

Orange Botswana (Pty) Ltd
Wholesale Reference Offer for Access by a Mobile Virtual Network Operator

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1. Interpretation

Words importing the singular shall include the plural and vice versa and the words importing one gender shall include the other gender

The following annexes form part of this agreement:

- a. Annex "A" - Request Form;
- b. Annex "B" – Non-Disclosure Agreement;
- c. Annex "C" – Technical Descriptions

Any other annexes as shall be mutually agreed upon by the parties from time to time.

- 1.1 **Access means** Access to the radio network and core network equipment of Orange Botswana.
- 1.2 **Agreement** means a renewable MVNO Access Agreement to be concluded pursuant to this Offer following a Guest's reasonable request to be hosted on the Orange Network, provided that the Guest fully meets the eligibility criteria herein defined, Orange Botswana will provide the Guest with Access, based on an; This Agreement will be negotiated by the Parties in good faith, based on the a draft contract to be provided by Orange Botswana;
- 1.3 **BOCRA** means Botswana Communications Regulatory Authority established in terms of the Communications Regulatory Authority Act No.19 of 2012, "the Regulator" shall have a corresponding meaning;
- 1.4 **Directive** means Regulatory Directive No. 1 of 2017 dated 27th March 2017 issued by BOCRA;
- 1.5 **Guest** means any licensed company or operator desirous of access to the Orange Botswana network, in order to provide its own mobile communication services;
- 1.6 **MVNO** means Mobile Virtual Network Operator; which does not possess the network elements nor IMSI code necessary for setting up SIM cards or SIM card production that can be used on the Orange Botswana network and for the routing of electronic communications via Orange Botswana;
- 1.7 **Parties** means Orange Botswana and the Guest, and "Party" shall mean either one of them.
- 1.8 **Offer means** offer for MVNO wholesale access on the Orange network;
- 1.9 **Orange Botswana (PTY) LTD** means a company whose registered office is Plot 166 Queens and Pilane Road, duly incorporated in the Republic of Botswana with the Registrar of Companies under number CO.1998/260

2. Scope of the Wholesale Reference Offer

- 2.1 Pursuant to the Directive, Orange Botswana will meet all reasonable requests to provide access on its radio access network ("Access") that is necessary to deliver the services to the Guest.
- 2.2 This Offer describes the main principles and conditions under which Orange Botswana is offering Access and associated services to the Guest.
- 2.3 The Offer is set for an MVNO operator.
- 2.4 The Offer is strictly limited to MVNO's for their retail market activity.
- 2.5 The wholesale resale of traffic on the Orange Botswana network is strictly prohibited.
- 2.6 A Guest wishing to be hosted on the Orange Botswana network shall make a request by filling out, in duplicate, the Request Form in the format stated in Annex "A" hereof or in such format as may be subsequently agreed by the Parties and submit the form to Orange Botswana.
- 2.7 Orange Botswana reserves the right not to respond to any request for hosting from a Guest that is unreasonable or is not in accordance with this Offer.
- 2.8 This Offer sets the principles and provisions which will be used for the establishment and signature of the Agreement between Orange Botswana and the Guest prior to implementing the Guest's hosting on the Orange Botswana network.
- 2.9 Orange Botswana reserves the right to change the MVNO Offer at any time provided that such change shall be approved by BOCRA.
- 2.10 The MVNO offer is made on a non-exclusive basis and nothing contained herein shall prevent Orange from entering into negotiations with other prospective MVNO operators provided always that no prospective MVNO operator shall negotiate simultaneously with Orange and its direct competitors.
- 2.11 Given the amount of spectrum allocated to Orange Botswana, the number of Guests that can benefit from this offer may be limited on the basis of the number of effective users of the Orange Botswana network and the number of users likely to use the Orange Botswana network according to the Guest's forecasts. Orange therefore reserves the right to decline requests for Access.
- 2.12. When amendments to the Offer and Agreement are imposed by the Regulator including by any decision of an administrative or judicial authority, including within time limits out of contractual notice periods, the modifications of the Offer and the Agreement will apply on the date imposed by the said Regulator.

