

**Licence Number: NER/IPP/GP/658-1050**

**LICENCE FOR THE OPERATION OF A GENERATION FACILITY**

This Licence is issued by the National Energy Regulator of South Africa, hereinafter referred to as "NERSA", in terms of the Electricity Regulation Act, 2006 ( Act No. 4 of 2006). This Licence is issued to:

**MOBILE TELEPHONE NETWORKS (PTY) LTD**

*(Company Registration No: 1993/001436/07)*

hereinafter referred to as "the Licensee", only for the purpose of the operation of the Generation Facility referred to in Schedule 2.

The operation of the Generation Facility permitted under this Licence is subject to the conditions listed in Schedule 1.

ISSUED at Pretoria on this 25<sup>th</sup> day of August 2016.

  
**CHIEF EXECUTIVE OFFICER (ACTING)**  
**NATIONAL ENERGY REGULATOR**



## Contents

Schedule 1 - Licence conditions.....	3
1. Definitions .....	3
2. Interpretation.....	5
3. Term of Licence .....	5
4. Licensed activities.....	5
5. Prohibited activities .....	6
6. Standard performance .....	6
7. Commercial Agreements.....	6
8. Tariff .....	7
9. Payment of Licence levies .....	7
10. Provision of information .....	7
11. Health and safety.....	7
12. Environmental.....	7
13. Inspection(s) .....	8
14. Investigation(s) .....	8
15. Assignment of Licence.....	8
16. Change in control of Licensee.....	8
17. Amendment of Licence .....	9
18. Revocation of Licence.....	9
19. Contravention of Licence .....	9
20. Correspondence with the National Energy Regulator.....	9
21. Whole Licence .....	9
22. Dispute resolution .....	9
Schedule 2 - Details of the Generation Facilities .....	10
Schedule 3 - Trading Agreements.....	11

## Schedule 1 - Licence conditions

### 1. Definitions

1.1 The following capitalised terms as defined hereunder will be used in the interpretation of these Licence conditions. Capitalised terms not defined hereunder but used in these Licence conditions will carry the same meaning as the definitions in the Commercial Agreements or the Act (as the case may be):

<b>Approvals</b>	means any permission, permit, approval, consent, authorisation, registration, grant, acknowledgement, exemption or agreement to be obtained from any Competent Authority by the Licensee under any law to enable the Licensee to undertake its obligations in respect of the Project;
<b>Buyer</b>	means Johannesburg City Power SOC Limited or any successor in law;
<b>Codes</b>	means as applicable, any code in respect of electricity distribution or transmission or generation as published by the Energy Regulator from time to time;
<b>Commercial Agreements</b>	means Power Purchase Agreement (PPA) and Connection Agreement;
<b>Commercial Operation Date</b>	has the meaning ascribed to it in the PPA;
<b>Contracted Capacity</b>	means the anticipated capacity of the Generation Facilities, measured at the Delivery Points and expressed as AC power capacity, net of own consumption and electrical losses between the generator terminals and the Delivery Points;
<b>Delivery Points</b>	means the physical points where the Generation Facilities connects to the System and where the Energy Output is to be delivered by the Licensee to the Buyer;

<b>Energy Regulator/ the National Energy Regulator</b>	means the National Energy Regulator established in terms of the National Energy Regulator Act, 2004 (Act No 40 of 2004);
<b>Generation Facilities</b>	means the generation facilities referred to in Schedule 2;
<b>Financial year</b>	means a period starting from the date immediately following the last day of the preceding accounting period up to and including the last day of the accounting period;
<b>Generation</b>	means the production of electricity by any means, and <b>generate</b> and <b>generating</b> have corresponding meanings;
<b>Generation Licence</b>	means a licence issued in terms of the Act;
<b>Licence</b>	means this Generation Licence issued to <b>Mobile Telephone Networks (Pty) Ltd</b> by the Energy Regulator
<b>Licensed Activities</b>	means the activities licensed hereunder, as set out in clause 4.1 of this Licence;
<b>Licensee</b>	means <b>Mobile Telephone Networks (Pty) Ltd</b> ;
<b>Premises</b>	means the commercial head of the Licensee.
<b>Rules</b>	means Rules made by the Energy Regulator in terms of the Act;
<b>Term</b>	means duration of Licence or period within which a Licence is in force;
<b>The Act</b>	means the <i>Electricity Regulation Act, 2006 (Act No 4 of 2006)</i> , and includes Regulations made under the Act.

