

#### **ROAD USE AGREEMENT**

Between

# AMANGWANE TRADITIONAL COUNCIL

Including its successors in title and assigns (hereinafter referred to as the "Lessor")

Registration / Identity No.: 7606167474086, represented herein by MENZI HUNGWANE, in their capacity as CHIEF, who is duly authorised to do so

And

#### MOBILE TELEPHONE NETWORKS (PTY) LTD.

Including its successors in title and assigns (hereinafter referred to as "MTN")

Registration No.: 1993/001436/07, represented herein by

being so duly authorised to do so

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#### Whereas: -

MTN needs to ensure the unhindered access to its Base Transceiver Station Site (hereinafter "BTS Site") and in pursuance thereof, require the use of a Road situated on the Property known as \_\_\_\_\_\_\_(hereinafter the "Property");

#### And Whereas: -

The Lessor of the land on which the Road is situated, is willing to grant MTN the right of usage of the Road;

Now therefore it is agreed as follows: -

#### SCHEDULE OF AGREEMENT

SITE DETAILS	
Site Name	
MAGANGANGOZI	
Site Number	
16818	
MTN Region	
KZN	

MTN DETAILS				
MTN				
Mobile Telephone Networks (Pty.) Ltd.				
Postal Address				
MTN Property Department				
Private Bag X 9955				
SANDTON				
2146				
Domicilium (Physical) Address				
MTN Property Department				
216 14 <sup>th</sup> Avenue				
FAIRLAND				
2195				

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### LESSOR DETAILS Lessor AMANGWANE TRADITIONAL (OUNCIL Registration / Identity Number 7606167474086 Postal Address DUKUZA BERGVILLE 3350 Domicilium (Physical) Address DUKUZA BERGVILLE 3350 Telephone Number Fax Number Cellular Number 071 542 4709 E-Mail Address Alternative Contact Person & Contact No. MASENDE KHUMALO 079 153 6473 Compensation Method, e.g. Cheque / Electronic Transfer EFT VAT Registration Number (if applicable) Payment Frequency, e.g. Monthly in advance MONTHLY Name of Payee AMANGWANE TRADITIONAL COUNCIL Bank Name ABSA Branch Name JOHANNESBURG Branch Code 630305 Account Number

## 000 733 63

FINANCIAL INFORMATION				
Road Agreement Commencement Date				
1 MAY 2019				
Termination Date				
31 APRIL 2028				
Monthly Compensation Amount (excl. VAT)				
R1000-00				
Annual Escalation Percentage				
CPI 10% First Escalation Date				
First Escalation Date				
1 APRIL 2020				

#### DEFINITION AND INTERPRETATION

- 2.1 Clause headings appear in this Agreement for the purposes of reference only, and shall not influence the proper interpretation of the subject matter.
- 2.2 Words and expressions defined in any clause will, for the purposes of this Agreement, bear the meaning assigned to the words and expression in that clause and subsequent sub-clause(s).
- 2.3 Expressions in the singular also denote the plural, and vice versa.
- 2.4 Words and phrases denoting natural persons also refer to juristic persons, and vice versa.
- 2.5 In this Agreement, unless inconsistent with or otherwise indicated by the context, the following words and expressions will have the meaning assigned to them in this clause:
  - 2.5.1 "Agreement" means this agreement, signed and executed between the parties as indicated, and includes all Schedules and Annexures hereto;
  - 2.5.2 "the Property" means the property as described in the <u>Schedule</u> and the preamble hereto;
  - 2.5.3 "Day" means any day of the week, excluding Saturdays, Sundays, and public holidays;
  - 2.5.4 "Month" means a calendar month and more specifically: -
    - 2.5.4.1 in reference to a number of months from a specific date, a calendar

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month commencing on that date or the same date of any subsequent month; and

2.5.4.2 in any other context, a calendar month, that is, one of the 12 (twelve) months of the calendar, and "monthly" has the corresponding meaning.