3. Criteria for Guest Eligibility

- 3.1 To submit an eligible request, for Access and associated services the Guest must fully comply with the following criteria:
- a) The Guest has been authorized by BOCRA . To this regard, the Guest shall provide Orange Botswana with a certified copy such authorization.
 - b) The Guest has satisfied any legal and financial due diligence requirements that Orange may request.
 - c) The Guest has signed the Non-Disclosure Agreement ("NDA") with Orange Botswana attached hereto as Annex B ;
 - d) The Guest has provided Orange Botswana with an initial estimation of traffic of all voice, SMS and data traffic volumes covering the envisaged contractual period in order for Orange Botswana to assess the necessary connection capacity, associated services and financial aspects.
 - e) The Guest has provided Orange Botswana with information required to evaluate the level of resources needed to implement the request.
 - f) The Guest understands the technical requirements mandatory to gain access to Orange Botswana's Network and has provided the information required in Annexure C.
 - g) The Guest must in no way be connected to the direct competitors of Orange.

4. Principles for hosting on the Orange Botswana network

A. The Network

- i. The Offer is limited to the 2G and 3G radio networks established and operated by Orange Botswana.
- ii. For purposes of the inclusion of 4G network Access the hosting terms and requirements may be discussed between the Parties once the request is submitted.
- iii. To access the Orange Botswana network, the Guest is required to have a Service and Application Provider (SAP) license issued by the BOCRA for MVNO services.
- iv. Orange Botswana gives no warranty or commitment to the Guest regarding the evolution of its network coverage, services and technology.

B. Services

- i) The services available from the Orange Botswana Network are as follows:
 - Voice calls
 - SMS
 - Data
- ii) Orange Botswana may update and enrich or upgrade the list of Services at its own discretion.

- iii) Orange Botswana provides the Services to the Guest on a non-exclusive basis.

C. Guest's Compliance Requirements

- i. The Guest defines its commercial offers and its distribution conditions in strict compliance with the following: (the list is not exhaustive):
 - a. the applicable laws and regulations in force for which it is solely responsible;
 - b. the obligations of customer identification in accordance with BOCRA guidelines and directives,
 - c. the rules applicable to security of customer information and data;
 - d. the use of the services in accordance with their intended purpose.
- ii. The Guest shall take into account, and its commercial offers shall expressly include the following prohibitions as well as any evolution or modification of these prohibitions notified by Orange Botswana in the future:
 - o Use of a SIM card in equipment not dedicated to interpersonal communications, or use for any abnormal, inappropriate, fraudulent or unlawful purpose;
 - o Use other than for personal purposes, including for the purpose of trade (assignment or resale in whole or in part of [the commercial offer]);
 - o Uninterrupted use of the mobile phone for another purpose other than person to person communication. Use free of charge or as a gateway for the redirection of communications or connections;
 - o Use in the case of radio box or key or 3G card;
 - o Attempts to establish more than one hundred (100) simultaneous TCP sessions;
- iii. This offer does not include any obligation or promise by Orange Botswana to market the offers of the Guest, to promote them and to communicate their existence and availability from the Orange Botswana network.
- iv. The Guest's commercial offers must be compatible with the Orange Botswana's information system.
- v. The Guest must not degrade the conditions of access and the use of the network, nor undermine its integrity.
- v. The Guest will communicate to Orange Botswana the nature of the commercial offers it intends to offer.
- vi. Within thirty (30) working days of receiving a request from the Guest, Orange Botswana will inform the Guest whether it shall or shall not carry out developments suitable to meet the needs expressed by the Guest.
- vii. The implementation of the developments is subject to a preliminary study by Orange Botswana. The preliminary study will be carried out only on the express consent of the Guest. The duration of a preliminary study will be mutually agreed between the Parties and the costs of the preliminary study shall be borne by Guest.
- viii. All or part of the development costs may be borne by the Guest. The timeline for carrying out the specific developments and the amount of the costs to be borne by the Guest will be determined at the end of the preliminary study.

