



# RECIPROCAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (NDA)

made and entered by and between:

## **MOBILE TELECOMMUNICATIONS LIMITED**

**Registration No: 94/458**

A public company, duly incorporated in terms of the company laws applicable in the Republic of Namibia,

having its principal place of business situated at

MTC HEAD OFFICE,

Corner of Mosé Tjitendero and Hamutenya Wanehepo Ndadi Streets

OLYMPIA, WINDHOEK

Herein represented by its duly authorised **Managing Director**,

**Dr. Licky Erastus,**

(Hereinafter referred to as "**MTC**")

**AND**

**Registration No:** \_\_\_\_\_

A public company, duly incorporated in terms of the company laws applicable in the Republic of Namibia,

having its principal place of business situated at

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Herein represented by its duly authorised the \_\_\_\_\_ in his/her capacity as

\_\_\_\_\_

(Hereinafter referred to as "\_\_\_\_\_")

BOTH PARTIES HAVE AGREED, NOTWITHSTANDING THE DATE OF SIGNATURE OF THIS AGREEMENT, TO NEGOTIATE AND EXCHANGE VIEWS WITH THE OTHER FOR THE CONCLUSION OF A POSSIBLE AGREEMENT BETWEEN THE PARTIES IN RESPECT OF THE POSSIBLE FUTURE BUSINESS COOPERATION WITH THE INTENT FOR POTENTIAL COLLABORATION FOR

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**AND WHEREAS** BOTH PARTIES WILL DISCLOSE OR CAUSE DISCLOSURE OF CONFIDENTIAL INFORMATION TO THE OTHER IN ORDER FOR THE PARTIES TO CONSIDER AND DISCUSS THE CONCLUSION OF AN AGREEMENT AND/OR POSSIBLE TRANSACTIONS RELATING TO THEIR BUSINESSES;

**AND WHEREAS** THE PARTIES HAVE AGREED TO ENTER INTO THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT, IN THE ABSENCE OF WHICH NEITHER PARTY WOULD HAVE DISCLOSED ANY OF ITS CONFIDENTIAL INFORMATION TO THE OTHER;

## **NOW THEREFORE IT IS AGREED AS FOLLOWS:**

### **1. INTERPRETATION**

In this agreement –

- 1.1 **“confidential information”** is information that is confidential to a party, or to an affiliate of a party, and includes, but is not limited to –
- 1.1.1 any information in respect of know-how, formulae, statistics, processes, systems, business methods, marketing, trading and merchandising methods and information, promotional and advertising plans and strategies, financial plans and models, inventions, long-term plans, research and development data, user or consumer data and profiles, ideas, computer programmes and associated material and documentation, drawings and any other information of a confidential nature of either party, in whatever form it may be;
  - 1.1.2 the contractual business and financial arrangements between the both parties and others with whom it has business arrangements of whatever nature;
  - 1.1.3 all information peculiar to the business of either party which is not readily available to a competitor of either party in the ordinary course of business;
  - 1.1.4 the fact of and content of the discussions between the parties referred to in the preamble hereof, as well as the existence and content of this Agreement and any

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agreement which may be concluded between the parties pursuant to such discussions and the content of such agreement;

- 1.1.5 all other matters of a confidential nature which relate to the either party's business;
- 1.1.6 generally, information which is disclosed in circumstances of confidence or which would be understood by the parties, exercising reasonable business judgment, to be confidential;