2.6 This Agreement shall be interpreted and applied in accordance with South African Law.

# 3. <u>COMMENCEMENT, DURATION AND OPTION TO RENEW</u>

- 3.1 Notwithstanding the date of signature hereto, this Agreement shall commence on the date as stipulated in the <u>Schedule</u> ("the Commencement Date") and shall terminate on the date stipulated in the <u>Schedule</u>, ("the Termination Date"), unless by prior termination in accordance with this Agreement.
- 3.2 MTN has the option to renew this Agreement, ("the Renewal Period") which option shall be exercised in writing, 3 (three) Months prior to the termination of the Agreement. The Renewal Period shall be subject to the same terms and conditions of this Agreement, unless otherwise indicated and agreed to in writing between the parties.

#### COMPENSATION

- 4.1 The compensation shall be the amount stipulated in the <u>Schedule</u>, which amount shall be payable monthly in advance and not later than the 7<sup>th</sup> (seventh) day of the Month as stipulated in the <u>Schedule</u>.
- 4.2 The Monthly compensation will escalate on the anniversary of the Commencement Date, and thereafter on every subsequent anniversary at the rate stipulated in the <u>Schedule</u>.
- 4.3 The compensation shall be paid to the payee in accordance with the details contained in the Schedule.

#### USE OF ROAD

- 5.1 The Road shall be used by MTN exclusively for the purpose of gaining access to its BTS Site, and for no other purpose whatsoever.
- 5.2 MTN will endeavour not to permit or allow anything, which may endanger, obstruct, hinder, or prejudice the Lessor, its employees or the Property of the Lessor.
- 5.3 Excepting for direct damage caused by MTN, its employees, agents, invitees or contractors, it shall not be obliged to maintain or contribute to the maintenance of the Road, or to make any additional financial contribution over and above the

compensation already paid, towards the upkeep and maintenance of the Road.

#### CHANGE OF OWNERSHIP

- 6.1 The Lessor shall notify any prospective purchaser of its/his/her Property of which the Road forms part of the existence of this Agreement.
- 6.2 In the event of the sale of the Property, of which the Road forms a part, the Lessor shall furnish MTN with the full name(s), address, telephone, cellular and fax number of the buyer of the property.
- 6.3 Notwithstanding any provision to the contrary, it is hereby agreed that in the event of a sale of the Property, this Agreement will continue uninterrupted until the expiration thereof, including options and Renewal Periods, in accordance with its provisions. MTN furthermore agrees to accept the buyer as the new Lessor of the Road upon the same terms and conditions as set out in this Agreement.
- 6.4 MTN shall continue to effect payment to the Lessor in terms of <u>clause</u> 4 and as per the <u>Schedule</u>, until advised otherwise in writing by the Lessor and buyer.
- 6.5 The Lessor hereby indemnifies MTN against any claim by the buyer, or the buyer's agent, for compensation amounts paid in advance by MTN to the Lessor or any third party nominated by the Lessor, and for any legal costs on an Attorney and own client scale incurred by MTN in defending any such claim.

#### 7. OWNER'S WARRANTIES

- 7.1 The Lessor warrants that: -
  - 7.1.1 it is aware of, and understands the requirements and objectives of MTN in relation to its use of the Road;
  - 7.1.2 to the best of its knowledge and belief, the exercise by MTN of its rights in terms of this Agreement and use of the Road for the purposes as contemplated in this Agreement, will not contravene the rights of any third party, title deeds, town planning schemes, township conditions, any law, bylaw, statutory regulations, provision(s) of any license or required consents, relating to or affecting the Road or use thereof;
  - 7.1.3 it is the registered owner or lawful occupier, with all the necessary authority and powers to enter into this Agreement, and to grant to MTN the rights as provided for in this Agreement;
  - 7.1.4 it is familiar with VAT requirements as required by the relevant legislation, and that

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the information provided in the <u>Schedule</u> is correct;

7.1.5 in the event of a dispute between the parties, the Lessor shall not for any reason prohibit or prevent the use of the Road by MTN or its employees or agents;

#### 8. <u>INDEMNITY</u>

- 8.1 MTN shall indemnify and hold the Lessor harmless against any claim of liability or loss for personal injury or property damage, resulting from, or arising out of the use of the Road by MTN, its employees, agents, invitees or contractors excepting, however, such claims or damages as may be due to or caused by the malicious or negligent acts or omissions of the Lessor or its employees or agents.
- 8.2 The parties agree that all of MTN's vehicles, equipment or property which may be on the Road during the term of this Agreement, is there at the sole risk and hazard of MTN, and if damaged in any manner, no part of the said damage may be charged to or borne by the Lessor, unless caused by the negligence or malicious conduct of the Lessor or its employees or agents.