D. Forecasts

- i. The Guest shall communicate to Orange Botswana traffic and distribution forecasts of SIM Cards for the contract duration (thirty six (36) months) allowing Orange Botswana to dimension the traffic load of its network.
- ii. Traffic forecasts are provided by distinguishing between Voice calls, SMS, and Data, and for each of the Services. Since these services make use of equipment other than the Orange Botswana network, this distinction is imperative for their particular dimensioning.
- iii. Forecasts of traffic and distribution of SIM cards are provided in aggregate form without distinction of commercial offers proposed by the Guest. They include promotional periods, special events, etc. As well as a relevant location of the traffic zones (department or zone below the department).
- iv. Traffic forecasts will be provided quarterly.
- v. The Guest shall communicate to Orange Botswana all the relevant information necessary for Orange Botswana to size its network in terms of capacity.

E. Suspension of Services for Breach

- i. Orange Botswana shall have the right to penalize the Guest or suspend the Services in the following cases:
 - a) In the event of use of illegal equipment or breach of regulations in force by the Guest;
 - b) In the event of connection to the Orange Botswana network of equipment without the prior and express authorization of Orange Botswana;
 - c) In the event of any disruption or non-conformance to the Orange Botswana information system;
 - d) In the event of a breach of the Orange Botswana network usage rules;
 - e) In case of use that is not in accordance with this Offer or the Agreement.
- ii. The Guest shall be notified of the decision to invoke penalties or of any suspension.
- iii. The notice shall specify the duration of the suspension which is dependent on the seriousness and of its effect on Orange Botswana, in particular the effect on the preservation, integrity and functioning of the Orange Botswana Network.
- iv. The suspension may be immediate and may be total or partial.
- v. In all cases, the suspension will be notified in writing.

F. Suspension of Services for scheduled operation

- i. Orange Botswana may suspend the services totally or partially for the purpose of carrying out maintenance or evolution of its network.

- ii. The Guest will be informed of the implementation of the scheduled operations during the monitoring committee and through a calendar of scheduled operations communicated by Orange Botswana.

G. Terminals

- i. Orange Botswana will not provide any terminals to the Guest and its customers.
- ii. The Guest will determine whether or not to provide terminals to its customers.
- iii. The Guest authorizes the use of SIM cards only in terminals dedicated to interpersonal communications.
- iv. In the event of the provision of terminals to its customers, the Guest is solely responsible for the acquisition and supply of the terminals to its customers. Orange Botswana does not provide any delivery, warehouse and logistics services for terminals.
- v. The Guest will select only the terminals that do not disturb or cause interference over the Orange Botswana network.
- vi. Orange Botswana may ask the Guest for the removal of terminals when they are likely to disturb or disrupt the proper operation of the Orange Botswana network.

H. Numbering

- i. The Guest is responsible for the availability and request of number ranges from BOCRA as well as the declaration of their number range to other operators.
- ii. The Guest shall provide its own short code numbers for additional voice services as well as for its information services, customer service, complaints, and so forth.
- iii. The Guest shall also manage the quantity of numbers available to it and the time required for the allocation of new number ranges.

I. Registration and management of the Guest's customer base

- i. The Guest shall ensure the registration of all subscribers on boarded onto the Orange Botswana network through the provisioning interface provided by Orange Botswana.
- ii. As such, the Guest shall ensure the processing, management, control and integrity of information captured.

5. SIM cards

5.1 SIM Card Provision

- i. The Guest shall be responsible for purchasing all its SIM cards through Orange Botswana authorized SIM manufacturers. Orange may impose any other reasonable requirements on the purchase of SIM cards.

- ii. The Guest is solely responsible for the order volumes of the SIM cards.
- iii. The Guest assumes and bears all the consequences of loss, theft, fraudulent use of the SIM cards.
- iv. The use of SIM cards is strictly limited to customers who have subscribed to an offer marketed by the Guest.

5.2 Use of the SIM cards

- i. The Guest shall request for the activation and deactivation of the SIM cards directly in the Orange Botswana information system from a dedicated secure access.
- ii. The Guest is solely responsible for controlling the use of SIM cards and for requesting for the deactivation of the SIM cards that are lost, stolen or fraudulently used.