but does not include information which –

- 1.1.7 is or hereafter becomes part of the public domain, otherwise than as a result of a breach or default of either party or of a representative or affiliate of either party;
- 1.1.8 can be shown to have been lawfully in the possession of either party or its affiliates prior to its disclosure and is not subject to an existing agreement between the parties or any of its affiliates;
- 1.1.9 is acquired by either party or its affiliates independently from a third party who lawfully acquired such information without restriction and who had not previously obtained the confidential information directly or indirectly under a confidentiality obligation from either party or its affiliates;
- 1.1.10 is acquired or developed by a party or its affiliates independently of the other party and in circumstances which do not amount to a breach of the provisions of this Agreement;
- 1.1.11 is disclosed or released by a party to satisfy an order of a court of competent jurisdiction or to otherwise comply with the provisions of any law or regulation in force at the time or the requirements of any recognised stock exchange; provided that, in these circumstances, the Counterparty shall (to the extent lawfully possible) advise the Divulging Party to take whatever steps it deems necessary to protect its interests in this regard and provided further that the Counterparty will disclose only that portion of the confidential information which it is legally required to so disclose; and the Counterparty will use its reasonable endeavours to protect the confidentiality of such confidential information to the widest extent lawfully possible in the circumstances (and the Counterparty shall cooperate with the Divulging Party if it elects to contest any such disclosure);

- 1.2 **“affiliate”** means a holding company and a subsidiary of a party and a subsidiary of a holding company of a party;

- 1.3 “**date of signature**” means the date on which the last party hereto signs this Agreement;
- 1.4 “**Divulging Party**” means the party disclosing confidential information in terms of this Agreement;
- 1.5 “**Counterparty**” means the party receiving confidential information in terms of this Agreement;
- 1.6 “**the parties**” means MTC and [\_\_\_\_\_].
- 1.7 Unless otherwise indicated –
- 1.7.1 the singular shall include the plural and *vice versa*;
- 1.7.2 the masculine shall include the feminine and neuter and *vice versa*;
- 1.7.3 natural persons shall include juristic persons and *vice versa*.
- 1.8 Headings are for convenience only and shall not be taken into account for interpretation purposes.

## **2. USE OF CONFIDENTIAL INFORMATION**

Any confidential information disclosed by the divulging party shall be received and used by the Counterparty only for the limited purpose described in the preamble above and for no other purpose, unless specifically agreed to otherwise by both parties.

## **3. NON-DISCLOSURE**

- 3.1 The Counterparty undertakes to the Divulging Party that –
- 3.1.1 the Counterparty will treat the Divulging Party’s confidential information as private and confidential and safeguard it accordingly;
- 3.1.2 the Counterparty will not (except as permitted in paragraph 2 above) use, disclose, divulge, copy, reproduce, publish, circulate, reverse engineer and/or decompile or otherwise transfer, whether directly or indirectly, the confidential information of the other party to any other person or entity; and the Counterparty shall take all such steps as may be reasonably necessary to prevent the Divulging Party’s confidential information falling into the hands of unauthorised persons or entities;



3.1.3 the Counterparty shall not disclose the confidential information of the Divulging Party to any employee, consultant, contractor or sub-contractor or agent of the Counterparty (collectively referred to herein as "*representative*" of the Counterparty) or an affiliate of the Counterparty, nor shall they be given access thereto by the Counterparty –

3.1.3.1 unless it is upon prior written consent of the Divulging Party, OR

3.1.3.2 unless it is strictly necessary for the purposes referred to in the preamble above; AND

3.1.3.3 the Counterparty shall have procured that the representative or affiliate to whom or to which such information is disclosed or made available shall have agreed to be bound by all the terms of this Agreement or is subject to similar obligations of confidentiality towards the Counterparty;

and, in such event, the Counterparty hereby irrevocably and unconditionally indemnifies the Divulging Party against any loss, which the Divulging Party may suffer as a result of the unauthorised disclosure of confidential information by a representative or affiliate.

3.2 Any documentation or written record or other material containing confidential information (in whatsoever form) which comes into the possession of the Counterparty shall itself be deemed to form part of the confidential information of the Divulging Party. The counter party shall, on request, return to the Divulging Party all of the Divulging Party's confidential information which is in physical form (including all copies) and shall destroy any other records (including, without limitation, those in machine readable form) as far as they contain the Divulging Party's confidential information, other than to the extent that the Counterparty is obligated by applicable law or regulation to retain such confidential information. The burden of proof shall rest on the Counterparty to prove such obligation, in the absence of same the Counterparty shall return and/or destroy all confidential information as requested by the Divulging Party.