#### BREACH

- 9.1 Should either party breach any of the terms and conditions of this Agreement, the aggrieved party shall: -
  - 9.1.1 be entitled forthwith, if the defaulting party has failed to remedy such breach within a period of 14 (fourteen) days after receipt of written notice by the aggrieved party requiring to do so, to cancel this Agreement against the defaulting party; and/or
  - 9.1.2 to claim immediate payment and/or performance of all the defaulting party's obligations, whether or not the due date for such payment and/or performance shall have arrived.
- 9.2 Notwithstanding anything else to the contrary, neither party shall be liable to the other for any indirect or consequential losses.

#### 10. DISPUTE RESOLUTION

10.1 If the parties are unable to resolve any dispute, then subject to <u>clause</u> 9, such dispute shall on written demand by either party to the dispute be submitted to arbitration in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA"), by an arbitrator or arbitrators agreed on by the parties, or, failing such agreement, and arbitrator appointed by AFSA.

#### 10.2 The following shall apply to arbitration:

- 10.2.1 The parties shall request that the arbitrator(s) appointed by AFSA commence arbitration within 21 (twenty one) days, and proceed as if time is of the essence in the arbitration proceeding.
- 10.2.2 The parties shall request that the arbitrator render his/her decision within 14 (fourteen) days, following the conclusion of the arbitration hearing.
- 10.2.3 The parties recognise their express desire for an expeditious means of dispute resolution, but the arbitrator shall limit or allow the parties to expand the scope of discovery as may be reasonable under the circumstances.
- 10.2.4 Should the parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded, an arbitrator shall be nominated and appointed, at the request of any party, by AFSA.
- 10.2.5 The parties undertake not to withhold their consent to join another party to the arbitration.
- 10.2.6 The parties irrevocably agree that the submission to arbitration is subject to the parties' right of appeal. Any party may appeal the decision of the arbitrator within a period of 20 (twenty) days after the arbitrator's ruling has been handed down, by giving written notice to that effect to the other party. The appeal shall be dealt with in accordance with the rules of AFSA by a panel of 3 (three) arbitrators appointed by AFSA.
- 10.2.7 All arbitration proceeding shall be conducted in the English language.
- 10.2.8 The decision of the arbitrator shall be binding on the parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling, if no party has lodged appeal. A decision, which will be final and binding in terms of this clause 10.2.8, may be made an order of court at the instance of any party to the arbitration.
- 10.2.9 Each party agrees to continue performing its obligations in terms of this Agreement while any dispute is being resolved, except to the extent in which the issue in dispute precludes performance. Disputes over

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payment, however, shall not be deemed to preclude performance.

- 10.2.10 The parties shall use commercially reasonable efforts to resolve disputes arising under the Agreement, as rapidly as possible.
- 10.2.11 This <u>clause</u> 10 shall not preclude either party from seeking urgent relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the parties are engaged.
- 10.2.12 Any dispute resolution or arbitration process under this <u>clause</u> 10 shall be conducted *in camera*, and the parties shall treat it as confidential and not disclose to any third party the existence of the dispute, details of the dispute, the conduct of the informal or formal dispute resolution proceedings, or the outcome of the dispute resolution proceedings, without the written consent of the other party, provided that the parties shall be entitled to disclose such information to such persons as are necessary, to enable them to conduct their case

#### 11. TERMINATION

- 11.1 Notwithstanding anything contained in this Agreement, and without prejudice to MTN's right to re-claim pre-paid compensation, where applicable, MTN shall be entitled to terminate this Agreement without attracting any liability for damages, or any compensation whatsoever, upon the occurrence of any of the following events:
  - 11.1.1 Immediately and without notice on the expiry, suspension, cancellation or withdrawal of the license in terms of which MTN is entitled to provide national cellular telecommunication services.
  - 11.1.2 By giving 30 (thirty) days written notice if the Road is no longer required to access the BTS Site for any reason whatsoever.
  - 11.1.3 By giving 30 (thirty) days written notice in the event that the Parties and the Department of Rural Development and Land Reform sign a tri party agreement relating to the Lease of the Property, which is the subject of this agreement.