6. Representative - Cooperation – Monitoring Committee

- i. Each of the Parties shall appoint one of its employees as responsible for representing it on the MVNO monitoring committee.
- ii. This monitoring committee shall meet at least once a month.
- iii. The Party shall alternate the responsibility of drawing up the agenda and drafting minutes.
- iv. The minutes will be approved unanimously by both Parties, it being specified that the minutes do not change this offer or the Agreement.
- v. The purpose of the monitoring committee is to monitor the execution of the Agreement, in particular in technical, financial and contractual terms.

7. MVNO Agreement Signature Conditions

- i. The signature of the Agreement is subject to the prior establishment of a complete specification based on the requirements given by the Guest.
- ii. Before defining the specifications, the Guest shall agree and send to Orange Botswana the non-disclosure agreement (NDA) attached as Annex B and signed in two original copies.
- iii. Once the NDA is signed, the Guest shall provide Orange Botswana with a summary statement of requirements (which may also be contained in the request form), at its own expense, describing the following:
 - o The needs of the Guest in technical and operational terms, including: three (3) year forecasts;
 - o the Guest's equipment;
 - o The signed NDA.
- iv. In all cases, transfer between networks will be subject to the control of its technical feasibility and the carrying out of specific studies
- v. If the Guest's requirements are incomplete or insufficient to enable Orange Botswana to begin work on the final specification, Orange Botswana shall inform the Guest within ten (15) working days of its delivery.
- vi. The final specification shall be established by mutual agreement between Orange Botswana and the Guest. It includes technical specifications as well as the tariffs applicable to the Agreement.
- vii. The technical specifications will specifically describe the following:
 - o The terms of connection of the Guest to the network of Orange Botswana;
 - o The work and developments to be carried out by Orange Botswana and its cost;
 - o The timeline and milestones for carrying out work and developments;
 - o The testing procedures;
 - o The operating conditions of the Orange Botswana's network by the Guest;
 - o The conditions of transfer between networks (handover) subject to technical feasibility.
- viii. The Guest and Orange Botswana shall do their best to set up the technical specifications and deliver a solution within three (3) months following delivery by the Guest of its requirements.
- ix. The technical specifications will be formally validated by Orange Botswana and the Guest.
- x. The tariffs applicable to the Agreement are defined after the technical specifications are finalized.
- xi. The tariffs shall also be formally validated by Orange Botswana and the Guest.

- xii. The specifications including the technical specifications and the tariffs validated by Orange Botswana will be attached to the Agreement.

8. Financial Conditions

8.1 Tariffs

- i. The tariff structure and tariffs of the Agreement will be negotiated between the Parties, taking into account the technical connection conditions to the Orange Botswana network, and the minimum traffic volume commitment on services (voice, SMS, data) from the Guest during the Agreement duration.
- ii. The Agreement rates will be established in the Agreement on the basis of the following :

		Charging Methodology
Voice	Call sent by a Guest's customer under Orange Botswana network	per minute (first 40seconds)
SMS	SMS sent by a Guest's customer under Orange	Per SMS
Data	Exchange of data Upload or Download	Per Megabyte
Services	Subscription on the Orange Botswana network	Once Off Fee for Access
Recurring Fee	provision of non-traffic related charges, like, but not limited to: monthly fees, 4G fees investment	Monthly charge

8.2 Tariffs updates

- i. Orange Botswana and the Guest shall undertake to determine a revision of the tariffs at the end of each calendar year.
- ii. However, Orange Botswana may upon reasonable notice to the Guest, revise tariffs unilaterally in any of the following cases:
- o changes in the legal or regulatory framework applicable to Orange Botswana;
 - o due to a decision of any judicial or regulatory authority applicable to Orange Botswana.
- iii. The revision of the tariff is not retrospective. However, where amendments to the Agreement are imposed by BOCRA, including any decision of an administrative or

judicial authority, the amendments to the Agreement in question shall take effect on the date imposed by the said regulation.

9. Invoice and payment

9.1 Billing of amount owed by Guest

- i. Orange Botswana will invoice the Guest on a monthly basis for the price of the Services and the costs incurred during the previous month.
- ii. Subject to any reconciliation process, Invoices are payable within thirty (30) days of the invoice date.

