares and the other Finance Documents to which BFC2 and BIC2 are a party (and MTN or any MTN Acceded Nominee shall be obliged to forthwith advise the Preference Share Agent in writing if it receives any such payment), and the Preference Share Agent shall be entitled to Dispose of such assets in order to *pro tanto* discharge such claims of BFC2 against BIC2 (and the excess, if any, of the amount required in order to *pro tanto* discharge the claims of BFC2 against BIC2 arising out of the BIC2 Preference Shares and the other Finance Documents to which BFC2 and BIC2 are a party shall be repaid by the Preference Share Agent to MTN or the relevant MTN Acceded Nominee, as the case may be);

(xiii) each of BFC2 and the Preference Share Agent (on behalf of the Holders) shall be entitled, without prejudicing its rights against MTN and/or an MTN Acceded Nominee:

(A) to vote (acting in good faith), on behalf of MTN and/or an MTN Acceded Nominee, to amend, approve or reject a proposed business rescue plan proposed for BIC2 in relation to such business rescue proceedings in accordance with the provisions of section 152 of the Companies Act, provided that neither BFC2 nor the Preference Share Agent shall be entitled to vote on behalf of MTN and/or an MTN Acceded Nominee, to amend, approve or reject a proposed business rescue plan proposed for BIC2 in relation to such business rescue proceedings if such proposed business rescue plan would result in:

(1) any financial obligations or obligations which have the potential to have a financial effect being imposed on MTN and/or such MTN Acceded Nominee; and/or

(2) the amount to be paid, or the security held by, MTN or an MTN Acceded Nominee, pursuant to such proposed business rescue plan to be reduced by an amount which is greater than what is required to fully and finally discharge all amounts owing by BIC2 to BFC2 and/or the Holders (but only to that extent); and/or

(B) to propose (acting in good faith), on behalf of MTN and/or an MTN Acceded Nominee, the development of an alternative business rescue plan for BIC2 in the manner contemplated in section 153 of the Companies Act, provided that neither BFC2 nor the Preference Share Agent shall be entitled to vote on behalf of MTN and/or an MTN Acceded Nominee for the development of an alternative business rescue plan for BIC2 in the manner contemplated in section 153 of the Companies Act if such alternative business rescue plan would result in:

(1) any financial obligations or obligations which have the potential to have an adverse financial effect being imposed on MTN and/or such MTN Acceded Nominee; and/or

(2) the amount to be paid, or the security held by, MTN or an MTN Acceded Nominee, pursuant to such alternative business rescue plan to be reduced by an amount which is greater than what is required to fully and finally discharge all amounts

owing by BIC2 to BFC2 and/or the Holders (but only to that extent);

- (xiv) in the event that a compromise is reached between BIC2 and BIC2's creditors in accordance with the provisions of section 155 of the Companies Act, MTN and/or any MTN Acceded Nominee undertakes (in its capacity as creditor of BIC2) not to vote to accept or reject a proposal in relation to such compromise otherwise than in accordance with the written instructions of the Preference Share Agent, provided that neither BFC2 nor the Preference Share Agent shall be entitled to vote on behalf of MTN and/or an MTN Acceded Nominee, to amend, approve or reject a proposal in relation to such compromise if such proposal would result in:
 - (A) any financial obligations or obligations which have the potential to have an adverse financial effect being imposed on MTN and/or such MTN Acceded Nominee; and/or
 - (B) the amount to be paid, or the security held by, MTN or an MTN Acceded Nominee, pursuant to such compromise proposal to be reduced by an amount which is greater than what is required to fully and finally discharge all amounts owing by BIC2 to BFC2 and/or the Holders (but only to that extent).
- (d) The subordination provisions set out in this clause 5(c) shall not and do not in any manner whatsoever release BIC2 from any obligation to fully and timeously perform its obligations under any of the Transaction Documents to which it is a party.

6. BFC2 SUBORDINATION

- (a) MTN and each MTN Acceded Nominee hereby subordinates the BFC2 Subordinated Claims (other than any MTN BFC2 Preference Shareholder Claims) in favour of the claims of whatsoever nature of the Holders against BFC2 under the Finance Documents to which the Holders and BFC2 are a party, including in particular any claim for any payment of any and all amounts whatsoever that BFC2 owes or may owe or otherwise be required or scheduled to pay from time to time to the Holders in terms of the BFC2 Preference Share Subscription Agreement and the other Finance Documents to which BFC2 and/or the Holders are a party, save as otherwise expressly provided for under or in terms of the Finance Documents or save as may otherwise be agreed in writing by the Preference Share Agent.
- (b) The subordination referred to in clause 6(a) shall continue until the BFC2 Discharge Date.
- (c) Until such time as the BFC2 Discharge Date has occurred, and save as otherwise expressly permitted or provided for under or in terms of the Finance Documents (and, in particular, without limiting the generality of the foregoing, the BFC2 Priority of Payments and payments out of the BFC2 Top-Up Loan Account or other payments permitted in terms of this Agreement) or as may otherwise be agreed in writing by the Preference Share Agent:
 - (i) all claims of the Holders against BFC2 in terms of the BFC2 Preference Share Subscription Agreement and the other Transaction Documents to which BFC2 and the Holders are a party shall rank in priority to the BFC2 Subordinated Claims (other than any MTN BFC2 Preference Shareholder Claims);

- (ii) neither MTN nor any MTN Acceded Nominee shall, in relation to any BFC2 Subordinated Claim, call an event of default (or other analogous event howsoever described) against BFC2, save for any BFC2 Permitted Enforcement Action;
- (iii) neither MTN nor any MTN Acceded Nominee shall take, accept or receive the benefit of any agreement or arrangement having the effect of creating a Security Interest or right of possession over any of BFC2's assets;
- (iv) no payment (whether directly or indirectly) of any amount payable (whether it be in whole or in part) by BFC2 to MTN or any MTN Acceded Nominee in respect of or arising from any BFC2 Subordinated Claim shall be made, claimed or accepted by MTN or any MTN Acceded Nominee, save in respect of any MTN BFC2 Preference Shareholder Claims paid in accordance with the applicable Priority of Payments;
- (v) neither MTN nor any MTN Acceded Nominee shall obtain or enforce any judgment against BFC2 arising from or in connection with any BFC2 Subordinated Claim, save for any judgement obtained as a result of any BFC2 Permitted Enforcement Action;
- (vi) neither MTN nor any MTN Acceded Nominee shall take any BFC2 Enforcement Action, save for any BFC2 Permitted Enforcement Action;
- (vii) neither MTN nor any MTN Acceded Nominee shall exercise its rights or powers (or take any steps to do so) in respect of any liability arising from or in connection with any BFC2 Subordinated Claim or otherwise against BFC2, save for any BFC2 Permitted Enforcement Action;
- (viii) if BFC2 is placed in liquidation (whether provisional or final) or under supervision for business rescue, then MTN and each MTN Acceded Nominee shall, on prior written notice to the Preference Share Agent, be entitled to prove a claim for the BFC2 Subordinated Claims in the estate of BFC2 provided that MTN and each MTN Acceded Nominee undertakes, in respect of any such claim proved by it against BFC2, that it shall hold any amount or assets received by it in respect of any such proven claim (save for any amount or assets received by it in respect of any proven claim in respect of any MTN BFC2 Preference Share Claims) in trust on behalf of and to the order of the Preference Share Agent (for and on behalf of the Holders) and shall pay all such amounts and/or deliver all such assets to the Preference Share Agent immediately on written demand by the Preference Share Agent to the extent required in order to *pro tanto* discharge the claims of the Holders against BFC2 arising out of the BFC2 Preference Shares and the other Finance Documents to which the Holders and BFC2 are a party, and the Preference Share Agent shall be entitled to Dispose of such assets in order to *pro tanto* discharge such claims of the Holders against BFC2 (and the excess, if any, of the amount required in order to *pro tanto* discharge the claims of the Holders against BFC2 arising out of the BFC2 Preference Shares and the other Finance Documents to which the Holders and BFC2 are a party shall be repaid by the Preference Share Agent to MTN or the relevant MTN Acceded Nominee, as the case may be);
- (ix) neither MTN nor any MTN Acceded Nominee shall be entitled to pledge, assign, cede or otherwise Encumber or transfer the BFC2 Subordinated Claims

(other than MTN BFC2 Preference Share Claims) to any other person which is not an MTN Nominee and it shall be a suspensive condition of such pledge, assignment, cession or other Encumbrance that such person becomes an MTN Acceded Nominee prior to such pledge, assignment, cession or other Encumbrance becoming effective;