#### 12. ENTIRE AGREEMENT

This Agreement contains all the express provisions agreed to by the parties with regard to the subject matter of the

Agreement, and the parties waive the right to rely on any alleged express provision(s) not contained in this Agreement.

No party may rely on any representation, which allegedly induced that party to enter into this Agreement, unless the representation is recorded in this Agreement.

No contract varying, adding to, deleting from or canceling this Agreement, and no wavier of any right under this Agreement shall be effective unless reduced to writing and signed by both parties or their authorized representative.

#### NOTICES AND CONSENTS

- 13.1 Any notice to any party shall be addressed to it at its domicilium, as stipulated in the <u>Schedule</u>. The said notice(s) shall be in writing, and unless the contrary is proved, shall: -
  - 13.1.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
  - 13.1.2 if posted by pre-paid registered post, be deemed to have been received by the addressee on the 8th (eighth) Day following the date of such posting;
  - 13.1.3 if transmitted by facsimile, be deemed to have been received by the addressee 1 (one) Day after the dispatch.

#### 14. RELAXATION

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

#### 15. SEVERABILITY

If any provision of this Agreement is held to be unenforceable, such provision shall, if severable, be severed from the remaining provisions of this Agreement, and the remaining provisions shall not be affected, and shall remain in full force and effect.

#### FORCE MAJEURE

Neither party shall incur any liability by reason of any failure to fulfill any obligation in terms of this Agreement, if such failure is occasioned by a *Force Majeure*, consisting of acts of God, fire accident, government acts, explosion, industrial dispute or any other act, omission or event beyond the reasonable control of such party. The onus of proving that

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such failure was occasioned by a Force Majeure shall rest on the party alleging it.

#### 17. CONFIDENTIALITY

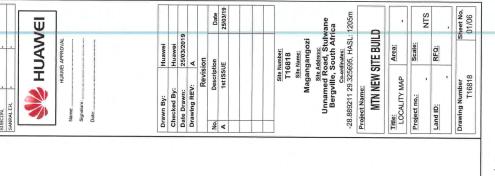
- 17.1 The parties shall not disclose to any third party, other than their respective employees or professional advisors, in their capacity as such, any information relating to the terms and conditions of this Agreement, except: -
  - 17.1.1 to the extent necessary for purposes of instituting legal proceedings by one party against the other;
  - 17.1.2 to the extent necessary to comply with any law, valid court order or the requirements of any recognised stock exchange; or
  - 17.1.3 as part of its normal reporting or review process to its auditors and its Attorneys; or
  - 17.1.4 to the extent required by any regulatory authority.

#### 18. EXECUTION

Witness 2 for the Lessor

This done and sign	gned by or on behalf o	f the <u>Lessor</u> at
	day ofAPRIL dersigned Witnesses:	2019 in the
MIM		1
	HLONG WANE	being so duly
authorised on beha	Sandile	Zuln
Signature Witness 1 for the	Lessor	
Signature		

This	done	and	signed	by	or	on	behalf	of	MTN	at
on th	on this the day of20 in the presence of the undersigned Witnesses:									
Ву М	Signature By Marius Jansen van Rensburg being so duly authorised on behalf of MTN									
Signature Witness 1 for MTN										
Signa Witne	ature ess 2 fe	or MT	N							