9.2 Billing of Guest's Customers

Orange Botswana will communicate to the Guest all the information and elements necessary for the billing of the Guest's postpaid customers. This information of consumption is provided on a daily basis to the Guest through the information system of Orange Botswana.

9.3 Late payment

- i. In the event of any default for payment, meaning late payment or only partial payment of an invoice on its due date, Orange Botswana may charge interest for late payment.
- ii. Interest for late payment is calculated on the amount inclusive of all amounts due.

9.4 Invoice Disputes

- i. Orange Botswana shall keep a copy of the invoice for such period as is legally required.
- ii. Invoice disputes must be received by Orange Botswana within sixty (60) days of receipt of the invoice. After this date, orange shall not entertain any dispute..

General principles

10. Effective date and duration

- i. The Agreement is concluded for a duration of thirty-six (36) months from the start of the Guest's services on the Orange Botswana network.
- ii. The commercial starting date of the Guests operations shall be no later than two (2) months after the date of signature by the parties.
- iii. The Agreement is renewable for a thirty-six (36) month period unless terminated by either party (12) months prior to the expiry date.

11. Bank Guarantee

- i. The Guest shall provide Orange Botswana a bank guarantee (guarantee) as security for all the Guest's financial obligations toward Orange Botswana. The validity period of the guarantee shall be at least one (1) year and renewable.
- ii. The bank guarantee shall be irrevocable, unconditional and payable at Orange Botswana's first demand and shall be issued by a reputable local bank.
- iii. The amount of the guarantee will be defined in the framework of the final Agreement. The guarantee will be established on the basis of the model provided by Orange Botswana.

12. Intangible Rights

12.1 Brand and Logos

- i. Any unauthorized use of trademarks, logos or intellectual properties of one party by the other party is prohibited in any form or by any means whatsoever.
- ii. In exceptional cases, the Guest is authorized to mention the company name of Orange Botswana however permission to mention Orange Botswana shall be sought and validated by Orange Botswana prior to use.

13. Parties Responsibilities and obligations

13.1 Guest's responsibilities and obligations

- i. The Guest is solely responsible for its obligations under the Agreement and its commercial offers to its customers. Having said that, it assumes full responsibility for its relations with its customers and for any errors, omissions or negligence of its personnel or subcontractors.
- ii. The Guest indemnifies Orange Botswana against any claim that may be brought against it by the Guest's customers or any other third party as a result of a breach of its obligation. It shall indemnify Orange Botswana in this respect of all consequences of such claims, including any convictions and costs incurred in its defense, if any.
- iii. The Guest is solely responsible for the quantities of SIM cards ordered from Orange Botswana's duly authorized SIM card manufacturer and its traffic forecasts.

13.2 Orange Botswana responsibilities and obligations

- i. Orange Botswana is responsible for the provision of the Services as agreed to by the Parties.
- ii. Orange Botswana will ensure that the Services are provided to the Guest with a quality equivalent to that which Orange Botswana offers its customers.

13.3 Limitation of liability

- i. As a condition of the commitment of each of the parties, any responsibility of each

Party:

- Is limited to direct material damage resulting from one or more breaches by a Party of a contractual obligation,
 - Is totally excluded with regard to indirect and / or non-material damages whatsoever, such commercial damages of any kind, financial prejudice, moral injury, loss of opportunity etc.
- ii. In any event, the liability of each party may not exceed 5% of the amounts paid by the Guest to Orange Botswana during the last three months.

14. Termination

14.1 Termination for Breach

- i. In the event of non-compliance by any party with any of its obligations under this Offer, except in the case of non-payment subject to its own rules contained herein, the other party shall be entitled to suspend, in whole or in part, the Offer on the expiry of a period of fifteen (15) days following the receipt by the defaulting party of a letter of formal notice.
- ii. If the defaulting party fails to remedy the breach within thirty (30) days of the suspension of the Offer, the other party shall be entitled to terminate ipso jure, in its sole discretion, and Without penalty, the process with immediate effect by letter, notwithstanding any damages that may be claimed from the defaulting party.

