



Network Solutions

SERVICE AGREEMENT
ENTERED INTO BETWEEN
MTN NETWORK SOLUTIONS (PROPRIETARY) LIMITED
1 Commerce Square, 39 Rivonia Rd, Sandhurst
("MTN NETWORK SOLUTIONS") AND
COMPANY'S FULL NAME ("THE CLIENT")

[Grid for company name]

COMPANY'S STREET ADDRESS

[Grid for street address]

[Grid for street address]

COMPANY'S POSTAL ADDRESS

[Grid for postal address]

[Grid for postal address]

[Grid for telephone no]

C O D E

COMPANY'S TELEPHONE NO

[Grid for telephone no]

[Grid for fax no]

C O D E

COMPANY'S FAX NO

[Grid for fax no]

COMPANY REGISTRATION NUMBER

[Grid for registration number]

EMAIL ADDRESS

[Grid for email address]

Represented by:

LAST NAME

[Grid for last name]

TITLE

[Grid for title]

INITIALS

[Grid for initials]

FIRST NAME

[Grid for first name]

MIDDLE NAME

[Grid for middle name]

EMAIL ADDRESS

[Grid for email address]

ID NUMBER

[Grid for id number]

FOR INTERNAL USE (CONTRACT NUMBER)

[Grid for contract number]

Invoice for Attention of:

COMPANY ORDER NUMBER (WHERE APPLICABLE)

[Grid for order number]

VAT REGISTRATION NUMBER

[Grid for vat registration number]

LAST NAME

[Grid for last name]

TITLE

[Grid for title]

INITIALS

[Grid for initials]

MTN NETWORK SOLUTIONS STANDARD TERMS AND CONDITIONS APPLY AND FORM PART OF THIS APPLICATION

AUTHORISED SIGNATURE FOR AND ON BEHALF OF THE CLIENT

DATE

AUTHORISED SIGNATURE FOR AND ON BEHALF OF MTN NETWORK SOLUTIONS

DATE

Direct Debit Order

BANK NAME

[Grid for bank name]

BRANCH NAME

[Grid for branch name]

BRANCH NO

[Grid for branch no]

ACCOUNT NAME

[Grid for account name]

ACCOUNT TYPE

[Grid for account type]

ACCOUNT NO

[Grid for account no]

AUTHORISED BANK ACCOUNT SIGNATURE FOR AND ON BEHALF OF THE CLIENT

POSITION

The Client authorises the company to deduct monthly subscriptions and any other monies due to the company using the direct debit order mechanism which is implemented on the first (1st) day of each calendar month for the duration of this agreement.

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NETWORK SOLUTIONS STANDARD TERMS AND CONDITIONS

1. INTERPRETATION AND DEFINITIONS

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

“Act” means the Electronic Communications Act, 2005 as amended from time to time;
“effective date” means the date on which service is first provided to the client provided that, if at any time during the currency of this agreement, the client upgrades the services then the effective date shall be the date when the upgraded service is first supplied to the client and provided that should the installation of the services be intentionally delayed by the client, or if acts or omission of the client prevent MTN Network Solutions from installing and delivering the service, then the effective date will be 60 (sixty) days after the signing of this agreement by the client regardless of whether or not the service has been activated, implemented or utilised.

“network” means all the equipment used to provide VANS to client, whether owned or rented by MTN Network Solutions;

“network maintenance” means repairs and improvements carried out by MTN Network Solutions from time to time to the MTN Network Solutions network;

“products” means the rented hardware or sold hardware, as the case may be, and the software licence and the ancillary services relating thereto, provided in terms of this agreement;

“Republic” means the Republic of South Africa;

“Schedule of Services” is a document which forms part of this agreement, setting out the services and products to be provided by MTN Network Solutions to client and the fees to be paid by client to MTN Network Solutions, which document may be amended or supplemented from time to time by agreement between the parties, and which amendment or supplement shall be referred to in a subsequent document;

“Service” or “Services” means the VANS as specified in the Schedule of Services.

“telecommunication facility” means telecommunication facility as contemplated in the Act;

“Signature Date” means the date on which the last party hereto signs this agreement;

“Telkom” means Telkom SA Limited (Registration No. 91/05476/06), a public company incorporated in accordance with the company laws of the Republic or any other PSTS license holder as contemplated in the Act;

“VANS” means value added network services as contemplated in the Act;

“VANS fee” means the monthly fee payable by the client in respect of the VANS provided in terms of this agreement;

If any provision contained in this agreement is rendered void, illegal or unenforceable in any respect, then the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. The expiration or termination of this agreement shall not affect the provisions of this agreement that 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.