- (x) neither MTN nor any MTN Acceded Nominee shall be entitled to pledge, assign, cede or otherwise Encumber or transfer any MTN BFC2 Preference Share Claims to any person which is not (a) an MTN Nominee or (b) an Assignment Party (as such term is defined in the BFC2 Preference Share Subscription Agreement), on the terms and conditions set out in in clause 12.1 of the BFC2 Preference Share Subscription Agreement and the applicable provisions of the BFC2 MOI, and, in the case of sub-clause (a), it shall be a suspensive condition of such pledge, assignment, cession or other Encumbrance that (i) such MTN Nominee becomes an MTN Acceded Nominee prior to such pledge, assignment, cession or other Encumbrance becoming effective and (ii) if there is more than one BFC2 Preference Shareholder, such MTN Acceded Nominee has also acceded to the Interfunder Agreement;
- (xi) without limiting the rights of any of the Holders in any way, any payment (whether in cash or otherwise) accepted by MTN or any MTN Acceded Nominee from BFC2 in contravention, whether intentional or unintentional, of the terms of this Agreement and/or the other Finance Documents, shall be repaid (together with interest actually accrued thereon, if any) and/or delivered, as the case may be, by MTN to the Preference Share Agent (for and on behalf of the Holders) immediately on written demand by the Preference Share Agent to the extent required in order to *pro tanto* discharge the claims of the Holders against BFC2 arising out of the BFC2 Preference Shares and the other Finance Documents to which BFC2 and the Holders are a party (and MTN or any MTN Acceded Nominee shall be obliged to forthwith advise the Preference Share Agent in writing if it receives any such payment), and the Preference Share Agent shall be entitled to Dispose of such assets in order to *pro tanto* discharge such claims of the Holders against BFC2 (and the excess, if any, of the amount required in order to *pro tanto* discharge the claims of the Holders against BFC2 arising out of the BFC2 Preference Shares and the other Finance Documents to which the Holders and BFC2 are a party shall be repaid by the Preference Share Agent to MTN or the relevant MTN Acceded Nominee, as the case may be);
- (xii) the Preference Share Agent (on behalf of the Holders) shall be entitled, without prejudicing its rights against MTN and/or any MTN Acceded Nominee:
 - (A) to vote (acting in good faith), on behalf of MTN and/or any MTN Acceded Nominee, to amend, approve or reject a proposed business rescue plan proposed for BFC2 in relation to such business rescue proceedings in accordance with the provisions of section 152 of the Companies Act, provided that the Preference Share Agent shall not be entitled to vote on behalf of MTN and/or an MTN Acceded Nominee, to amend, approve or reject a proposed business rescue plan proposed for BFC2 in relation to such business rescue proceedings if such

proposed business rescue plan would result in:

- (1) any financial obligations or obligations which have the potential to have a financial effect being imposed on MTN and/or such MTN Acceded Nominee; and/or
 - (2) the amount to be paid, or the security held by, MTN or an MTN Acceded Nominee, pursuant to such proposed business rescue plan to be reduced by an amount which is greater than what is required to fully and finally discharge all amounts owing by BFC2 to the Holders (but only to that extent);
- (B) to propose (acting in good faith), on behalf of MTN, the development of an alternative business rescue plan for BFC2 in the manner contemplated in section 153 of the Companies Act, provided that the Preference Share Agent shall not be entitled to vote on behalf of MTN and/or an MTN Acceded Nominee for the development of an alternative business rescue plan for BFC2 in the manner contemplated in section 153 of the Companies Act if such alternative business rescue plan would result in:
 - (1) any financial obligations or obligations which have the potential to have an adverse financial effect being imposed on MTN and/or such MTN Acceded Nominee; and/or
 - (2) the amount to be paid, or the security held by, MTN or an MTN Acceded Nominee, pursuant to such proposed business rescue plan to be reduced by an amount which is greater than what is required to fully and finally discharge all amounts owing by BFC2 to the Holders (but only to that extent);
- (xiii) in the event that a compromise is reached between BFC2 and BFC2's creditors in accordance with the provisions of section 155 of the Companies Act, MTN and each MTN Acceded Nominee undertakes (in its capacity as creditor of BFC2) not to vote to accept or reject a proposal in relation to such compromise otherwise than in accordance with the written instructions of the Preference Share Agent, provided that the Preference Share Agent shall not be entitled to vote on behalf of MTN and/or an MTN Acceded Nominee, to amend, approve or reject a proposal in relation to such compromise if such proposal would result in:
 - (A) any financial obligations or obligations which have the potential to have an adverse financial effect being imposed on MTN and/or such MTN Acceded Nominee; and/or
 - (B) the amount to be paid, or the security held by, MTN or an MTN Acceded Nominee, pursuant to such proposed compromise to be reduced by an amount which is greater than what is required to fully and finally discharge all amounts owing by BFC2 to the Holders (but only to that extent).
- (d) The subordination provisions set out in this clause 6 shall not and do not in any manner whatsoever release BFC2 from any obligation to fully and timeously perform its obligations under any of the Transaction Documents to which it is a party.

- (e) Notwithstanding anything to the contrary set out in this Agreement:
- (i) BFC2 shall only be entitled to pay, and MTN and each MTN Acceded Nominee shall only be entitled to receive payment of, any MTN BFC2 Preference Share Claims strictly in accordance with the provision of the Priority of Payments set out in clause 33.3.2 of the BFC2 MOI;
 - (ii) MTN and each MTN Acceded Nominee that has MTN BFC2 Preference Share Claims irrevocably and unconditionally undertakes in favour of each BFC2 Refinancing Investor that, until the expiry of the Indemnity Period, it shall not propose, or vote in favour of, any resolution proposing to amend the provisions of the BFC2 Preference Share Terms and in particular (without derogating from the generality of the foregoing) to vary, amend, cancel or remove clause 33.3.2 of the BFC2 MOI, without the prior written consent of the BFC2 Refinancing Investors being obtained.

7. BIC2 SUBORDINATED LOANS ON ACCOUNT OF TRADING PLATFORM LOSSES DIFFERENTIALS

BIC2 hereby undertakes, in favour of MTN, until the BIC2 Discharge Date, to promptly, and in any event not less than 15 Business Days prior to the date on which any JSE Loss becomes due and payable, and in respect of which a Trading Platform Losses Differential arises, to give written notice to MTN, requesting MTN and/or an MTN Acceded Nominee, to advance a BIC2 Subordinated Loan to BIC2, as contemplated in clause 4.6 hereof, in an amount equal to such Trading Platform Losses Differential.

8. GUARANTEE, UNDERTAKING AND INDEMNITY

8.1 Guarantee, undertaking and indemnity

MTN Holdings hereby irrevocably and unconditionally, as a principal obligor and not merely as a surety and on the basis of discrete obligations enforceable against it:

- (a) guarantees payment to the Holders of the BFC2 Redemption Amount Shortfall; and
 - (b) guarantees payment to the Holders of the Post Redemption Amount Shortfall,
- in aggregate, up to the Guarantee Limit;
- (c) undertakes in favour of the Holders that if, at any time, a Guarantee Event occurs (which event shall be the sole condition to the obligation of MTN Holdings to pay the Guaranteed Amount, subject to a maximum of the Guarantee Limit), the Preference Share Agent shall be entitled to give written notice (a "**Guarantee Notice**") to MTN Holdings, describing the Guarantee Event, specifying the Guaranteed Amount, and demanding payment of the Guaranteed Amount, then MTN Holdings shall be obliged to pay the Guaranteed Amount, subject to a maximum of the Guarantee Limit, to the Preference Share Agent on behalf of the Holders on or before the applicable Guarantee Due Date; and
 - (d) agrees with each Holder that if any obligation guaranteed by it hereunder is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Holder immediately on demand against any cost, loss or liability it incurs as a result of it not paying any amount which would, but for such

unenforceability, invalidity or illegality, have been payable by it hereunder on the date when it would have been due.

8.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by BFC2 under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

8.3 Reinstatement

If any payment by BFC2 or any discharge, release or arrangement given by a Holder (whether in respect of the obligations of BFC2 or any security for those obligations or otherwise) is avoided or reduced for any reason (including, without limitation, as a result of insolvency, business rescue proceedings, liquidation, winding-up or otherwise):

- (a) the liability of BFC2 and MTN Holdings shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) each Holder shall be entitled to recover the value or amount of that security or payment from BFC2 and MTN Holdings, as if the payment, discharge, avoidance or reduction had not occurred.