15. Territory Governing Law and Disputes

- i. This Offer and the Agreement are subject to the laws of the Republic of Botswana.
- ii. In the event of a dispute and after an attempt by either party has been made to reach an amicable settlement, any dispute shall be brought by the most diligent party to BOCRA.

ANNEX "A"
REQUEST FORM

(To be filled by the Requesting Party)

Requesting Guest: _____

Name: _____

Signature: _____

Date: _____

Annex B – Non-Disclosure Agreement (NDA)

MUTUAL NON-DISCLOSURE AGREEMENT

By and between

XXX (Pty) Ltd, represented by **XXX**, in his/her capacity as **Managing Director** (being duly authorised), a company established under the laws of Botswana and whose principal place of business is P O Box 1823, Gaborone, Botswana, who shall be bound by the terms of this Agreement.

and

Orange Botswana (Pty) Ltd, represented by in his capacity as **Chief Executive Officer** a company established under the laws of Botswana and whose principal place of business is Plot 166 Main Mall, Gaborone, Botswana.

WHEREAS, the Parties want to explore the idea of Orange Botswana hosting XXX as a Mobile Virtual Network Provider. To do so, the Parties intend to disclose to each other, their proprietary confidential information.

NOW THEREFORE, the Parties hereto agree as follows:

1. Purpose.

In consideration and as a condition of disclosure of the Information, as defined below in Clause 2, being made available by each Party or its Advisors to the Other Party or its Advisors, each Party commits to keep and hold such Information confidential and to take or abstain from taking certain other actions as set forth herein. Each Party agrees that it will protect the Information with the highest standard of care possible and with at least the same degree of care to avoid disclosure to third parties as applied by the Receiving Party to its own confidential information of a similar nature

2. Information

"Confidential Information" means any information and/or documentation of any nature whatsoever and in whatever form or format, oral or in writing (including, without this limiting the generality of the foregoing, e-mails, faxes, drawings, listings, software, electronic copies of documents, specifications, data, graphs, sound recordings, and/or pictorial reproduction and digital information) whether or not marked "confidential " or with some similar wording, which have become known by the Recipient or its Representatives prior or after the entry into force of this Agreement or which have been disclosed prior or after the entry into force of this Agreement by the Disclosing Party or by another person on behalf of the Disclosing Party to the Recipient or to the Recipient's Representatives by the Disclosing Party or any person on behalf of the Disclosing Party including,

without limitation, any information relating to: (i) the Disclosing Party or more generally to its respective organisations, or strategic, financial, legal, commercial or other policies, including, but not limited to, the negotiation of alliances, whether domestic or international; (ii) the identity of the people involved on the Project, including the Representatives of the Disclosing Party, (iii) the existence, content, nature, progress and evolution of the Project and (iv) the existence and the content of this Agreement and anything related to it.

3. Exceptions

The undertakings set out in this Agreement shall not apply to any information that:

(i) the receiving Party can prove was in the public domain at the date of this Agreement, or subsequently came into the public domain other than as a result of a breach of contract or of this Agreement;

(ii) the Receiving Party can prove was rightfully received by it from a third party without any restriction as to its disclosure;

(iii) the Receiving Party can prove was already (prior to the disclosure hereunder) in its possession and at its free disposal without any obligation of confidentiality;

(iv) the Receiving Party can prove was developed independently by itself, other than by reference to any of the Information;

(v) the disclosure of which has been authorised in writing by the Disclosing Party, subject to any restrictions to this disclosure; and

(vi) the Receiving Party is obliged to disclose by reason of any legal requirement provided that the Disclosing Party has the opportunity to challenge such legal requirement before any disclosure is made, as detailed further in Clause 6 below

4. Accuracy

The Information will be provided bona fide, the Parties however do not make any representations and warranties as to the accurateness or completeness of the Information and will not be liable for the correctness or completeness of disclosed information.