The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.

2. PROVISION OF VANS AND PRODUCTS

MTN Network Solutions will provide to the client VANS as set out in the Schedule of Services, namely, Internet access services or both Internet access services and security, co-location and/or managed data network services, on the specific terms applicable thereto as set out in the relevant annexures hereto. If required by client, MTN Network Solutions will supply to the client the products in the Schedule of Services, namely, rented hardware, sold hardware and/or software and software licensing, on the specific terms applicable thereto as set out in the relevant annexures hereto.

3. PAYMENT FOR VANS AND PRODUCTS

The amounts payable by client for the provision of VANS and products by MTN Network Solutions are as set out in the Schedule of Services and annexures. The amounts payable are exclusive of Value-Added Tax. Save for the initial payment, all monthly amounts payable by client must be paid monthly in advance on or before the first day of the month in which the service is provided. All payments must be made in South African Rands and by electronic funds transfer. If the client fails to make any payment on the due date, MTN Network Solutions may, without prejudice to any of its rights, suspend the performance of any of its obligations in terms of this agreement and shall be entitled to charge the client interest on the overdue amount from the due date to the date of actual payment thereof (both days inclusive) at the rate of 2,5% (two comma five percent) above the then current overdraft interest rate being charged by MTN Network Solutions' bankers plus any additional costs incurred by MTN Network Solutions as a result of client's failure to make any payment on the due date. MTN

Network Solutions may adjust the amounts payable by the client in terms of this agreement to reflect any increase in the cost to MTN Network Solutions in providing the VANS and products which is due to any factor beyond the control of MTN Network Solutions, including without limitation, foreign exchange fluctuation, increased costs of third party products including telecommunication facilities provided by Telkom, alteration of duties, surcharges, taxes, rates or levies, increased costs of materials or manufacture, change in delivery dates, quantities or specifications which are required by the client or delay caused by any instruction of the client. In addition to the foregoing, MTN Network Solutions may adjust the amounts payable by the client in terms of this agreement on the 1st day of April each year by an amount equal to the year on year percentage increase in the Consumer Price Index (“CPI”) core inflation rate for the month February for that year. The client will contract directly with Telkom and all Telkom costs are thus for the expense of the client.

The client will not be entitled to withhold payment of any amount payable in terms of this agreement to satisfy any claim against MTN Network Solutions arising from this or any other agreement with MTN Network Solutions, nor will the client be entitled to set off any such amount payable in terms of this agreement against any amount owing to it by MTN Network Solutions in terms of this or any other agreement.

Notwithstanding anything to the contrary contained in this agreement, MTN Network Solutions shall be entitled to start invoicing the client as from the signature date in instances where the client is in contravention of any of the terms and conditions of this agreement, irrespective of whether the client is able to utilise the service or not. In all remaining instances where the client is not in contravention of any of the terms and conditions of this agreement, MTN Network Solutions shall start invoicing the client from the effective date (service provision date).

4. TERMINATION PRIOR TO SERVICES PROVIDED

Should the effective date (service provision date) occur after the signature date of this agreement, nothing herein contained shall be construed so as to give either party the right to terminate, rescind or repudiate this agreement before the effective date.

5. THE CLIENT'S OBLIGATIONS

Client has sole responsibility to ensure that the information it and its users transmit and receive over MTN Network Solutions' network complies with all applicable laws and client indemnifies MTN Network Solutions and holds it harmless against any claims by third parties in respect of prohibited activities conducted by the client or its users. The client shall not take any steps or fail to take any steps which directly or indirectly:

- damages MTN Network Solutions' network or any part thereof;
- impairs or precludes MTN Network Solutions from being able to provide VANS or products in a professional manner;
- constitutes an abuse or malicious misuse of the VANS or products provided by MTN Network Solutions (including but not limited to spamming etc);
- is calculated to have one or more of the above-mentioned effects.

Under such circumstances as referred to above, MTN Network Solutions reserves the right to suspend all services to the client until such time as the Client remedies the situation and in the event that MTN Network Solutions incurs any expense in remedying the effects of any of the acts or omissions referred to above, the client shall reimburse MTN Network Solutions on demand in the amount necessary to cover such expense

The client agrees to adhere to the MTN Network Solutions Code of Conduct, Acceptable Use Policy and Privacy Policy available at <http://www.mtnns.co.za>.

6. DURATION

This agreement shall endure for a period of 24 (twenty four) months calculated from the effective date and thereafter shall be renewed automatically on the anniversary date, for further periods of 12 (twelve) months unless 3 (three) months' written notice prior to the anniversary date, of its intention not to renew the agreement, is given by one party to the other.