## **2. Interpretation**

In these Licence conditions, unless otherwise specified:

- 2.1 Words or phrases importing the singular include the plural and vice versa;
- 2.2 Headings are for convenience only and do not affect the interpretation of the licence;
- 2.3 Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document;
- 2.4 Any reference to a numbered section is a reference to the section bearing that number in which the reference occurs;
- 2.5 In the computation of time, where there is a reference to a number of days between events, such computation of time will be counted by excluding the day on which the first event happens and including the day on which the second event happens and where the time for doing an event expires on a holiday, the event will be done on the next day that is not a holiday.

## **3. Term of Licence**

- 3.1 The Licence will commence on the Commercial Operation Date (COD) and continue to be in force for a period of 15 years.
- 3.2 Subject to the provisions of the Act, the Term of this Licence may be renewed on application by the Licensee.
- 3.3 The Energy Regulator may set different Licence conditions upon granting an approval for renewal of the Licence as contemplated in clause 3.2.

## **4. Licensed activities**

- 4.1 This Licence is issued to operate the Generation Facilities and to sell its electricity to the Buyer as contemplated in Schedule 3.
- 4.2 The entitlement of the Licensee to conduct the Licensed Activities is subject to all Approvals having been obtained.

## **5. Prohibited activities**

- 5.1 The Licensee must not increase the installed capacity (as set out in Schedule 2) or change the generating process of the Generation Facilities without the approval of the Energy Regulator.
- 5.2 The Licensee must not sell electricity from the Generation Facilities to any third party without the approval of the Energy Regulator.

## **6. Standard performance**

The Licensee must:

- 6.1 comply with the Act and Regulations, Rules, Codes, guidelines, directives and standards issued by the National Energy Regulator from time to time;
- 6.2 save for exemptions approved by the Energy Regulator, comply with the provisions of the Codes as varied, supplemented or replaced from time to time;
- 6.3 comply with restrictions and conditions imposed by any relevant government department, agency and/or authority which its decision can have an impact on the existence of this Licence.

## **7. Commercial Agreements**

- 7.1 The Licensee must at all times comply with its obligations under the Commercial Agreements, subject to and in accordance with the terms and conditions of those Commercial Agreements.
- 7.2 The Licensee must keep original Commercial Agreements or copies of these documents at its Premises.
- 7.3 The Licensee must at all times provide a Connection Agreement for each Delivery Points as and when required to do so or provide a copy of a current and valid Connection Agreement to the National Energy Regulator.
- 7.4 Amendment, variations and/or ratification of Power Purchase and Connection Agreements must not be made without the prior written approval of the Energy Regulator.

## **8. Tariff**

- 8.1 The Licensee must sell electricity from the Contracted Capacities to the Buyer, at the tariff stipulated in the PPA.
- 8.2 Any variations to the tariff in the PPA, other than escalation of such tariff in accordance with the PPA, will be subject to approval by the Energy Regulator.

## **9. Payment of Licence levies**

The Licensee must pay to the National Energy Regulator such levies in respect of this Licence as determined by the Minister of Energy under the prevailing legislation.

## **10. Provision of information**

The Licensee must:

- 10.1 maintain records of the operation of the Generation Facilities and provide, in the manner and form prescribed by the National Energy Regulator, such information and documents as the National Energy Regulator may require from time to time for the purpose of performing functions assigned or transferred to it under the law. Records must include but not limited to Regulatory Reporting Manuals (RRMs) and generation performance reports.
- 10.2 maintain a separate information and statement of accounts for electricity generation business covered by this Licence in the form prescribed by the Energy Regulator.
- 10.3 provide the Energy Regulator with audited financial statements for each Financial year in accordance with relevant financial legislations within 180 days of the end of the Licensee's Financial year.