5. Right to refuse

Either Party shall have the right to refuse to accept any Information under this agreement prior to any disclosure and nothing herein shall obligate either Party to disclose to the other Party any particular Information

6. Court or Administrative Order

In the event that the Receiving Party, an employee of the Receiving Party anyone to whom the Information has been supplied by the Receiving Party pursuant to this Agreement receives a request to disclose from a court of competent jurisdiction or by a governmental body, all or any part of the Information, the Receiving Party agrees to:

- (i) notify the Disclosing Party promptly in writing of the existence, terms, and circumstances surrounding such request,
- (ii) consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow such request
- (iii) give the Disclosing Party the opportunity to defend, limit or protect against such disclosure, and
- (iv) if disclosure of such Information is lawfully required, furnish only that portion of the Information which is legally necessary or appropriate in the light of all the circumstances and seek to obtain confidential treatment for any Information required to be disclosed.

7. Disclosure to Representatives

Each Party may disclose Information on a need-to-know basis only to those of its employees or its counsels, advisers and lawyers who i) are involved in the Project and ii) are bound by confidentiality obligations or a Deontological Status that provides for Non-disclosure obligations at least equivalent to those in this agreement.

8. Warranty as to Competence

Each Party warrants and represents to the other Party that it possesses all necessary powers, rights and authority to lawfully make the disclosures subject to this Agreement

9. Legal Remedy for Breach

Because damages for breach of this Agreement would be difficult to ascertain, the Parties agree that in the event of a breach or threatened breach of this Agreement, without limiting any other rights and remedies of each other, an injunction, specific performance or equitable relief may be sought against the other Party in breach or threatening to breach this Agreement without proof of actual damages

10. **Independent Projects**

Each Party acknowledges that the other Party shall be free to commence or continue its own independent development projects and programs - if any -, even if identical or similar in nature to the subject matter hereof as far as no Information from the other Party is used in such projects and programs

11. **Ownership of Information**

All Information remains the property of the Disclosing Party. No provision or disclosure of the Information by either Party to the other or to its Advisors shall be deemed to give the Receiving Party any right to use or to disclose such Information except in strict compliance with this Agreement. Nothing contained in this Agreement shall be deemed to grant to the Receiving Party any right, by licence or otherwise, under any patent, patent applications, copyrights, trademarks, other intellectual property rights or other proprietary rights with respect to any Information.

12. **Delivery or destruction of Information**

Upon termination of this Agreement each Party shall cease to make use of the Information received from the other Party.

Upon expiry or termination of this Agreement, or within seven (7) days of receipt of a request from one Party to this Agreement, the other Party shall promptly deliver to the requesting Party any and all materials that contain any part of the Information in its possession or control (including all copies of the information in whatever form or any notes, summaries or other tangible material containing Information whether prepared by the Disclosing or the Receiving Party or its Advisors, its Representatives or otherwise) and erase all Information copied onto computer media.

Further, the Party shall provide the Requesting Party with a written statement under oath to the effect that upon such delivery and/or deletion it has not knowingly retained in its possession or under its control, either directly or indirectly, any Information.

Any document or information incorporating Information from the Disclosing Party prepared by the Receiving Party, in particular without limitation all transcripts, analysis, and studies shall not be delivered to the Disclosing Party but shall be destroyed upon request by the Disclosing Party

13. **Further Agreements**

Neither this Agreement nor the exchange of information contemplated hereby shall commit either Party to continue discussions or to negotiate, or to be legally bound to any potential business relationship or further agreements. The Parties shall only be bound to a business relationship by way of a further definitive written agreement signed by the Parties.

14. **Amendment**

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless made in writing and signed by the Parties to this Agreement.

In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but such Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein and the Agreement shall be carried out as nearly as possible according to its original terms and intent. The same shall apply mutatis mutandis with respect to any situation not contemplated by the Parties in this Agreement

15. **Assignment**

The Agreement may not be assigned by either Party without the prior written consent of the other Party

16. **Entire Agreement**

This Agreement represents the entire understanding of the Parties and supersedes all prior communications, agreements and understandings concerning the scope of this Agreement

17. **Applicable Law**

The Parties acknowledge that the proprietary rights to Information (e.g. patents, copyrights, trade secrets) are subject to the laws of the country where they have been originated and/or registered.

Notwithstanding the foregoing, this Agreement is made subject to and shall be interpreted under the laws of Botswana.