7. WARRANTY FOR FITNESS

Save for those warranties expressly set out herein, MTN Network Solutions makes no representations or warranties whatsoever, whether express or implied, to the client as to the condition of the products or as to the fitness of the VANS or the products for any purpose whatsoever. The VANS and the products have been selected by the client and the client shall have no claim against MTN Network Solutions nor shall it be entitled to cancel this agreement if, in respect of the VANS or products, it subsequently determines that such VANS or products are for any reason unacceptable to it.

8. LIMITATION OF LIABILITY

MTN Network Solutions shall not be liable in terms of this agreement, in delict, contract, warranty or otherwise for:

- any indirect or consequential damages suffered by the client, howsoever arising, and the client indemnifies MTN Network Solutions accordingly;
- any direct damage suffered by the client howsoever arising, in respect of any

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amount which is more than the amount of revenue received from the client and the client indemnifies MTN Network Solutions accordingly.

9. BREACH

If any party breaches any material provision or term of this agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 10 (ten) days of receipt of written notice requiring it to do so (or if it is not reasonably possible to remedy the breach within 10 (ten) days, within such further period as may be reasonable in the circumstances) then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it at law or under this agreement, including obtaining an interdict, to cancel this agreement or to claim specific performance of any obligation whether the due date for performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages.

MTN Network Solutions is entitled to interrupt the provision of the VANS or products to the client if the client is in default of any of its obligations to MTN Network Solutions under this agreement. Under no circumstances may the client cancel this agreement or withhold or defer payment or be entitled to a reduction in any charge or have any other right or remedy against MTN Network Solutions, its servants, its agents or any other persons for whom it may be liable in law, if MTN Network Solutions interrupts the provision of VANS or products to the client. A certificate of indebtedness issued under the hand of any director or manager of MTN Network Solutions, whose authority or appointment it shall not be necessary to prove, in respect of any indebtedness of the client in terms of this agreement, shall be *prima facie* evidence of the client's indebtedness to MTN Network Solutions. Should the client breach the agreement by terminating prior to the expiry of the duration thereof the client will pay to MTN Network Solutions a penalty equal to the remaining contract value of the agreement.

10. NO ASSIGNMENT

Client shall not be entitled to cede, assign or delegate any of its rights and obligations under this agreement to any third party, unless otherwise agreed in writing by MTN Network Solutions. MTN Network Solutions shall be entitled to cede, assign or delegate any of its rights and obligations under this agreement to any third party without prior notice to and without the consent of the client.

11. CONFIDENTIALITY AND PUBLICITY

Any information obtained by either party to this agreement in negotiating it or arising from the implementation thereof, shall be treated as confidential by the party and shall not be divulged or permitted to be divulged to any person not being a party to this agreement, without the prior written consent of the other party save that –

- any information which is required to be furnished by law or by existing contract or by any stock exchange on which the shares of either party to this agreement are listed may be so furnished;
- either party shall be entitled (after consultation with the other party so as to avoid embarrassment or prejudice to the extent possible) to make such information available to its shareholders as may be necessary to enable such shareholders to consider the value and prospects of their share holdings;
- neither party shall be precluded from divulging any information to any person who is negotiating with such party for the acquisition of an interest in such party, provided that the person to whom any disclosure is made in the aforesaid circumstances shall first have undertaken in writing not to divulge such information to any other person and to use it only for the purpose of evaluating the business; and
- no party shall be precluded from using or divulging such information in order to pursue any legal remedy available to it.

12. NON SOLICITATION

For the duration of this agreement and for a period of 1 (one) year following the termination of this agreement for any reason whatsoever, the client shall not, whether directly or indirectly, either itself or via another entity, act in any manner whatsoever which results in an employee of MTN Network Solutions consulting to, working for or being contracted by the client.

13. FORCE MAJEURE

If *vis major* or *force majeure* or *casus fortuitus* ("the interrupting circumstances") cause delay in or failure or partial failure of performance by a party of all or any of its obligations hereunder, this agreement, or as the case may be, the affected portion thereof, shall be suspended for the period during which the interrupting circumstances prevail, but if they affect any material part of the agreement, only for a maximum period of 30 (thirty) days, whereafter any affected party shall be entitled on 30 (thirty) days' written notice to cancel this agreement. Written notice of the interrupting circumstances specifying the nature and date of commencement thereof shall be despatched by the party seeking to rely thereon (on whom the onus shall rest) to the other as soon as reasonably possible after the commencement thereof. Written notice of the cessation of the interrupting circumstances shall be given by the party who relied thereon within 10 (ten) days after such cessation. No party shall subsequently be

obliged to comply with the obligations suspended during such period. The party whose performance is interrupted by the interrupting circumstances shall be entitled, provided that such party shall give notice to that effect with the written notice of the interrupting circumstances, to extend the period of this agreement by a period equal to the time that its performance is so prevented.