8.4 Waiver of defences

The obligations of MTN Holdings under this clause 8 will not be affected by an act, omission, matter or thing which, but for this clause 8, would reduce, release or prejudice any of its obligations under this clause 8 (without limitation and whether or not known to it or any Holder) including:

- (a) any time, waiver or consent granted to, or composition with, BFC2, BIC2 and/or MTN Holdings or any other person;
- (b) the release of BFC2, BIC2 and/or MTN Holdings or any other person under the terms of any composition or arrangement with any creditor of BFC2, BIC2 and/or MTN Holdings;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against, or security over assets of, BFC2, BIC2 and/or MTN Holdings or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of BFC2, BIC2 and/or MTN Holdings or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of any Finance Document or other document or security;

- (f) any unenforceability, illegality, invalidity, suspension or cancellation of any obligation of any person under this Agreement or any other Finance Document or any other document or security;
- (g) any insolvency, liquidation, winding-up, business rescue or similar proceedings (including, but not limited to, receipt of any distribution made under or in connection with those proceedings) of any of BFC2, BIC2 or MTN Holdings;
- (h) this Agreement or any other Finance Document not being executed by or binding against BFC2, BIC2 or any other party; or
- (i) any other fact or circumstance arising on which MTN Holdings might otherwise be able to rely on a defence based on prejudice, waiver or estoppel.

8.5 Immediate recourse

MTN Holdings waives any right it may have of first requiring the Preference Share Agent or any Holder (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from MTN Holdings under this clause 8. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

8.6 Appropriations

Until the BIC2 Discharge Date, the Preference Share Agent or any Holder (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that person (or agent or other person on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and MTN Holdings shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from MTN Holdings or on account of MTN Holdings' liability under this clause 8.

8.7 Deferral of Rights of MTN Holdings

- (a) Until the BIC2 Discharge Date, and unless the Preference Share Agent otherwise directs, MTN Holdings will not exercise any rights which it has by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this clause 8:
 - (i) to be indemnified by BFC2 and/or BIC2;
 - (ii) to claim any contribution from any other guarantor of or provider of security for BFC2 or BIC2's obligations under the Finance Documents;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation, cession of action or otherwise) of any rights of the holder under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Holder;

- (iv) to bring legal or other proceedings for an order requiring BIC2 to make any payment, or perform any obligation, in respect of which MTN Holdings has given a guarantee, undertaking or indemnity under clause 8.1;
 - (v) to exercise any right of set-off against BFC2 and/or BIC2; and/or
 - (vi) to claim, rank, prove or vote as a creditor or shareholder of BFC2 and/or BIC2 in competition with any Holder.
- (b) If MTN Holdings receives any benefit, payment or distribution in relation to such rights, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Holder by MTN Holdings under or in connection with the Finance Documents to be repaid in full on trust for, or otherwise for the benefit of, the Holder and shall promptly pay or transfer the same to the Preference Share Agent.

8.8 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Holder. w

8.9 Indemnity in favour of MTN Holdings

BIC2 undertakes, subject to the provisions of clause 8.7, to indemnify MTN Holdings immediately on written demand against any costs, loss or liability it incurs as a result of any amount paid by MTN Holdings in terms of this clause 8.

9. MTN REPRESENTATIONS AND WARRANTIES

- (a) In deciding to enter into this Agreement and the other Transaction Documents to which they are a party, each Holder, BIC2 and BFC2 relies on the representations and warranties which MTN makes in this clause 9 as being true, correct and complete and MTN recognises and agrees that the other Parties would not have entered into this Agreement and/or the other Finance Documents to which they are a party but for the representations and warranties given by MTN in this Agreement, it being recorded that all such representations and warranties are material to the entry into and performance of this Agreement and the other Finance Documents to which such Parties are party.
- (b) MTN hereby represents and warrants in favour of the other Parties to this Agreement that:

9.2 Status

- (a) On each MTN Warranty Date, it is a limited company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) On each MTN Warranty Date, it has the power to own its assets and carry on its business as it is being conducted.

9.3 Powers and Authority

On each MTN Warranty Date, subject to obtaining the relevant approvals, consents and authorisations required in terms of the Conditions Precedent, it has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of its

obligations under the Transaction Documents to which it is or will be a party and its obligations under the transactions contemplated by those Transaction Documents.

9.4 Legal Validity

- (a) On each MTN Warranty Date, subject to any general principles of South African law limiting its obligations and subject further to obtaining the relevant approvals, consents and authorisations required in terms of the Conditions Precedent, each Transaction Document to which it is a party is its legally binding, valid and enforceable obligation.
- (b) On each MTN Warranty Date, each Transaction Document to which it is a party is in the proper form for its enforcement in the jurisdiction of its incorporation.

9.5 Non-Conflict

On each MTN Warranty Date, the entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party do not conflict with:

- (a) any Applicable Law or regulation applicable to it;
- (b) its Constitutional Documents; or
- (c) any document which is binding upon it or its assets,

if such conflict would constitute or give rise to a Material Adverse Effect.

9.6 No Trigger Event

On each MTN Warranty Date, no BIC2 Trigger Event or BIC2 Potential Trigger Event will result from the entry into of, or the performance by it of any transaction contemplated by, any Transaction Document to which it is a party.

9.7 Authorisations

On each MTN Warranty Date, subject to obtaining the relevant approvals, consents and authorisations required in terms of the Conditions Precedent (other than the authorisations referred to in clause 9.3), all authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Transaction Documents to which it is a party have been obtained or effected (as appropriate) and are in full force and effect.

9.8 Subordination provisions Valid

On each MTN Warranty Date, it has not entered into any agreement or arrangement which would or do have the effect of rendering the provisions of clauses 4.3 or 6 of this Agreement invalid or unenforceable.

9.9 Valid Issue of Target Shares

- (a) On the Issue Date the MTN Tranche 1 Subscription Shares, the MTN Tranche 2 Subscription Shares and the MTN Tranche 3 Subscription Shares shall be validly allotted and issued to BIC2.

- (b) On each date on which BIC2 subscribes for MTN Tranche 1 Additional 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.

9.10 No Encumbrance

On the Issue Date and each MTN Warranty Date thereafter, neither its Constitutional Documents nor any of the agreements or documents to which both it and BIC2 are a party will or may in any manner whatsoever restrict the Encumbrance of the MTN Shares held by BIC2 in favour of the Holders.

9.11 Environmental laws

- (a) On each MTN Warranty Date, MTN is in compliance with clause 13.7 and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is likely to have a Material Adverse Effect.
- (b) On each MTN Warranty Date, no Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against MTN where that claim has or is likely to have a Material Adverse Effect.

9.12 Sanctions

On each MTN Warranty Date, neither MTN nor any member of the Group:

- (a) is using, lending, contributing or otherwise making available or will use, lend contribute or other make available the proceeds of the BFC2 Preference Shares or the BIC2 Preference Shares;
- (b) to fund or finance, directly or, to the knowledge of the relevant member of the Group after due inquiry, indirectly, any activities or business of or with any person which is listed on, or owned or controlled by or acting on behalf of a person on a Sanctions List or in a Sanctioned Country, in each case at the time of such funding or financing; or
- (c) in a manner that would otherwise cause or would reasonably be expected to cause any person to be in breach of Sanctions; or
- (d) to the knowledge of any member of the Group after due inquiry:
 - (i) has been or is targeted under any Sanctions; or
 - (ii) has violated or is violating any applicable Sanctions.

10. MTN ACCEDED NOMINEE REPRESENTATIONS AND WARRANTIES

- (a) In deciding to enter into this Agreement, each Holder, BIC2 and BFC2 relies on the representations and warranties which each MTN Acceded Nominee makes in this clause 10 as being true, correct and complete and each MTN Acceded Nominee recognises and agrees that the other Parties would not have entered into this Agreement with the MTN Acceded Nominee but for the representations and warranties given by each MTN Acceded Nominee in this Agreement, it being recorded that all such

representations and warranties are material to the entry into and performance of its obligations under this Agreement by each MTN Nominee.

- (b) Each MTN Acceded Nominee hereby represents and warrants in favour of the other Parties to this Agreement that:

10.2 Status

- (a) On each applicable Nominee Warranty Date, it is a limited company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) On each applicable Nominee Warranty Date, it has the power to own its assets and carry on its business as it is being conducted.