18. Disputes

Any differences or disputes arising from this Agreement regarding its performance shall, if not settled by an amicable effort on the part of both Parties, be finally settled under the Rules of the Botswana Institute of Arbitrators. The language of the arbitration shall be English. The place of arbitration shall be Botswana. The procedural law of this forum shall apply where the Rules are silent.

19. Duration

This Agreement shall be effective as of the date of the first signature(s) below and shall automatically expire after one year, but can be terminated in writing by either Party at any time.

Notwithstanding the foregoing and any applicable export control provision(s), the confidentiality and restriction-on-use obligations stated in this Agreement shall endure for a period of five years commencing on the date of the furnishing of respective Information under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of this _____ day of _____ 2017.

XXX Pty Ltd

Orange Botswana

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Annex C – Technical descriptions for providing the services and network element

1. Business System Support (BSS) and in particular, Order capture will be under MVNO responsibility.
2. MVNOs shall define their Offers and MVNO customers will purchase all MVNO offers in MVNO shops or portals.
3. MVNOs shall identify all their Customers.
4. MVNO shall give SIM cards to their customers and ensure the following:
 - SIM cards should be identified with a dedicated ICCID range.
 - SIM Card profiles should not differ from Orange Botswana's SIM Cards (a priori, no dedicated SIM card generation process needed, nevertheless, for operational reason, could be a way to simplify the management)
 - SIM cards contain mainly IMSI and credentials (need for this latest to store them in IS repository before being provisioned into HLR-AUC (recommendation)).
 - IMSI is a resource owned by Orange (MNC & MCC are shared with Orange); Orange provides an IMSI range to MVNO.
 - When SIM are no more used, ICCID resources shall be returned to Orange.
 - ICCID shall be managed by MVNO
 - A dedicated process between MVNO and Orange shall be created for SIM ordering (under MVNO responsibility).
5. MVNO shall request Orange for the delivery of each subscribed Service/Product:
 - MVNOs manage their Customers (each MVNO owns a commercial inventory and a customer installed base). Orange doesn't manage MVNO customers; MVNO customers are unknown from Orange point of view. MVNO manages MSIDSN resources and assigns them to their customers
6. Delivery is in charge to deliver the subscribed products into Orange equipment (HLR/HSS, etc)
 - MVNO shall communicate the products to be delivered for each customer according to Orange's ordering semantics. Cross references are shared in order to be able to track on both side the orders and later the usages.
 - Detailed real-time acknowledgment shall be returned by Orange to MVNO for each ordering achievement.
 - ORANGE shall update his Technical Inventory with MVNO's customer installed services.
 - MVNO help desk support shall be able to request ORANGE level 2 support for any issue on provisioning. Only ORANGE support shall access to technical inventory. ORANGE support level 3 has no direct relationship with MVNO.
 - ORANGE's mediation layers shall be able to identify the MVNO's customer usages.
 - National & international MVNO's customer CDRs are routed to ORANGE's mediation layers. Usages are then eventually enriched and finally routed to :
 - Post-paid case: MVNO's billing choice (may be supported by ORANGE billing in that case, accessing to consumption follow-up function shall be offered or, pushing priced CDR towards MVNO shall be considered). Bills are sent to MVNO who is generally in charge of invoicing process (including editing).
 - Note : Customer Financial management, payment, dunning, debt,... shall be managed by MVNO
 - Pre-paid case: IN solution shall be supported by ORANGE. Any usage monitoring leads IN to generate CDR that are sent to ORANGE mediation layers. Consumption follow-up function shall be offered by IN solution or priced CDR shall be routed to MVNO.
 - Note : Voucher system or any alternative system will be under MVNO responsibility.

Crediting a balance within IN solution require an interface

- o ORANGE wholesale for MVNO bills

7. Performance and traffic supervision are monitored by ORANGE.
8. In case of performance deterioration, MVNO shall be informed.
9. ORANGE Service Impact analysis is also under ORANGE responsibility
10. In case of MVNO service impact, MVNO shall be informed.
11. ORANGE shall provide MVNO with an access to its Problem and Maintenance tools in order to allow MVNO to register a trouble ticket