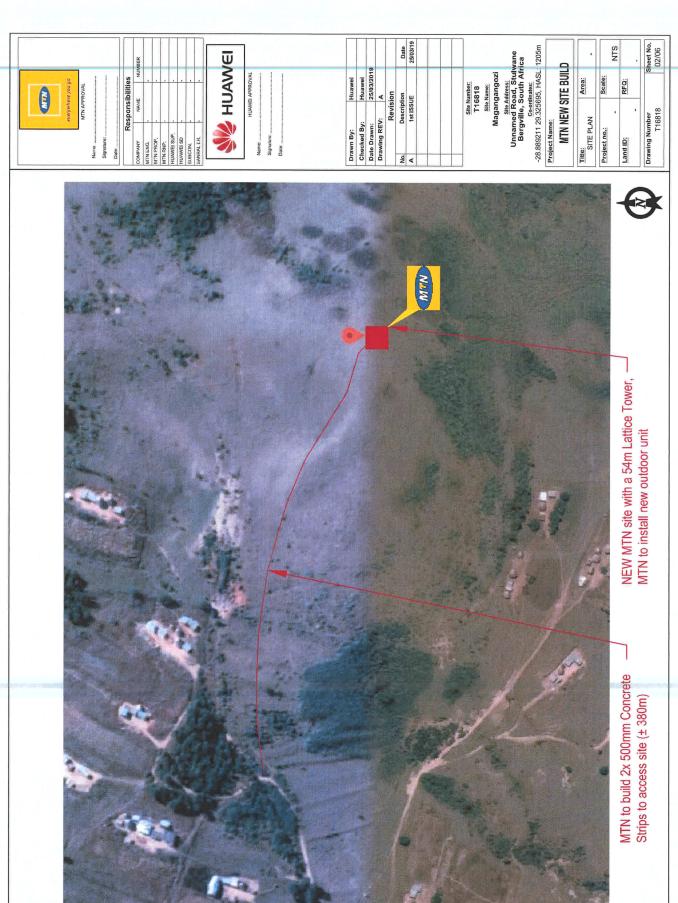


Responsibilities

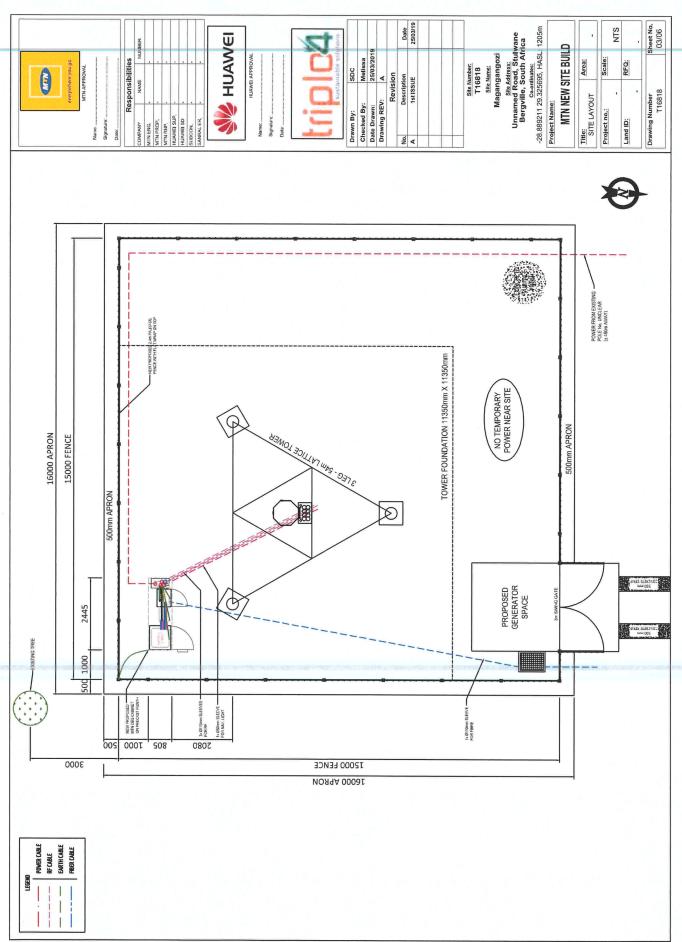
NAME

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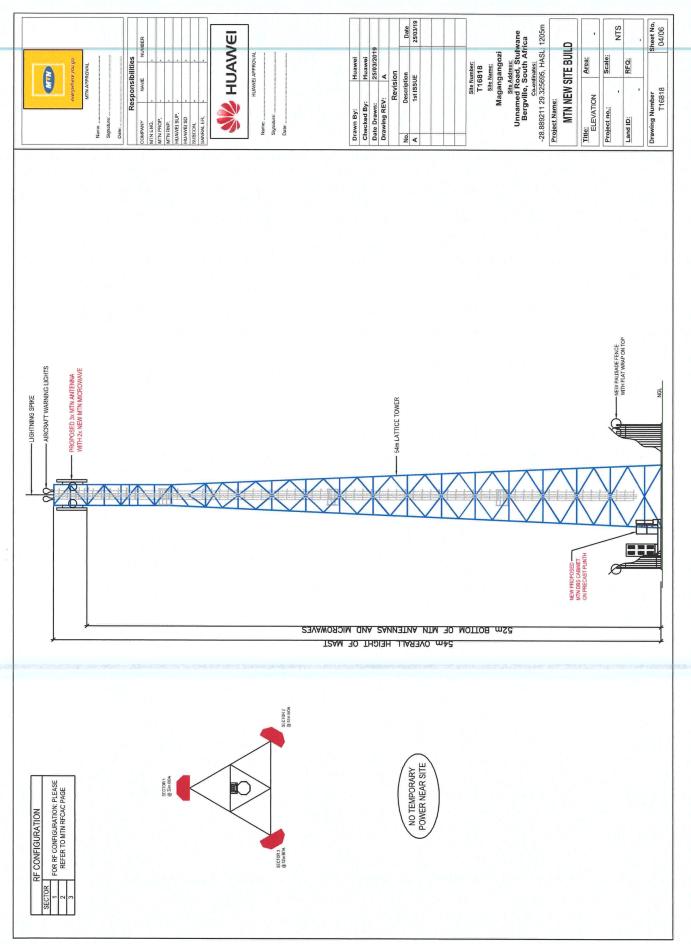
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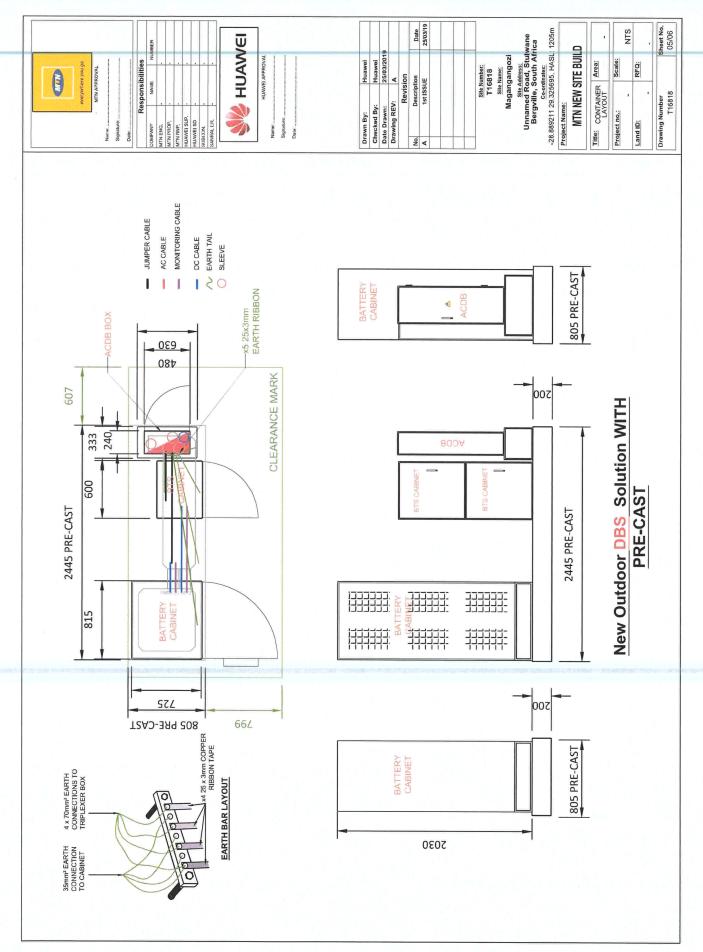