#### **4. DURATION**

This Agreement shall commence or shall be deemed to have commenced on the date of signature of this Agreement, unless such confidential information has been shared between the parties prior to signature at which point the Agreement shall commence on date of disclosure of the information, and shall thereafter remain in force indefinitely.

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## **5. RELATIONSHIP OF THE PARTIES**

- 5.1 A party will not be obliged, by reason of this Agreement, to disclose any of its confidential information to the other party or to enter into any further agreement or business relationship with the other party.
- 5.2 Each party shall retain the sole and exclusive ownership of intellectual property rights to its respective confidential information and no license or any other interest in such confidential information is granted in terms hereof or by reason of its disclosure.
- 5.3 Other than the obligations set out in this Agreement, no legal obligation will arise between the parties until signature of legal agreements between them in regard to the transaction envisaged in the preamble above.
- 5.4 The termination of discussions without entering into an agreement in regard to the transaction envisaged in the preamble above shall not release the parties from the obligations set out in this Agreement.

## **6. ENFORCEMENT, GOVERNING LAWS AND JURISDICTION**

- 6.1 This Agreement shall be governed by and interpreted according to the laws of the Republic of Namibia.
- 6.2 The parties irrevocably submit to the jurisdiction of the High Court of Namibia in respect of any action or proceeding arising from this Agreement.
- 6.3 The parties agree that, in the event of a breach of this Agreement, monetary damages would not be an adequate remedy. In the event of a breach or threatened breach of any provisions of this Agreement by the Counterparty, the Divulging Party shall be entitled to injunctive relief in any court of competent jurisdiction. Nothing contained in this Agreement shall be construed as prohibiting a party or its affiliate from pursuing any other remedies available to it for a breach or threatened breach.

## **7. DOMICILIUM**

- 7.1 The parties choose as their *domiciliae* the addresses indicated in the heading to this Agreement for the purposes of giving any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement.
- 7.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its *domicilium* to any other address which is not a post office box or *poste restante*.

- 7.3 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if reduced to writing.
- 7.4 Any notice given and any payment made by one party to the other ("*the addressee*") which –
- 7.4.1 is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
- 7.4.2 is posted by prepaid registered post from an address within the Republic of Namibia to the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved, to have been received by the addressee on the seventh day after the date of posting;
- 7.4.3 is transmitted by email to the addressee's receiving email address shall be presumed, until the contrary is proved, to have been received within 12 (twelve) hours of transmission where it is transmitted during normal business hours or, if transmitted outside normal business hours, within 12 (twelve) hours of the resumption of normal business hours on the next normal business day.

## **8. GENERAL**

- 8.1 No party shall be bound by any representation, warranty, undertaking, promise or the like not recorded in this Agreement.
- 8.2 No addition to, variation or agreed cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties.
- 8.3 Any indulgence which either party may show to the other in terms of or pursuant to the provisions contained in this Agreement shall not constitute a waiver of any of the rights of the party which granted such indulgence.
- 8.4 The parties acknowledge that this Agreement and the undertakings given by it in terms hereof are fair and reasonable in regard to their nature, extent and period and go no further than is reasonably necessary to protect the interests of the parties.
- 8.5 The parties agree that if any provision of this Agreement is found by a Court to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.
- 8.6 The parties hereby confirm that they have entered into this Agreement with full and clear understanding of the nature, significance and effect thereof and freely and voluntarily and without duress.



- 8.7 Neither party shall have the right to assign or otherwise transfer any of its rights or obligations under this Agreement.
- 8.8 This Agreement may be executed in several counterparts that, together, shall constitute one and the same instrument.
- 8.9 In this Agreement clause headings are for convenience and shall not be used in its interpretation.

DATED and SIGNED at **WINDHOEK** on this the \_\_\_\_\_ day of \_\_\_\_\_ **2023** in the presence of the undersigned witnesses:

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

**For and on behalf of  
MOBILE TELECOMMUNICATIONS LIMITED**





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DATED and SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2023 in the presence of the undersigned witnesses:

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_ **For and on behalf of**

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