10.3 Powers and Authority

On each applicable Nominee Warranty Date, it has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of its obligations under this Agreement and its obligations under the transactions contemplated by this Agreement.

10.4 Legal Validity

- (a) On each applicable Nominee Warranty Date, subject to any general principles of South African law limiting its obligations, this Agreement is its legally binding, valid and enforceable obligation.
- (b) On each applicable Nominee Warranty Date, this Agreement is in the proper form for its enforcement in the jurisdiction of its incorporation.

10.5 Non-Conflict

On each applicable Nominee Warranty Date, the entry into and performance by it of, and the transactions contemplated by, this Agreement do not conflict with:

- (a) any Applicable Law or regulation applicable to it;
- (b) its Constitutional Documents; or
- (c) any document which is binding upon it or its assets,

if such conflict would constitute or give rise to a Nominee Material Adverse Effect.

10.6 No Trigger Event

On each applicable Nominee Warranty Date, no BIC2 Trigger Event or BIC2 Potential Trigger Event will result from the entry into of, or the performance by it of any transaction contemplated by, this Agreement.

10.7 Authorisations

On each applicable Nominee Warranty Date, all authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated

by, this Agreement have been obtained or effected (as appropriate) and are in full force and effect.

10.8 Subordination provisions Valid

On each applicable Nominee Warranty Date, it has not entered into any agreement or arrangement which would or do have the effect of rendering the provisions of clauses 4.3 or 6 of this Agreement invalid or unenforceable.

10.9 Environmental laws

- (a) On each Nominee Warranty Date, it is in compliance with clause 13.7 and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) On each Nominee Warranty Date, no Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against it where that claim has or is reasonably likely to have a Material Adverse Effect.

10.10 Anti-corruption Law and Sanctions

On each applicable Nominee Warranty Date, neither it nor any member of the Group:

- (a) is using, lending, contributing or otherwise making available or will use, lend contribute or other make available the proceeds of the BFC2 Preference Shares or the BIC2 Preference Shares;
- (b) to fund or finance, directly or, to the knowledge of the relevant member of the Group after due inquiry, indirectly, any activities or business of or with any person which is listed on, or owned or controlled by or acting on behalf of a person on a Sanctions List or in a Sanctioned Country, in each case at the time of such funding or financing; or
- (c) in a manner that would otherwise cause or would reasonably be expected to cause any person to be in breach of Sanctions; or
- (d) to its knowledge after due inquiry:
 - (i) has been or is targeted under any Sanctions; or
 - (ii) has violated or is violating any applicable Sanctions.

11. INFORMATION COVENANTS

11.1 Financial statements

- (a) MTN must supply to the Preference Share Agent in sufficient copies for all the Holders:
 - (i) its audited consolidated financial statements for each of its financial years;
 - (ii) its abridged semi-annual condensed consolidated financial results for the first half-year of each of its financial years.

- (b) All financial statements or results (as the case may be) must be supplied as soon as they are available and:
 - (i) in the case of MTN's audited consolidated financial statements, within 120 days;
 - (ii) in the case of MTN's abridged semi-annual condensed consolidated financial results, within 85 days,
 of the end of the relevant financial period.

11.2 Form of Financial Statements

- (a) MTN must ensure that each set of financial statements or results (as the case may be) supplied under this Agreement fairly presents the financial position and state of affairs (consolidated or otherwise) of the relevant person as at the date to which those financial statements or results (as the case may be) were drawn up, and all financial statements must be drawn up in accordance with IFRS.
- (b) MTN must notify the Preference Share Agent of any material change to the manner in which its audited consolidated financial statements are prepared.
- (c) If requested by the Preference Share Agent, MTN must supply to the Preference Share Agent:
 - (i) a full description of any change notified under clause 11.2(b); and
 - (ii) sufficient information to enable the Holders to make a proper comparison between the financial position shown by the set of financial statements prepared on the changed basis and its most recent audited consolidated financial statements delivered to the Preference Share Agent under this Agreement.
- (d) If so requested by the Preference Share Agent, MTN must enter into discussions for a period of not more than 30 days with a view to agreeing any amendments required to be made to this Agreement to place MTN and the Holders in the same position as they would have been in if the change had not happened. Any agreement between MTN and the Preference Share Agent will be binding on all the Parties.
- (e) If no agreement is reached under clause 11.2(d) on the required amendments to this Agreement, MTN must supply with each set of its financial statements another set of its financial statements prepared on the same basis as the Original Financial Statements.

11.3 Notification of Legal Proceedings

Until the BIC2 Discharge Date, unless the Preference Share Agent otherwise agrees in writing, MTN shall deliver to the Preference Share Agent as soon as reasonably possible after becoming aware of them, the details of any litigation, arbitration or administrative proceedings and/or any liquidation applications, winding up applications or business rescue applications, which are current, threatened or pending against MTN (other than litigation, arbitration or administrative proceedings and/or any liquidation applications, winding up applications or business rescue applications which:

- (a) are announced by the Stock Exchange News Service; and/or

- (b) are not reasonably likely to result in the occurrence of a Material Adverse Effect),

provided that nothing in this clause 11.3 shall require MTN to provide any notice or price sensitive information which would be prohibited to be disclosed by (or the supply of which would result in any requirements to make a public disclosure or announcement pursuant to) any law, regulation or the rules of any applicable stock exchange.

11.4 Compliance Certificate

- (a) MTN must supply to the Preference Share Agent a Compliance Certificate with each set of its financial statements or results (as the case may be) sent to the Preference Share Agent under this Agreement, setting out:
 - (i) a calculation of the Financial Covenant together with a reconciliation thereof to the figures reflected in the financial statements or results (as the case may be) in respect of which such calculation has been carried out;
 - (ii) confirming compliance with the representations, warranties and undertakings given by MTN in this Agreement; and
 - (iii) listing the Material Subsidiaries.
- (b) Each such Compliance Certificate must be signed by two authorised signatories of MTN.

11.5 FATCA Information

- (a) Subject to clause 11.5(a)(iii), each Party shall, within 10 Business Days of a reasonable request by the other Parties:
 - (i) confirm to such other Parties whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to such other Parties such forms, documentation and other information relating to its status under FATCA as each such other Party reasonably requests for the purposes of each such other Party's compliance with FATCA; and
 - (iii) supply to such other Parties such forms, documentation and other information relating to its status as each such other Party reasonably requests for the purposes of each such other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to the other Parties pursuant to clause 11.5(a)(i) that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify the other Parties promptly.
- (c) Clause 11.5(a)(iii) shall not oblige any Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;

- (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with clause 11.5(a)(i) or clause 11.5(a)(i)(B) (including, for the avoidance of doubt, where clause 11.5(c) applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If MTN or any MTN Acceded Nominee is a US Tax Obligor or the Preference Share Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Holder shall, within 10 Business Days of:
 - (i) if MTN is a US Tax Obligor, the Refinancing Date; and
 - (ii) the date of a request from the Preference Share Agent,
 shall supply to the Preference Share Agent:
 - (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (B) any withholding statement or other document, authorisation or waiver as the Preference Share Agent may require to certify or establish the status of each Holder under FATCA or that other law or regulation.
- (f) The Preference Share Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Holder pursuant to clause 11.5(e) to MTN or any applicable MTN Acceded Nominee.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Preference Share Agent by a Holder pursuant to clause 11.5(e) is or becomes materially inaccurate or incomplete, that Holder shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Preference Share Agent unless it is unlawful for the Holder to do so (in which case the Holder shall promptly notify the Preference Share Agent). The Preference Share Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to MTN or any applicable MTN Acceded Nominee.
- (h) The Preference Share Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Holder pursuant to clause 11.5(e) or clause 11.5(g) without further verification. The Preference Share Agent shall not be liable for any action taken by it under or in connection with clauses 11.5(e), 11.5(f) or 11.5(g).

12. FATCA DEDUCTION

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA

Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify MTN and any applicable MTN Acceded Nominee and the Preference Share Agent and the Preference Share Agent shall notify the other Holders.

12.2 Information – Miscellaneous

MTN must supply to the Preference Share Agent, in sufficient copies for all the Holders if the Preference Share Agent so requests:

- (a) copies of all documents despatched by MTN to its creditors generally or any class of them at the same time as they are despatched;
- (b) promptly on request, a list of the then current Material Subsidiaries; and
- (c) promptly on request, such further information regarding the financial condition and operations of the Group as the Preference Share Agent may reasonably request.