## **11. Health and safety**

The Licensee must comply with applicable health and safety legislation, subordinate legislation and such other requirements as may be applicable.

## **12. Environmental**

The Licensee must comply with applicable environmental legislation, subordinate legislation and such other requirements as may be applicable.

### **13. Inspection(s)**

The Licensee must:

- 13.1 consent to inspection at all reasonable times to be conducted by the Energy Regulator or authorised persons on its behalf for the purpose of ascertaining the condition of the Generation Facilities and operational standards.
- 13.2 allow any person authorised by the Energy Regulator to inspect and verify the financial accounts of the Generation Facilities and must render all necessary assistance to such person.

### **14. Investigation(s)**

- 14.1 The Energy Regulator or authorised person may on receipt of complaint or at its own instance conduct investigation with regard to compliance with the Act or Licence conditions.
- 14.2 On completion of the investigation the Energy Regulator may:
  - 14.2.1 refer the investigation report to the Director of Public Prosecutions of the area concerned; and
  - 14.2.2 act on the matter in accordance with the provision of the Act.

### **15. Assignment of Licence**

- 15.1 The Licensee may not assign, cede or transfer this Licence or any power or duty granted or imposed under this Licence, to any other person without the prior consent of the Energy Regulator.

### **16. Change in control of Licensee**

- 16.1 The Licensee must ensure that there is no Change in Control in the Licensee without approval from the Energy Regulator.
- 16.2 A Licensee must at all times notify the Energy Regulator with the details of any changes in the registered name, operation status of the Generation Facilities, registered address and other contact details.
- 16.3 The notification must be provided within 14 days after the event.



**17. Amendment of Licence**

This Licence may be amended in accordance with the Act and the Rules.

**18. Revocation of Licence**

This Licence may be revoked by the Energy Regulator in accordance with the provisions of the Act and the Rules.

**19. Contravention of Licence**

19.1 The Licensee must not act in any manner that is inconsistent with the Act, Rules and this Licence.

19.2 In the event of contravention, such contravention must be dealt with in terms of the Act.

**20. Correspondence with the National Energy Regulator**

20.1 All official communication with the Energy Regulator must be in writing, unless directed otherwise by the Energy Regulator.

20.2 The communication can be sent by any means possible including post, fax, email and hand delivery.

20.3 The Licensee must, in all correspondence with the Energy Regulator, quote the Licence reference number, as it appears on the Licence certificate.

**21. Whole Licence**

This Licence constitutes entire licence and supersedes all prior understandings and agreements between the Licensee and the Energy Regulator.

**22. Dispute resolution**

Save for the provisions of the PPA:

22.1 The Energy Regulator may act as mediator if so requested by both the Licensee and the buyer to settle the dispute; or

22.2 The Energy Regulator may appoint a suitable person to act on its behalf towards the settlement of the dispute and any action or decision of a person so appointed is deemed to be an action by or decision of the Energy Regulator.

**Schedule 2 - Details of the Generation Facilities**

<b>Generating Station</b>	<b>Location</b>	<b>Type</b>	<b>Installed Capacity (MW)</b>
MTN Newlands	Newlands, Gauteng P GPS Coordinates 26°10'.21" S 27°57'58.98" E	Tri-generation	5.4
MTN Doornfontein	Doornfontein, Gauteng Province GPS Coordinates 26°11'46.73" S 28°03'19.56" E	Tri-generation	1.1

### Schedule 3 - Trading Agreements

Power Purchaser (Buyer)	Contracted generation station	Duration of PPA	Contracted Capacity (MW)	Date Issued
Johannesburg City Power SOC Limited	MTN Newlands	1 Year	3.5MW	25 August 2016
Johannesburg City Power SOC Limited	MTN Doornfontein	1 Year	0.3MW	25 August 2016