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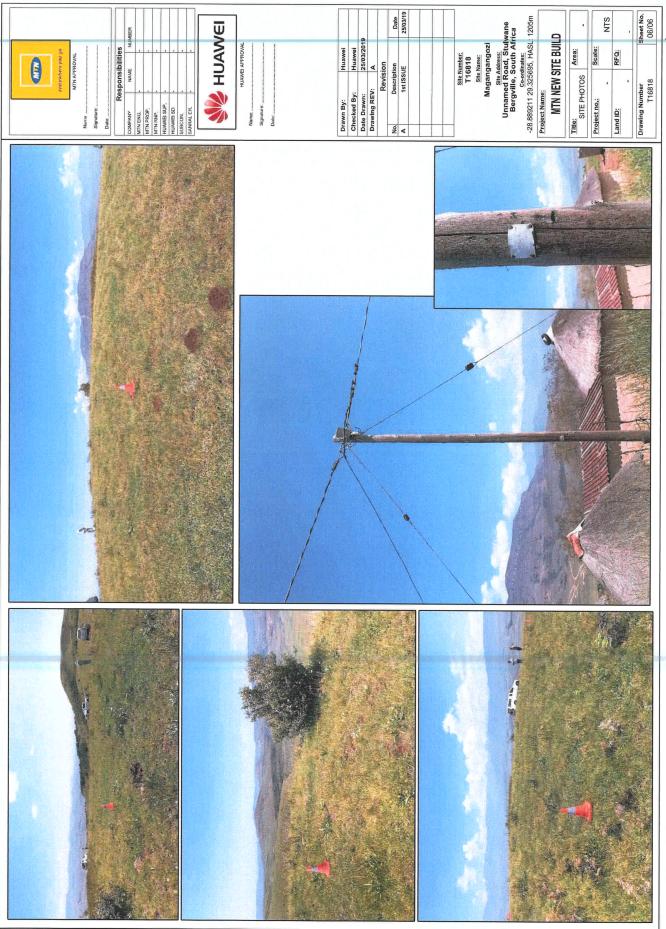
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PROPOSED TELECOM TOWER MTN IN THE MAGANGANGOZI AREA UNDER THE JURISDICTION OF THE AMANGWANE TRADITIONAL COUNCIL MINUTES.