12.3 Notifications of Trigger Events

MTN must promptly notify the Preference Share Agent of the occurrence of:

- (a) in relation to MTN, any BIC2 Potential Trigger Event referred to in clauses 2.3.1.7, 2.3.1.11, 2.3.1.14, 2.3.1.18, 2.3.1.19, 2.3.1.23, 2.3.1.24, 2.3.1.25, 2.3.1.26, 2.3.1.30, 2.3.1.31 and 2.3.1.35 of the BIC2 Preference Share Terms, and the steps, if any, being taken to remedy any such event;
- (b) in relation to BIC2 and/or BFC2, any other BIC2 Potential Trigger Event and/or BFC2 Potential Trigger Event of which the board of directors of MTN is aware, and the steps of which the board of directors of MTN is aware, if any, being taken to remedy any such event.

12.4 Year end

MTN shall not change its financial year end without the prior written consent of the Preference Share Agent (which shall not be unreasonably withheld) and provided that all such amendments to the Transaction Documents as are necessary as a result of change in MTN's financial year end have been made to the reasonable satisfaction of the Preference Share Agent.

12.5 Know your customer requirements

MTN must promptly on the request of the Preference Share Agent supply to the Preference Share Agent any documentation or other evidence which is reasonably requested by any Holder (whether for itself or any prospective new Holder) to enable a Holder or prospective new Holder to carry out and be satisfied with the results of all applicable know your customer requirements.

13. GENERAL COVENANTS

13.1 Authorisations

MTN and each MTN Acceded Nominee must promptly:

- (a) obtain, maintain and comply with the terms; and
- (b) supply certified copies to the Preference Share Agent,
- (c) of any authorisation required by it under any Applicable Law to enable it to perform its obligations under, or for the validity or enforceability of, any Transaction Document to which it is a party.

13.2 Compliance with Applicable Laws

- (a) MTN must comply in all respects with all Applicable Laws to which it is subject where failure to do so has or is reasonably likely to constitute or give rise to a Material Adverse Effect.
- (b) Each MTN Acceded Nominee must comply in all respects with all Applicable Laws to which it is subject where failure to do so has or is reasonably likely to constitute or give rise to a Nominee Material Adverse Effect.

13.3 No Amendment to Transaction Documents

- (a) Subject to the provisions of clause 12 of the Implementation Agreement, MTN shall not amend, novate or supplement the terms of any of the Transaction Documents to which it is a party without the prior written approval of the Preference Share Agent having been obtained.
- (b) Subject to the provisions of clause 12 of the Implementation Agreement, no MTN Acceded Nominee shall amend, novate or supplement the terms of any of the Transaction Documents to which it is a party without the prior written approval of the Preference Share Agent having been obtained.

13.4 Distributions in respect of the Target Shares

MTN shall ensure that all cash Distributions due and payable to the BIC2 in respect of the Target Shares are paid via STRATE to the Security Custodian into the Subject Shares Securities Account (provided that the MTN Shares are registered in the name of BIC2 with STRATE) on the due date therefor in accordance with the provisions of the Account Bank and Agency Agreement.

13.5 Amendments to Constitutional Documents

MTN shall promptly notify the Preference Share Agent in writing of any proposed amendments to its Constitutional Documents.

13.6 Environmental compliance

MTN shall:

- (a) comply with all Environmental Law;

- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is likely to have an Material Adverse Effect.

13.7 Environmental Claims

MTN shall, promptly upon becoming aware of the same, inform the Preference Share Agent in writing of:

- (a) any Environmental Claim against MTN or any MTN Acceded Nominee which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against MTN or any MTN Acceded Nominee,
- (c) where the claim has or is likely to have a Material Adverse Effect.

13.8 Anti-corruption Law and Sanctions

- (a) None of MTN, any MTN Acceded Nominee, nor any member of the Group shall use, lend, contribute or otherwise make available the proceeds of the BFC2 Preference Shares or BIC2 Preference Shares:
 - (i) to fund or finance, directly or, to the knowledge of the relevant member of the Group after due inquiry, indirectly, any activities or business of or with any person which is listed on, or owned or controlled by or acting on behalf of a person listed on a Sanctions List or in a Sanctioned Country, in each case at the time of such funding or financing; or
 - (ii) in a manner that would otherwise cause or would reasonably be expected to cause any person to be in breach of Sanctions.
- (b) MTN and each MTN Acceded Nominee shall ensure that appropriate controls and safeguards designed to prevent any proceeds of the BFC2 Preference Shares and BIC2 Preference Shares from being used contrary to clause 13.8(b) are in place.

13.9 Notices, consents, approvals and waivers under Transaction Documents

MTN undertakes to respond, as soon as reasonably practicable, to any request by any Party to provide any notice, consent, approval or waiver requested by such Party under any of the Transaction Documents.

13.10 Amendments to the MTN Tranche 1 Subscription and Call Option Agreement

Prior to the BIC2 Discharge Date, MTN shall not, without the prior written consent of the Preference Share Agent, permit any variation, amendment, deletion, addition and/or alteration to and/or cancellation of clause 4, clause 2 of Annexure "C" and/or clause 2 of Annexure "D" of the MTN Tranche 1 Subscription and Call Option Agreement.

14. ACCEPTANCE OF STIPULATIO ALTERI

- (a) MTN hereby accepts the benefits of each *stipulatio alteri* granted in favour of MTN in each relevant Transaction Document.
- (b) The Preference Share Agent accepts the benefits of each *stipulatio alteri* granted in favour of the Preference Share Agent in each relevant Transaction Document.

15. BREACH

If MTN or any MTN Acceded Nominee breaches any provision or term of this Agreement and fails to remedy such breach within five Business Days of the receipt of written notice requiring it to do so, then the other Parties shall be entitled, in addition to any other remedy available to them at law, to claim specific performance of such obligations, without prejudice to their right to claim damages.

16. PREFERENCE SHARE AGENT

- (a) Each of MTN, each MTN Acceded Nominee, BIC2, BFC2 and the Holders acknowledges that the subscribers for the BFC2 Preference Shares have appointed the Preference Share Agent as their agent in terms of the Interfunder Agreement and shall be entitled, from time to time, to remove the Preference Share Agent, provided that they replace the Preference Share Agent in accordance with the provisions of the Interfunder Agreement.
- (b) Where this Agreement:
 - (i) makes reference to the Preference Share Agent exercising any discretion or election, performing any function, exercising or enforcing any right, requiring the performance of any obligation or in any other manner whatsoever, such reference shall be to the Preference Share Agent acting on behalf of the relevant Holders in accordance with the provisions of the Interfunder Agreement;
 - (ii) requires that the waiver, consent, instruction, approval or permission of the Preference Share Agent is to be obtained, such waiver, consent, instruction, approval or permission shall at all times be required to be obtained from the relevant Holders directly and the granting or withholding of such waiver, consent, instruction, approval or permission shall be issued by the Preference Share Agent and not by the relevant Holders or by BFC2;
 - (iii) requires that any notice be given to BFC2 or to the Holders, or that BFC2 or any of the Holders may give notice to any other Party, all such notices shall be given to or by (as the case may be) the Preference Share Agent acting as agent on behalf of BFC2 or the relevant Holders, as the case may be.
- (c) BIC2, MTN and each MTN Acceded Nominee shall be entitled to rely on any written instructions received from the Preference Share Agent and on any written waivers, consents and approvals given by the Preference Share Agent as being that of BFC2 or the subscribers for the BFC2 Preference Shares, as the case may be (in respect of the period up to the Issue Date) or of BFC2 or the relevant Holders, as the case may be (in respect of the period after the Issue Date). Any action taken by MTN, each MTN Acceded Nominee or BIC2, as the case may be, in fulfilment of or pursuant to any such written instructions, waivers, consents and/or approvals shall constitute a valid

discharge of its obligations (including payment) to the BIC2 Preference Shareholders or to the BFC2 Preference Shareholders (as the case may be).

- (d) BFC2 shall be entitled to rely on any written instructions received from the Preference Share Agent and on any written waivers, consents and approvals given by the Preference Share Agent as being that of the subscribers for the BFC2 Preference Shares (in respect of the period up to the Issue Date) or of the relevant Holders (in respect of the period after the Issue Date). Any action taken by BFC2 in fulfilment of or pursuant to any such written instructions, waivers, consents and/or approvals shall constitute a valid discharge of its obligations (including payment) to the BFC2 Preference Shareholders.
- (e) Neither BIC2 nor any Holder, as the case may be, shall be entitled to exercise any right conferred upon it by this Agreement otherwise than through the Preference Share Agent.

17. NOMINATION

- (a) If at any time following the Issue Date:
 - (i) an MTN Nominee wishes to provide a Loan Undertaking to BIC2 (or to BFC2, with the prior written consent of the Preference Share Agent and subject to any amendments required to be made to the Transaction Documents as a result thereof having been made to the satisfaction of the Preference Share Agent);
 - (ii) an MTN Nominee wishes to advance a Subordinated Loan to BIC2 (or to BFC2, with the prior written consent of the Preference Share Agent and subject to any amendments required to be made to the Transaction Documents as a result thereof having been made to the satisfaction of the Preference Share Agent);
 - (iii) an MTN Nominee wishes to exercise the MTN Call Option under the MTN Tranche 1 Subscription and Call Option Agreement;
 - (iv) MTN or any MTN Acceded Nominee wishes to pledge, assign, cede or otherwise Encumber or transfer any BFC2 Subordinated Claims and/or BIC2 Subordinated Claims to any other person who is an MTN Nominee; and/or
 - (v) any MTN Nominee wishes to exercise any other right and/or perform any other obligation of MTN under any of the Transaction Documents,

(each of the matters referred to in clauses 17(a)(ii) to 17(a)(v) being referred to as an "**MTN Right or Obligation**"), and/or

- (vi) any Subsidiary, joint venture of MTN, associate of MTN or trust in which MTN has an interest (an "**MTN Related Entity**") wishes to exercise any right granted to MTN under the Relationship Agreement (an "**MTN Relationship Right**"),

then the MTN Nominee shall not be entitled to exercise or perform the applicable MTN Right or Obligation and/or the MTN Related Entity shall not be entitled to exercise the MTN Relationship Right until MTN or the applicable MTN Acceded Nominee, as the case may be, has nominated such MTN Nominee or MTN Related Entity, as the case may be, to exercise or perform such MTN Right or Obligation or MTN Relationship Right, as the case may be (or any

of such MTN Rights and Obligations and/or any of such MTN Relationship Rights, as the case may be), and provided that:

- (vii) the MTN Nominee or MTN Related Entity, as the case may be, need not be in existence at the time this Agreement is signed but must be in existence at the time of the nomination;
- (viii) the prospects of the MTN Nominee or MTN Related Entity, as the case may be, obtaining the relevant authorisations necessary for it to exercise or perform such MTN Right or Obligation or such MTN Relationship Right, as the case may be, must be not less than the prospects of MTN or the applicable MTN Nominee, as the case may be, doing so;
- (ix) the MTN Nominee or MTN Related Entity, as the case may be, must accept the nomination of MTN or the applicable MTN Nominee, as the case may be, in writing and must accede to the provisions of this Agreement by executing an Accession Undertaking, and:
 - (A) the written nomination by MTN or the applicable MTN Acceded Nominee, as the case may be;
 - (B) the written acceptance thereof by the MTN Nominee or MTN Related Entity, as the case may be;
 - (C) a duly completed and executed Accession Undertaking and, if applicable in respect of any MTN BFC2 Preference Share Claims, a duly completed and executed accession undertaking to the Interfunder Agreement, if there is or will be more than one BFC2 Preference Shareholder;
 - (D) a certified copy of a resolution of the board of directors of the applicable MTN Nominee or MTN Related Entity, as the case may be, authorising the entry into of, and performance under, this Agreement by the MTN Nominee or MTN Related Entity, as the case may be;
 - (E) a certified copy of a special resolution passed by the shareholders of the applicable MTN Nominee or the applicable MTN Related Entity, as the case may be, and duly registered by the Registrar of Companies, which is of full force and effect, approving the grant of the financial assistance by the applicable MTN Nominee or the applicable MTN Related Entity, as the case may be, in terms of the Agreement,

must be delivered to the Preference Share Agent by no later than the date on which such MTN Right or Obligation or MTN Relationship Right, as the case may be, is to be exercised or performed by the MTN Nominee or MTN Related Entity, as the case may be;

- (x) the right of MTN or any MTN Acceded Nominee to nominate a third party as an MTN Nominee or an MTN Related Entity, as the case may be, is conditional on MTN and each MTN Acceded Nominee not being in breach of any obligation under this Agreement at the time at which the nomination is made.

(b) If at any time after any MTN Nominee becomes an MTN Acceded Nominee, such MTN Acceded Nominee:

- (i) ceases to qualify as an MTN Nominee (in the case of any MTN Right or Obligation); and/or
- (ii) becomes a Sanctioned Entity (in the case of any MTN Right or Obligation and/or an MTN Relationship Right),

then MTN shall be obliged to procure that all the rights and obligations of such MTN Acceded Nominee or MTN Related Entity, as the case may be, under this Agreement are ceded, delegated and transferred to MTN or to an MTN Acceded Nominee who is not a Sanctioned Entity immediately prior to such MTN Acceded Nominee:

- (iii) ceasing to qualify as an MTN Nominee (in the case of any MTN Right or Obligation); and/or
- (iv) becoming a Sanctioned Entity (in the case of any MTN Right or Obligation and/or an MTN Relationship Right),

(the "**Cessation Date**"), and shall be obliged to provide written evidence to the reasonable satisfaction of the Preference Agent, by no later than the Cessation Date, that such cession, delegation and transfer has become effective on or before the Cessation Date.

18. INTERFUNDER AGREEMENT

The Preference Share Agent shall endeavour to advise MTN of all amendments made to the Interfunder Agreement from time to time. MTN shall at any time in writing be entitled to request a complete and up-to-date copy of the Interfunder Agreement from the Preference Share Agent, and the Preference Share Agent shall provide such a complete and up-to-date copy of the Interfunder Agreement to MTN within a reasonable period of time after receipt of such written request from MTN.

19. CONFIDENTIALITY

(a) Save to the extent required to be disclosed for the purposes of implementing the Transaction or with the prior written consent of MTN to the contrary, each Party (other than MTN and each MTN Acceded Nominee) will keep confidential and will not disclose to any person:

- (i) the details of this Agreement, the details of the negotiations leading to this Agreement, and the information handed over to such Party during the course of negotiations, as well as the details of all the transactions or agreements contemplated in this Agreement; and
- (ii) all information relating to the business or the operations and affairs of the other Parties including MTN and each MTN Acceded Nominee (together "**Confidential Information**"),

save that a Holder will be entitled to disclose Confidential Information to the members of its group and to any person to whom a Holder may wish to transfer any BFC2 Preference Shares, and their officers, directors, employees and professional

advisers, subject to:

- (iii) any such member of its group, potential financier or their officers, directors, employees granting a confidentiality undertaking in favour of the relevant Holder in writing, substantially in a form approved by the African Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or
 - (iv) in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the relevant Holder, any such professional adviser granting a confidentiality undertaking in favour of the relevant Holder in writing in a form, and in substance reasonably satisfactory to the Preference Share Agent.
- (b) The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:
 - (i) is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality; or
 - (ii) is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who received such Confidential Information; or
 - (iii) is disclosed to any professional adviser or potential financier of BIC2, BFC2 or MTN subject to:
 - (A) any such potential financier granting a confidentiality undertaking in favour of the relevant Holder in writing, substantially in a form approved by the African Loan Markets Association and otherwise in a form and in substance reasonably satisfactory to the Preference Share Agent; or
 - (B) in the case of a professional adviser who is not otherwise bound by a confidentiality undertaking or a duty of confidentiality in favour of the relevant Holder, any such professional adviser granting a confidentiality undertaking in favour of the relevant Holder in writing in a form, and in substance reasonably satisfactory to the Preference Share Agent; or
 - (iv) is required by the provisions of any Applicable Law, statute or regulation or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed.
- (c) The provisions of clauses 19(a) and 19(b) will not apply to the relevant Holder to the extent that disclosure of Confidential Information is made by (or on behalf of) the relevant Holder pursuant to any enforcement of their rights under any Finance Document in accordance with its terms.
- (d) With effect from the Issue Date, the provisions of this clause supersede any prior confidentiality undertaking given by a Holder in favour of MTN pursuant to a Confidentiality Letter in relation to the Transaction and, in relation to each Party, shall

endure for a period of 24 months after the later of:

- (i) termination of this Agreement in respect of such Party; and
- (ii) such Party ceasing to be a Party to this Agreement for any reason.

20. SEVERABILITY

Each of the provisions contained in this Agreement shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable under the laws of any jurisdiction, the validity, legality and enforceability of each of the remaining provisions of this Agreement shall not in any way be affected, prejudiced or impaired thereby in that jurisdiction, nor shall the legality, validity or enforceability of any of the provisions herein be affected, prejudiced or impaired thereby in any other jurisdiction. The Parties agree in such event, and insofar as may be available under Applicable Law, to substitute valid, legal and enforceable provisions for the invalid, illegal or unenforceable provisions so as to implement the intention of the Parties hereto to the extent legally possible.

21. NOTICES

- (a) The Parties choose as their address for notices for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

- (i) **BFC2:**
 - Physical: 135 Rivonia Road
Sandown
Sandton
2196
South Africa
 - E-mail: ssa-zakhelefuthi@nedbank.co.za
 - Attention: Nedbank Share Administration
 - With a copy to MTN:
 - Physical: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa
 - E-mail: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com
 - Attention: Kholekile Ndamase
Thobeka Sishuba;
- (ii) **BIC2:**
 - Physical: 135 Rivonia Road
Sandown
Sandton

2196
South Africa

E-mail: ssa-zakhelefuthi@nedbank.co.za

Attention: Nedbank Share Administration

With a copy to MTN:

Physical: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

E-mail: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba;

(iii) MTN:
Physical: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

E-mail: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba;

(iv) MTN Holdings:
Physical: 216 14th Avenue
Fairland
Roodepoort
2195
South Africa

E-mail: Kholekile.Ndamase@mtn.com
Thobeka.Sishuba@mtn.com
LegalNotices@mtn.com

Attention: Kholekile Ndamase
Thobeka Sishuba;

(v) MML (as BFC2 Preference Shareholder):
Physical: 268 West Avenue
Centurion
0157

South Africa

Email: Kagiso.Tsatsane@mmltd.co.za

Attention: Head: Asset Origination;

(vi) United Towers (as BFC2 Preference Shareholder):

Physical: c/o Absa Bank Limited
15 Alice Lane
Sandown
Sandton
2196
South Africa

E-mail: xradocmanvalidations@absa.africa

Attention: Transaction Administration IMPEX; and

(vii) RMB (as Preference Share Agent and BFC2 Preference Shareholder):

Physical: 14th Floor
1 Merchant Place
1 Fredman Drive
Sandton
2196
South Africa

E-mail: Catriona.Robertson@rmb.co.za
Lorraine.Maluleke@rmb.co.za
Lwandle.Matsinya@rmb.co.za
Nomonde.Mdingi@rmb.co.za
Theresa.Rheeder@rmb.co.za

Attention: Head of Transaction Management, Investment Banking
division,

or at such other address in South Africa, not being a post office box or *poste restante*,
of which the Party concerned may notify the other in writing.

- (b) Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice only by hand delivery or by courier and by e-mail.
- (c) Any Party may by notice to the other Parties change the physical address chosen as its address for notices to another physical address where postal delivery occurs in South Africa or its e-mail address, provided that the change shall become effective on the 5th (fifth) Business Day from the deemed receipt of the notice by the other Parties.
- (d) Any notice to a Party:
 - (i) delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its address for notices shall be deemed to have been received on the day of delivery or if such delivery is not during normal business

hours or such date is not a Business Day, on the immediately succeeding Business Day; or

- (ii) sent by e-mail to its chosen e-mail address stipulated in clause 21(a) during ordinary business hours, shall be deemed to have been received on the date of despatch or if such delivery is not during normal business hours or date is not a Business Day, on the immediately succeeding Business Day (unless the contrary is proved).
- (e) 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 it notwithstanding that it was not sent to or delivered at its chosen address for notices.
- (f) All communications under the Finance Documents to or from MTN must be sent through the Preference Share Agent.
- (g) Except as provided below, MTN may deliver any information under this Agreement to the other Parties by posting it on to an electronic website if:
 - (i) the Preference Share Agent and the Holders agree;
 - (ii) MTN and the Preference Share Agent designate an electronic website for this purpose;
 - (iii) MTN notifies the Preference Share Agent of the address of and password for the website; and
 - (iv) the information posted is in a format agreed between MTN and the Preference Share Agent.
- (h) The Preference Share Agent must supply each relevant Holder with the address of and password for the website.
- (i) Notwithstanding the above, MTN must supply to the Preference Share Agent in paper form a copy of any information posted on the website together with sufficient copies for:
 - (i) any Holder not agreeing to receive information via the website; and
 - (ii) within 10 Business Days of request any other Holder, if that Holder so requests.
- (j) MTN must, promptly upon becoming aware of its occurrence, notify the Preference Share Agent if:
 - (i) the website cannot be accessed;
 - (ii) the website or any information on the website is infected by any electronic virus or similar software; or
 - (iii) the password for the website is changed.
- (k) If the circumstances in clauses 21(j)(i) or 21(j)(ii) occur, MTN must supply any information required under this Agreement in paper form until the Preference Share

Agent is satisfied that the circumstances giving rise to the notification are no longer continuing.

22. REMEDIES AND WAIVERS

- (a) The rights, powers and remedies provided by this Agreement are cumulative and are not, nor are they to be construed as, exclusive of any right of set-off or other rights, powers and remedies provided by law.
- (b) No failure on the part of any Party to exercise, or delay on the part of any Party in exercising, any of the rights, powers and remedies provided by this Agreement or by law shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise thereof or the exercise of any other such right, power or remedy.

23. GOVERNING LAW AND JURISDICTION

- (a) This Agreement shall be governed by and construed in accordance with the laws of South Africa.
- (b) Each Party agrees that any legal action or proceedings arising out of or in connection with this Agreement may be brought against it in the High Court of South Africa (South Gauteng High Court, Johannesburg) (or any successor to that court) and irrevocably submits to the non-exclusive jurisdiction of such court. Each Party irrevocably waives any objection it may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. Nothing herein shall affect the right of the other Parties hereto to serve process in any manner permitted by law. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of any Party hereto to take proceedings against any other Party in whatever other jurisdiction such Party considers appropriate nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

24. CESSION AND DELEGATION

- (a) None of MTN, each MTN Acceded Nominee, BIC2 or BFC2 shall be entitled cede, delegate or transfer any of their rights and/or obligations under this Agreement to any third party without the prior written consent of the Preference Share Agent.
- (b) The Holders and the BFC2 Investors shall be entitled at any time to cede all or any of their rights and to delegate all or any of their obligations hereunder to any third party to whom they may cede or delegate any of their rights and obligations and/or transfer any BFC2 Preference Shares held by them in terms of the Finance Documents. MTN and each MTN Acceded Nominee hereby unconditionally and irrevocably consents to the splitting of claims against it which may result from or pursuant to or in consequence of any such cession and/or delegation by the Holders and/or BFC2 Investors in terms of this Agreement.

25. FURTHER ASSURANCES

MTN and each MTN Acceded Nominee shall from time to time promptly execute, acknowledge, deliver, file and register all such additional documents, instruments, agreements, certificates, consents and assurances and do all such other lawful acts and things as may be

necessary from time to time in order to maintain or perfect the rights intended to be constituted by this Agreement.

26. WHOLE AGREEMENT, NO AMENDMENT

- (a) This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.
- (b) No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- (c) No oral *pactum de non petendo* shall be of any force or effect.
- (d) No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any party in respect of its rights under this Agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this Agreement.
- (e) To the extent permissible by law no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

27. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, all of which shall together constitute one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.

28. INDEPENDENT ADVICE

MTN and each MTN Acceded Nominee acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has taken such independent legal and other advice. Further, each of MTN and each MTN Acceded Nominee acknowledges that all of the provisions of this Agreement and the restrictions herein contained have been negotiated as between it and the other Parties hereto and are part of the overall intention of the Parties in connection with this Agreement.

29. COSTS

29.1 Amendment Costs

MTN shall promptly on demand pay to the Preference Share Agent (on behalf of the relevant Holder) the amount of all reasonable or necessary costs and expenses (including reasonable or necessary legal fees on the attorney and own client scale) incurred by the relevant Holder in

connection with any amendment, variation, supplement, replacement, novation, waiver or consent which is requested by MTN or any MTN Acceded Nominee in relation to this Agreement.

29.2 Enforcement Costs

MTN shall promptly on demand pay to the Preference Share Agent (on behalf of the relevant Holder) the amount of all costs and expenses (evidenced by means of supporting invoices) (including legal fees on the scale as between attorney and own client whether incurred before or after judgement) incurred by any Party to this Agreement (other than MTN) in connection with the enforcement of, or the preservation of any rights of such Party under, this Agreement as a result of any breach or threatened breach of the provisions of this Agreement by MTN and/or any MTN Acceded Nominee.