13. ARBITRATION

A dispute which arises in regard to this agreement, or out of or pursuant to this agreement (other than where an interdict or urgent relief is sought from a court of competent jurisdiction), may at the discretion of MTN Network Solutions be submitted to and decided by arbitration. The arbitration shall be subject to the arbitration legislation for the time being in force in South Africa. The provisions of this clause are severable from the rest of this agreement and shall remain in effect even if this agreement is terminated for any reason. The arbitrator shall have the power to give default judgment if any party fails to make submissions on the relevant due date or fails to appear at the arbitration.

14. GOVERNING LAW

This agreement shall be governed in all respects by the law of South Africa.

15. DOMICILIUM CITANDI ET EXECUTANDI

The parties choose as their *domicilia citandi et executandi* for all purposes under this agreement the addresses as set out on the first page of this agreement. Either party may by notice to the other party change its *domicilia citandi et executandi*.

16. WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties relating to the subject matter hereof. No amendment or cancellation of this agreement or any provision or term hereof shall be binding unless recorded in a written document signed by the parties. Neither party may rely on any representation which allegedly induced that party to enter into this Agreement, unless the representation is recorded specifically in this Agreement.

ANNEXURE 1

SERVICE LEVEL AGREEMENT

1. MTN Network Solutions will provide the services and products as set out in the Schedule of Services. All Telkom costs associated with the provision of this service will be for the account of the client and the client must contract directly with Telkom.
2. The charges payable by the client to MTN Network Solutions are as set out in the schedule of services.
3. MTN Network Solutions is not able to provide any service level guarantees on Mobile Data Products. These must be obtained directly from MTN SA (Pty) Ltd.
4. MTN Network Solutions is not able to provide any service level guarantees on ADSL products.

NETWORK AVAILABILITY GUARANTEE

1. MTN Network Solutions guarantees that the Client will enjoy 99.65% availability of the MTN Network Solutions Network in respect of co-location and 99.65% on Internet connectivity. As set out more fully here below, MTN Network Solutions will credit the client if MTN Network Solutions fails to meet this Availability Guarantee during any given calendar month. It is specifically recorded that Mobile Data Products are not covered under this Service Level Agreement.
2. At the client's request MTN Network Solutions will calculate the client's "Network Unavailability" for any calendar month.
3. "Network Unavailability" is the number of minutes that the MTN Network Solutions Network was not available to the client, but will not include unavailability resulting from:
 - MTN Network Solutions scheduled Network maintenance (outside of normal working hours and with notice of at least 24 hours),
 - The client's applications, equipment, or facilities.
 - Acts or omissions of the client, or any use of the service authorised by the client
 - Reasons of Force Majeure
 - Any component within the MTN Network Solutions Network that is owned or maintained by Telkom.
 - Any act or omission of Telkom.
4. For each accumulative hour of Network Unavailability, in that MTN Network Solutions does not comply with this guarantee, in any calendar month, MTN Network Solutions will credit the client's account with an amount equal to the pro rata charge for one day of the monthly fee for the service with respect to which this Guarantee has not been met.

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REPORTING GUARANTEE

1. MTN Network Solutions guarantees that the person nominated by the client will be notified (by a suitable method elected by MTN Network Solutions) within 30 minutes of it coming to MTN Network Solutions' attention that the client's service is unavailable.
2. MTN Network Solutions standard procedure is to ping the client's router every five minutes. Should the client's router not respond after two consecutive five-minute ping cycles, MTN Network Solutions will deem the service unavailable and will contact the client's designated point of contact by a method elected by MTN Network Solutions.
3. This Reporting Guarantee is only available for services provided entirely on the MTN Network Solutions Network. It is the sole responsibility of the client to provide accurate and current contact information to be used for reporting purposes. MTN Network Solutions' obligations under this Reporting Guarantee will no longer be applicable should the contact information which the client has supplied be out of date or inaccurate due to an act or omission of The client.
4. MTN Network Solutions' obligations with regard to the Reporting Guarantee shall not be applicable if MTN Network Solutions' failure to comply is due to reasons of Force Majeure.
5. If MTN Network Solutions fails to meet this Reporting Guarantee the client will be entitled to request that the client's account be credited with an amount equal to the pro rata charge for one day of the monthly fee for the service with respect to which this Guarantee has not been met, provided that the client may obtain no more than one credit per day irrespective of how often in that day MTN Network Solutions failed to meet the Reporting Guarantee.

CIRCUIT INSTALLATION GUARANTEE

1. MTN Network Solutions' guarantees to have the installation of all the MTN Network Solutions infrastructure and activation of a MTN Network Solutions port completed within 30 business days. This applies for 64Kbps or larger capacity services and upgrades.
2. MTN Network Solutions' Circuit Installation Guarantee specifically excludes any infrastructure that is owned, managed, or installed by Telkom.
3. The client shall not delay the installation of the services in any manner whatsoever.
4. For purposes of this guarantee the number of days shall be calculated from the date on which MTN Network Solutions receives all of the documentation from the client needed to process the installation.
5. This Circuit Installation Guarantee is not applicable in the case of an installation delay where the delay is attributable to one or more of the following:
 - The client's equipment
 - An act or omission of the client, its employees or agents
 - The client not passing MTN Network Solutions' credit check
 - Reasons of Force Majeure
5. If MTN Network Solutions fails to meet this Circuit Installation Guarantee, The client's account shall be credited with an amount equal to 50% of MTN Network Solutions' standard installation charge for the service with respect to which this Guarantee has not been met.

ANNEXURE 2 CO-LOCATION

1. MTN Network Solutions will co-locate the client's equipment, whether provided to the client by MTN Network Solutions or not, at one or more of the MTN Network Solutions data centres.
2. MTN Network Solutions will provide power reticulation, UPS, air-conditioning, a physically secure, fully monitored, controlled and managed environment and access to the data centre by the client, subject to the provisions of this annexure.
3. The client will pay MTN Network Solutions for the co-location in the amount specified in the Schedule of Services, which amount reflects the client's specifications regarding the use of 4U slots and/or rack space or footprint space required for co-location.
4. The client shall nominate a contact person (in the employ of the client) in writing to MTN Network Solutions who shall have access to MTN Network Solutions' data centres for scheduled and unscheduled client maintenance.
5. For scheduled maintenance, the client must provide written notice to MTN Network Solutions of 48 (forty eight) hours if access is required between the hours 07h00 and 19h00 and 4 (four) days if access is required any other time.

The first two hours of access will not be charged for however thereafter an hourly fee for time and costs will be charged. The client will have access for unscheduled maintenance. An hourly fee for time and costs will be payable.

6. The client may have access only to that portion of MTN Network Solutions' data centres made available by MTN Network Solutions to the client for the placement of the client's equipment, unless otherwise approved by MTN Network Solutions.
7. The client will not have access during MTN Network Solutions' scheduled or unscheduled network maintenance, unless otherwise agreed by MTN Network Solutions.
8. The client agrees to adhere to and abide by all security and safety measures established by MTN Network Solutions and communicated to the client by MTN Network Solutions from time to time. In particular, the client shall not engage in any of the following:
 - misuse, unauthorised use, abuse of or interference with any of MTN Network Solutions' or any third party's equipment or other property located at MTN Network Solutions' data centres;
 - the harassment of any person including MTN Network Solutions' personnel or authorised representatives, or personnel or representatives of any of MTN Network Solutions' other clients;
 - any unlawful activity or assisting therein, while on MTN Network Solutions' property;
9. The client shall keep that area in MTN Network Solutions' data centres used for the co-location of its equipment clean and free of debris and refuse at all times.
10. The client shall not, except as otherwise agreed to in writing by MTN Network Solutions:
 - place any hardware or software or other equipment at MTN Network Solutions' data centres that has not been agreed to in writing by MTN Network Solutions;
 - store any paper products or other combustible materials of any kind at the MTN Network Solutions data centres save for equipment manuals;
 - bring any prohibited matter into MTN Network Solutions' data centres, prohibited matter being those things detrimental to MTN Network Solutions' network and equipment as determined by MTN Network Solutions.
11. The client undertakes to label clearly each piece of equipment co-located at MTN Network Solutions' data centres. Such label must contain the client's name, component identification and in the case of a connection, the starting and ending points of the connection.
12. The client's equipment that is to be co-located at MTN Network Solutions' hub must be configured and run at all times in compliance with the manufacturers' specifications, including power outlets, power consumption and clearance requirements.
13. The client must provide MTN Network Solutions with at least 48 (forty eight) hours notice whenever it intends to connect or disconnect its equipment.
14. MTN Network Solutions may shut down the client's equipment co-located at MTN Network Solutions' premises in the event that it is detrimentally affecting MTN Network Solutions' network or if MTN Network Solutions is required to do so by law.
15. Unless MTN Network Solutions otherwise agrees in writing the client shall:
 - insure the equipment it co-locates at MTN Network Solutions' data centres for the full appraised value thereof against any loss or damage howsoever arising and shall indemnify MTN Network Solutions against all claims arising in respect of such loss or damage;
 - insure against any loss or damage of whatsoever nature and howsoever arising caused by the client's equipment at MTN Network Solutions' data centre and shall indemnify MTN Network Solutions against all claims arising in respect of such loss or damage.
16. The client shall:
 - pay all insurance premiums punctually and shall at all times comply with all conditions of the insurance policies;
 - within 3 (three) days of MTN Network Solutions so requesting, provide to MTN Network Solutions proof of fulfilment of all the clients obligations in terms of hereof.
17. Should the client fail to fulfil its obligations in terms hereof, MTN Network Solutions shall be entitled, but not obliged, to carry out on behalf of the client, such obligations and to that end pay the relevant insurance premiums on behalf of the client and any money so disbursed shall be refunded by the client to MTN Network Solutions on demand.

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- 18.** As security for its obligations in terms of this agreement, the client pledges to MTN Network Solutions the equipment co-located at MTN Network Solutions' data centres ("the pledged equipment") on the following terms:
- the delivery of the pledged equipment to MTN Network Solutions' premises in terms of this Annexure, will constitute delivery for the purposes of this pledge;
 - if the client fails to make full and timeous payment to MTN Network Solutions, MTN Network Solutions shall be entitled without notice to the client and without first obtaining an order of court, to cause all or any of the pledged equipment to be sold either by public auction or private sale, as MTN Network Solutions in its discretion deems fit;
- MTN Network Solutions may, in its discretion, utilise the proceeds of such sale for:
- the discharge of the client's indebtedness to MTN Network Solutions; and
 - the recovery of all costs and expenses incurred by MTN Network Solutions in respect of the sale of the pledged equipment.
- The residue remaining after the net proceeds of such sale have been applied by MTN Network Solutions in terms of this clause shall be paid by MTN Network Solutions to the client in a manner to be determined by MTN Network Solutions at the relevant time.

**ANNEXURE 3
HARDWARE**

1. MTN Network Solutions rents or sells to the client which rents or purchases the hardware specified in the Schedule of Services in consideration for which the monthly rental fee or purchase price as set out in the Schedule of Services is payable.
2. With respect to sold hardware, all risk of loss, damage or destruction or otherwise in and to the sold hardware shall pass to the client on delivery.
3. With respect to rented hardware, it, including modifications thereto or upgrading thereof, shall at all times remain the property of MTN Network Solutions and nothing in this agreement shall be construed as conferring on the client any right, title or interest in the rented hardware other than as the party renting the equipment in terms of this agreement.
4. The client may, during the course of this agreement, move the rented or sold hardware to another site on the following terms and conditions:
 - the prior written consent of MTN Network Solutions must be obtained by client;
 - The client shall be responsible for all aspects of the transportation to, delivery at and installation in such other site;
 - the cost of any repairs arising out of the removal, moving or reinstallation of the hardware shall be paid by the client to MTN Network Solutions which shall be in addition to the monthly rental fee or purchase price; and
 - the monthly rental fee and all other amounts payable by the client in terms of this agreement shall continue to be paid to MTN Network Solutions while the rented hardware is being moved.
5. Upon termination of the rental of the hardware for whatever reason, the client shall return the rented hardware in good working order and condition together with all applicable documents and insurance policies relating thereto to MTN Network Solutions, at the client's cost, whereupon the client shall have no further interest whatsoever in the rented hardware unless otherwise agreed in writing by MTN Network Solutions.
6. MTN Network Solutions shall service, repair and otherwise maintain the rented hardware in good working order for the duration of this agreement.
7. MTN Network Solutions shall perform the hardware maintenance services as soon as reasonably possible subject to:
 - the availability of MTN Network Solutions staff;
 - the receipt by MTN Network Solutions of reasonable written notice from the client setting out details of the hardware maintenance services required; and the nature of the hardware maintenance services required.
8. The client shall, at its own expense, provide MTN Network Solutions with free access to the rented hardware, to enable MTN Network Solutions to carry out the hardware maintenance services.
9. The client agrees that if reasonably so requested by MTN Network Solutions, it shall make any of its personnel available to MTN Network Solutions at the client site in order to assist MTN Network Solutions in the performance of the hardware maintenance services.
10. No alterations, adjustments and repairs to, modifications and maintenance of the rented hardware, shall be carried out by any person other than a member

of MTN Network Solutions' personnel or a person duly authorised by MTN Network Solutions.

11. MTN Network Solutions will use reasonable care and skill in performing the hardware maintenance services referred to in this annexure and will take all reasonable and practical steps to avoid any delay in carrying out same. However, MTN Network Solutions will not be liable for any claim whatsoever howsoever arising whether in contract, delict or otherwise for any delay or act or omission on its part in relation to the hardware maintenance services.
12. Corrective or preventive maintenance necessitated by the following shall not be covered as maintenance:
 - the fault or negligence of the client, its employees, agents, contractors or invitees;
 - the client's program or operator error;
 - *force majeure* as defined in the agreement;
 - in the opinion of MTN Network Solutions, the client's carelessness in developing or executing password procedures;
 - the client's failure to comply with any provision of this agreement, including, without limitation, the client's failure to observe MTN Network Solutions' or the manufacturers', as the case may be, specifications relating to the use of the hardware and environmental conditions;
 - electrical work external to the hardware which does not constitute standard inter-connecting of cables between the hardware;
 - changes or alterations to specifications of the hardware, which are not requested or specified by MTN Network Solutions;
 - re-building or overhauling of the hardware after a period of 3 (three) years from the installation date;
 - supplying or fitting parts specifically excluded from this agreement;
 - refurbishing of display systems, where the client has not had any screen saving applications or measures in place.
13. With respect to rented hardware, MTN Network Solutions will diagnose a hardware fault within 4 hours and guarantees to either replace or repair faulty hardware within 4 hours after diagnoses. This guarantee only applies for equipment situated within a radius of 40 kilometres from Rosebank. For areas outside of this radius the travel time must be added to the repair guarantee time. This guarantee is only applicable in the case of hardware failure and will not apply in the event of hardware theft or any act of omission of the Client.

**ANNEXURE 4
DOMAIN REGISTRATIONS / RENEWALS**

1. MTN Network Solutions will offer domain services to the client who contracts MTN Network Solutions to manage the end to end process of the registration, these will include only:
 - Hosting of the primary and secondary zone files on MTN Network Solutions' DNS servers
 - Hosting of secondary zone files on MTN Network Solutions' DNS servers
 - Management of the billing process
 - Management of the administration of the domain
 - Technical management of the domain
2. MTN Network Solutions will not host primary zone files if the client registers and administers the domain. A separate set up fee and annual fee will, however, be charged if the client wishes MTN Network Solutions to host its secondary zone files only.

NEW APPLICATIONS

3. New applications can be submitted via the MTN Network Solutions traffic web-site or by raising a change request with the MTN Network Solutions Support Desk. The appropriate application form will be supplied to the client. The MTN Network Solutions Support Desk can be reached on:
 - support@mtnns.net
 - 0860 11 0860
 - 011 280 0880 (Fax)
4. The Support Desk will raise a ticket for the request, and send a notification thereof to the client, together with a reference number. The client will be asked to confirm the registration details to ensure that the request for the application has been through the appropriate client approval channel. A once-off fee for domain registration will be charged to the client. This fee is to cover administration, registration and server usage costs. Requests to host secondary zone files will also be processed in this manner.

TRANSFER OF EXISTING DOMAIN NAMES

5. Transfers can be initiated via the MTN Network Solutions Support Desk, and are handled in the same manner as new applications.

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6. If a client wishes to transfer a domain to MTN Network Solutions' name servers, the Client must notify the holder of the domain that such a request will be forwarded to the holder of the domain for acceptance thereof.
7. The holder of the domain must acknowledge the request within 24 hours, to prevent the request from being denied.
8. MTN Network Solutions will host the primary and secondary zone files, in accordance with its standard policies, set out above.

UPDATES TO ZONE FILES

9. An email or fax must be forwarded to the MTN Network Solutions Support Desk requesting any such changes.
10. The Support Desk will supply the client with the appropriate change request form.

RENEWAL OF DOMAINS

11. The client will be invoiced when the first notification for renewal of a domain is issued by the relevant registration authority.
12. At this stage, the client will be given the opportunity to inform MTN Network Solutions of its intention to allow the domain to be suspended.
13. If the client fails to pay the invoice it will be assumed that the client does not want the renewal to take place.
14. MTN Network Solutions will not be held responsible for suspension or deletion of domains, resulting from the failure, of the client, to settle his domain renewal invoices.

CLIENT'S WARRANTIES

15. The Client warrants that it:
 - o shall use the assigned domain name[s] as per the guidelines provided by the Internet Corporation for Assigned Names and Numbers (ICANN at www.icann.org) and shall comply strictly with all restrictions imposed on computer networks through which any information and/or data transmitted by client passes and shall not use the domain name for any illegal activities.
 - o shall not take steps or fail to take steps which directly or indirectly:
 - o Infringes upon a third party's trade marks or other intellectual property rights;
 - o Constitutes an abuse or malicious misuse of the Services;
 - o Constitutes or allows vile, abusive (hatespeech), slanderous and blasphemous content. (In this regard client will place content on the website with the assigned domain name[s] that is in accordance with the guidelines of the Broadcasting Complaints Commission of South Africa (BCCSA at www.bccsa.co.za);
 - o or is calculated to have the effect of any of the above.
 - o shall not at any time use the Service in contravention of any South African law. In particular, client undertakes to familiarise itself and ensure that it is kept continuously apprised of all South African law in force from time to time which has any bearing on the Service and/or its use. Client shall not at any time use the Service in contravention of any South African law. In particular, client undertakes to familiarise itself and ensure that it is kept continuously apprised of all South African law in force from time to time which has any bearing on the Service and/or its use.
16. In such an event, should MTN Network Solutions incur expenses to remedy the situation MTN Network Solutions reserves the right to charge the client the amount necessary to cover MTN Network Solutions' additional expenditure.
17. Client shall duly inform MTN Network Solutions in the event of the domain name[s] being assigned to another party.
18. MTN Network Solutions has no obligation to assist client in this regard.

EXCLUSION OF WARRANTIES

Save as expressly set out herein, MTN Network Solutions does not make any Representations nor gives any warranties or guarantees of any nature whatsoever in respect of the domain name[s] registration/ renewal/ deletion as the case may be and all warranties which are implied or residual at common law are hereby expressly excluded. Without limitation to the generality of the above, MTN Network Solutions does not warrant or guarantee the following:

- that client's application for registration/ renewal/ deletion as the case may be of the domain name[s] shall be successful;
- that after the successful assignment of the domain name[s] to client, that no third party shall contest such assignment;

- that the administrative system used by ICANN accredited Registrars or ICANN itself is flawless and that no administrative error[s] might take place that will negatively affect the successful application for the domain name[s] or the renewals thereof;
 - o will be suitable for any purpose as envisioned by client;
 - o will be free of inaccuracies of any kind,
 and MTN Network Solutions assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause above.

EXCLUSION OF LIABILITY

19. MTN Network Solutions shall not be liable to client or any third party for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue, data or anticipated savings) or for any costs, claims or demands of any nature whether asserted against MTN Network Solutions or against client by any party, arising directly or indirectly out of the domain registration/ renewal/ deletion as the case may be, their use, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be, by or from their use. Client hereby indemnifies MTN Network Solutions against and holds MTN Network Solutions harmless from any claim by any third party arising directly or indirectly out of the domain registration/ renewal/ deletion as the case may be, access to or use of the domain name[s] or information obtained through the use thereof or in respect of any matter for which liability of MTN Network Solutions is excluded in terms of this clause.
20. Furthermore, client hereby indemnifies MTN Network Solutions against any claim if the use of such domain name[s] is in conflict with any statutory enactment, the common law or court order or where the use of such domain name infringes the legal rights of a third party including circumstances where such third party contests client's intellectual property rights such as trade marks, trade names or other proprietary rights to any name.
21. MTN Network Solutions shall not be liable for any claim or damages of whatsoever nature if it is unable for any reason to secure the registration/ renewal/ deletion as the case may be of client's requested domain name.
22. MTN Network Solutions shall NOT automatically renew the domain name[s] on an annual basis. The obligation is on the Client to provide to MTN Network Solutions at least one month's written notice before the renewal date to renew the domain name[s].

ANNEXURE 5

ADSL, DIAL-IN AND ISDN SERVICES

1. MTN Network Solutions is not able to provide any service level, throughput or MTTR (Mean time to repair) guarantees, monitoring, graphing, on-site support or QOS on ADSL, Dial-in or ISDN services or hardware..
2. All ADSL equipment must be provided by MTN Network Solutions.
3. All aspects of the ADSL, Dial-in or ISDN services supplied by Telkom SA Limited (Telkom) must be ordered directly from Telkom by the client and managed fully by the client.

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