discuss a proposed Mobile Telecommunications Network (MTN) (Pty) Ltd telecon tower (cell-most) in the Magangangozi Area; which falls under the jurisdiction of the Traditional Courcil Amangwane

ESOLUTION: I Menz; Hlongwane (7606167474086) agree and resolute that MTN (Pty) Ltd erects the abovemention telecom tower for the purposes of providing network coverage in the Maganganops; Area; which falls under my jurisdiction as the chief of the Amangwane Traditions Council.

> Furthermore, I agree and resolute that the monthly rented to be paid by MTN for the abovementioned telecon tower is to be paid into the Amangwane Traditional Council bank account attached to this document.

TRADITIONAL COUNCIL

PROPOSED	MTN	TELE	Com -	TOWER	- 12	THE
MAGANGAN	VGOZI	AREA	UNDE	R THE	JUR	BDICTION
OF THE	AMAN	IGWANE	TRA	DITION	AL I	COUNCIL
		NINUTI				

# Attendance Register:

Name	Position	Signature
Menzi Hlangwane Sandite Zuln	Chief	Hit Ille
Xolile Hlophe	MTN Representative Secretary	800
Masende Khumalo	Headman	Maria
Siyabonga Hlongwane	Community Member	Mongisano
Thokozani Langa	Community Member <	theinga
Zama Ndlovu	Community Member	Ndlovu. Z

KZN PROVINCIAL ADMINISTRATION
ATAANGWANE
TRADITIONAL COUNCIL

2019 -04- 17

P.O. Box 204 Bergville, 3350

ADMINISTRATIVE CENTRE



ABSA TOWERS NORTH, JOHANNESBURG

Member of / Lid van **BARCLAYS** 

**Annexure: Bank Cheque Account Deposit** Bylaag: Bank Tjekrekening Deposito

**KZN - LGTA TRADITIONAL COUNCIL** TRUST ACCOUNT 00073363

	Drawer's Name / Naam van trekker	Branch clearing No Takverrekeningsno	Amount/Bedrag	
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ABSA TOWERS NORTH, JOHANNESBURG **KZN - LGTA TRADITIONAL COUNCIL** TRUST ACCOUNT