SCHEDULE 1: FORM OF MTN ACCEDED NOMINEE ACCESSION UNDERTAKING

To: [◆]

(as Preference Share Agent)

From: [Insert full name of MTN Acceded Nominee] (the "MTN Acceded Nominee")

Date:

Dear Sirs

MTN SUBORDINATION AND UNDERTAKING AGREEMENT DATED [◆] 2016 (the "Agreement")

1. We refer to the Agreement. This is an Accession Undertaking, and terms used in this Accession Undertaking have the same meaning as in the Agreement.
2. This Accession Undertaking is delivered to you as Preference Share Agent pursuant to the Agreement.
3. In consideration of the MTN Acceded Nominee being accepted as an MTN Acceded Nominee for the purposes of the Agreement, the MTN Acceded Nominee hereby confirms that, as from the date of acceptance of this Accession Undertaking by the Preference Share Agent, it:
 - (a) shall be Party to the Agreement as an MTN Acceded Nominee;
 - (b) undertakes to perform all the obligations expressed in the Agreement to be assumed by an MTN Acceded Nominee;
 - (c) agrees that it shall be bound by all the provisions of the Agreement as if it had been an original Party to the Agreement as an MTN Acceded Nominee.
4. This Accession of Undertaking may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Accession Undertaking.
5. This Accession Undertaking shall be governed by and construed in accordance with the laws of South Africa.

For and on behalf of
Jabisaan 04 (RF) Proprietary Limited

Name:

Capacity:

Who warrants his authority hereto

Address for notices for purposes of clause 21 of the Agreement:

Address:

E-mail:

Attention:

For and on behalf of

FirstRand Bank Limited (acting through its Rand Merchant Bank division)

(acting in its capacity as the Preference Share Agent)

Name:

Capacity:

Who warrants his authority hereto

SCHEDULE 2: FORM OF COMPLIANCE CERTIFICATE

(To appear on MTN Group Limited letterhead)

To: FirstRand Bank Limited (acting through its Rand Merchant Bank division) (in its capacity as Preference Share Agent)

From: [MTN Group Limited]

Date: [insert]

Dear Sirs

SUBORDINATION AND UNDERTAKING AGREEMENT – COMPLIANCE CERTIFICATE

1. We refer to the MTN Subordination and Undertaking Agreement (the "**Agreement**") dated [◆] 2016 entered into between, *inter alios*, MTN, BIC2, BFC2, the Preference Share Agent, RMB and United Towers, as amended and/or restated from time to time. Terms defined in the Agreement shall bear the same meaning herein.
2. This Compliance Certificate is delivered in terms of clause 11.4 of the Agreement, in respect of the financial statements or results (as the case may be) for the period ended [◆].
3. We attach, as **Annexure A** to this Compliance Certificate, a calculation of the Financial Covenant, together with a reconciliation thereof to the figures reflected in the financial statements or results (as the case may be) in respect of which such calculation has been carried out.

[Annexure A to be attached]
4. We hereby confirm compliance with the representations and warranties given by MTN in terms of clause 9 of the Agreement and the undertakings given by MTN in clause 11 of the Agreement.
5. As at the date of this Compliance Certificate, the Material Subsidiaries are:

[to be listed]

Yours faithfully

For: MTN Group Limited

SCHEDULE 3: FORM OF UTILISATION REQUEST

From: MTN Zakhele Futhi (RF) Limited

To: [Insert details of MTN or the applicable MTN Acceded nominee]

With a copy to: [Insert details of the Preference Share Agent]

Dated: [◆]

Dear Sirs or Madams

UTILISATION REQUEST

1. We refer to the written agreement entitled "*Second Amended and Restated MTN Subordination and Undertaking Agreement*" concluded on or about [◆] 2021 between FirstRand Bank Limited (acting through its Rand Merchant Bank division), Momentum Metropolitan Life Limited, United Towers Proprietary Limited, Jabisan 04 (RF) Proprietary Limited, MTN Zakhele Futhi (RF) Limited, MTN Group Limited and Mobile Telephone Networks Holdings Limited ("**Agreement**"), as amended and/or restated from time to time.
2. This is a Utilisation Request as contemplated in the Agreement.
3. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
4. [Request for advance of a BIC2 Taxes Shortfall Loan]
 - (a) We hereby request, pursuant to the provisions of clause 4.4 of the Agreement, that MTN or an MTN Acceded Nominee advance to us a BIC2 Taxes Shortfall Loan, on the terms and conditions set out in clause 4.4 of the Agreement, as follows:
 - (i) Amount of BIC2 Taxes Shortfall Loan: ZAR[◆]
 - (ii) Advance Date:
 - (iii) Interest Rate:
 - (iv) Bank Account details: [set out details of the BIC2 Collection Account]
 - (b) We confirm that:
 - (i) the purpose of such BIC2 Taxes Shortfall Loan is to fund the payment of, or provision for, BIC2 POP Taxes;
 - (i) the amount of this BIC2 Taxes Shortfall Loan which, when taken together with all other BIC2 Subordinated Loans previously made to, or proposed to be made to BIC2, shall not exceed the amount of any facility amount approved by MTN or any MTN Acceded Nominee to BIC2 from time to time.]

5. [Request for advance of a BIC2 Administration Costs Loan]

- (a) We hereby request, pursuant to the provisions of clause 4.5 of the Agreement, that MTN or an MTN Acceded Nominee advance to us a BIC2 Administration Costs Loan, on the terms and conditions set out in clause 4.5 of the Agreement, as follows:
- (i) Amount of BIC2 Administration Costs Loan: ZAR[◆]
 - (ii) Advance Date:
 - (iii) Interest Rate:
 - (iv) Bank Account details: [set out details of the BIC2 Collection Account]
- (b) We confirm that:
- (i) the purpose of such BIC2 Administration Costs Loan is to fund the payment of, or provision for, BIC2 Administration Costs;
 - (ii) the amount of this BIC2 Administration Costs Loan which, when taken together with all other BIC2 Subordinated Loans previously made to, or proposed to be made to BIC2, shall not exceed the amount of any facility amount approved by MTN or any MTN Acceded Nominee to BIC2 from time to time.]

6. [Request for advance of a BIC2 Scheduled Preference Dividend Shortfall Loan]

- (a) We hereby request, pursuant to the provisions of clause 4.7 of the Agreement, that MTN or an MTN Acceded Nominee advance to us a BIC2 Scheduled Preference Dividend Shortfall Loan, on the terms and conditions set out in clause 4.7 of the Agreement, as follows:
- (i) Amount of BIC2 Scheduled Preference Dividend Shortfall Loan: ZAR[◆]
 - (ii) Advance Date:
 - (iii) Interest Rate:
 - (iv) Bank Account details: [set out details of the BIC2 Collection Account]
- (b) We confirm that:
- (i) the amount of the BIC2 Scheduled Preference Dividend that is due and payable on [insert BIC2 Priority of Payments Date] is ZAR[insert amount];
 - (ii) the amount of the available cash resources of BIC2 for the purposes of making payment of the BIC2 Scheduled Preference Dividend that is due and payable on [insert BIC2 Priority of Payments Date] (and having regard to any BIC2 Taxes Shortfall Loan and/or Administration Costs Loan to be advanced pursuant to this Utilisation Request) at [insert BIC2 Priority of Payments Date] is ZAR[insert amount];

- (iii) the BIC2 Scheduled Preference Dividend Shortfall is ZAR[insert amount], as confirmed by the Calculation Agent in **Annexure A** hereto;
- (iv) the BIC2 Scheduled Preference Dividend Shortfall Loan requested in this paragraph [6]:
 - (A) is for an amount that is not less than the BIC2 Scheduled Preference Dividend Shortfall;
 - (B) when taken together with any other BIC2 Subordinated Loans previously made to, or proposed to be made to BIC2, does not exceed the amount of any facility amount approved by MTN or any MTN Acceded Nominee from time to time;
- (v) the purpose of such BIC2 Scheduled Preference Dividend Shortfall Loan is to fund the payment BIC2 Scheduled Preference Dividends.]

7. This Utilisation Request is irrevocable.

Yours faithfully

.....
Name of signatory:
authorised signatory for
MTN Zakhele Futhi (RF) Limited

[SIGNATURE PAGES INTENTIONALLY LEFT BLANK]