Cheque Account Deposit / Ljekrekening Deposito

Member of / Lid van



No cheque exceeding	Total cheques of annex	tal cheques of annexure/Totaal tjeks van bylae		
R500 000.00 can be accepted.	Notes/note /R10/	R		
Geen tjek wat R500 000.00	/R20	R		
oorskry, kan aanvaar word nie.	P/50	R		
Effective/Effektief	A100	R		
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A STAPPE	Nickel/Nikkel	R		
	Bronze/Brons	R		
17.551	Postal orders/Posorders	R	R	
A-Maria	Total/cash/Totaal kontant		R	

Details of Depositor / Besonderhede van deponeerder

Depositors reference / Deponeerderverwysing

Date Datum

Name (Print) / Naam (Drykskrif)

Tel (

Signature / Handtekening

PASA 5&G

Absa 2401 BX (07/04/2016)

Total R Totaal

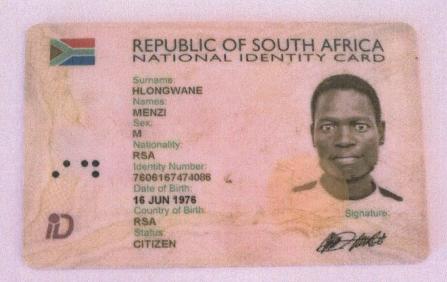
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ISSUED FREE OF CHARGE ALIKHOKHELWA

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District/Local House: UThukel9	
Document Reference: 13.118	
Traditional Council: Amangwave	
Applicant Contact No: 271.5424.709	
TO WHOM IT MAY	CONCERN
This letter serves to confirm that Hongware	Menzi
ID No./Date of birth 76.0616 7474 086	
member of AMANAW AVE ur	nder isigodi ENGO BA
I appeal to you that she/he be given the following assistance:-	
Birth Certificate/Identity Document	
Child Support Grant/Forster Care Grant/Disability Care	Grant
Old Age Pension	
Maintenance	
Road Accident Fund	
Bank Account update/opening	
Confirmation of address	
Other (Specify)	
Your co-operation will be highly appreciated.	
Yours faithfully  TC chairperson/delegated person	TC Secretary
Name: Menai Surname: Hlongwane Traditional Council: Amangwane Date: 17 April 2019 Contact details: 07/5424709	KZN PROVINCIAL ADMINISTRATION  AMANGWAME  TRADITIONAL COUNCIL  2019 -04- 1 7  P.S.TAMPO  Bergville, 3350  ADMINISTRATIVE CENTRE





# SPECIAL POWER OF ATTORNEY

I/We, the undersigned in my/Our capacity as AMANGW ANE (RAD TIONAL per the authority and powers delegated to me/us as the	do.	and appoint (company name/person) HUAMEN TECHNOLOGIES SOUTH AFRICA (PTY) ID to enter into an agreement of lease with Mobile	Telephone Networks (Pty) Ltd, herein after referred to as MTN for the purpose of erecting a telecommunication mast and associated infrastructure within (jurisdiction area) AMANGWANE TRIBAL AUTHORITY	This special power of attorney/resolution takes effect as of (day) 17 of (month) APRIL 2018 and shall continue until terminated in writing. The	above nominated, constituted and appointed person(s) is given authority to sign all documentation associated with the Agreement of Lease/Road Use Agreement	and Permitting Documentation associated with the proposed MTN Telecommunication mast installation at the aforementioned property description.  2019	OWNER(S)/REPRESENTATIVE(S	Name: MENZ! HLO NOWANE with ID/Passport/Registration Number 7606167474086 Signature 14006167474086 Signature 1400616747474086 Signature 1400616747474086 Signature 1400616747474086 Signature 1400616747474086 Signature 1400616747474086 Signature 14006167474747474747474747474747474747474747		R.O. Box 204  Bergville, 2059  ADMINISTRATIVE CENTRAL  with ID/Passport/Registration Number
I/We, the u	owner(s)/r	and appoin	Telephone (jurisdictic	This specia	above nom	and Permit		Full Name:	Full Name:	Full Name: