

MASCOM WHOLESALE REFERENCE OFFER FOR HOSTING MVNOS

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MASCOM WHOLESALE REFERENCE OFFER FOR HOSTING MVNOS

This Reference Offer sets out the key commercial principles and charges for the provision of Mobile Virtual Network Operators (“MVNO”) wholesale access to the MASCOM Network for the purpose of providing mobile communications services to end users in Botswana.

This Reference Offer is intended to potentially accommodate different types of prospective MVNOS. Therefore, the Reference Offer contains certain terms and conditions which may be unnecessary or irrelevant to include in a final wholesale access agreement between MASCOM and an MVNO, including, but not necessarily limited to, an MVNO who wishes to fully depend on MASCOMs network, systems and all other resources in the delivery of services to end users, save only for the MVNOS own branding and sales.

A. DEFINITIONS AND INTERPRETATIONS

1. For the avoidance of doubt, all terms included in this Reference Offer shall have the same meaning as defined under Botswana Law, including in the Communications Regulatory Authority Act, 2012 (the “CRA Act”), Regulations, Licences and any other regulatory legal instruments.
2. For the purposes of this Reference Offer, the following terms shall have the following meanings:

Effective Date: means, unless otherwise specifically stated, the date of signature by both Parties of an MVNO Agreement.

MVNO: means a person that:

- (a) does not directly or indirectly control, is not controlled by or is not under common control with or is not otherwise affiliated to a mobile network operator active in Botswana; and
- (b) provides (or wishes to provide) mobile services to end customers under its own brand name using the network of a mobile network operator; and
- (c) does not hold spectrum frequency licence(s) for mobile cellular services in Botswana; and

MVNO Agreement: means an agreement for wholesale access to the MASCOM Network entered into between MASCOM and the Requesting Party.

Requesting Party: means an MVNO seeking wholesale access to the MASCOM Network for the purposes of offering retail mobile communications services to end customers as an MVNO in Botswana.

Reference Offer: means this document

B. WHOLESALE ACCESS OFFER

3. Where a Requesting Party reasonably requests in writing to become an MVNO on the MASCOM Network, MASCOM shall offer the following services:
 - (a) wholesale access to the MASCOM Network for the origination and termination of voice, SMS and data services to MVNO customers;
 - (b) location data for emergency call delivery services with respect to MVNO customers; and
 - (c) location data and real time CDRs (“Call Data Records”) for legal interception services with respect to MVNO customers.
4. The above wholesale access services are available using the 2G and 3G mobile network technologies which MASCOM uses to deliver the same services to its customers from time to time.
5. MASCOM may grant the MVNO access to other and/or future evolutions in mobile technologies and/or new products and services based on existing technologies which were not offered by MASCOM in Botswana as at [*insert Date*] unless such access is not technically feasible, and subject to negotiation and agreement between MASCOM and the MVNO of the terms and conditions.
6. Subject to Section B 8, the MVNO shall be responsible for making its own arrangements to meet its obligations as a public communications network operator under Botswana law.
7. MASCOM will consider all reasonable requests to provide assistance with respect to emergency call delivery services, legal intercept services and numbering. The provision of any such assistance by MASCOM shall be subject to negotiation between MASCOM and the MVNO of the terms and conditions (including any potential charges which shall take into account the incremental costs that MASCOM would incur as an effect of providing assistance to the MVNO with respect to its adherence with emergency call delivery services, legal intercept services and numbering).
8. This Reference Offer covers only the services set out in Section B 3 above, and not, for instance, the following services (a) the provision of all or part of the core network infrastructure such as the interconnection between the MASCOM and Requesting Party, or between the Requesting Party and other mobile or fixed network operators (b) transit or routing services or (c) international roaming services. MASCOM may consider reasonable requests for additional services. The provision of any such services by MASCOM shall be subject to separate negotiation and agreement between MASCOM and the MVNO of the terms and conditions (taking into account *inter alia* the investment and operational expenditures made by MASCOM).
9. This Reference Offer is subject to the Requesting Party and MASCOM entering into an MVNO agreement on reasonable terms and conditions which shall include the terms set out in this Reference Offer.

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10. MASCOM Botswana shall not be obliged to carry out the technical implementation of wholesale access for more than 2 MVNOs on the MASCOM Network at any one time.

C. CHARGES

11. The charges payable by the MVNO for the services in Section B 3(a) above shall be subject to commercial negotiation and agreement, based on the principles and methodology set out in APPENDIX 1. Provided that MASCOM may pass on to the MVNO any additional fees or charges that have been levied on MASCOM under Botswana law and/or at the direction of a competent authority (or which MASCOM is required to charge to the MVNO) to the extent that they relate to the network access services being provided to the MVNO. The commercially negotiated and agreed rates are subject to price indexation in accordance with Section D below.
12. Charges payable for any other service (including any administrative and other handling services with respect to emergency call delivery and legal intercept) shall be subject to negotiation and agreement between MASCOM and the MVNO of the terms and conditions.
13. Unless in the case where the Requesting Party is a branded MVNO and hence relies fully on *inter alia* MASCOM's network routing and existing interconnection agreements, all national interconnection fees for the termination and origination of voice services and SMS by or to MVNO customers shall be for the account of the MVNO, and shall be paid and settled directly between the MVNO and the interconnecting mobile and/or fixed network operator (including MASCOM) as the case may be.
14. The MVNO shall provide an on demand financial security (in the form of a bank guarantee) ("Security") to MASCOM in an amount equal to the Security Amount. For this purpose the "Security Amount" shall be an amount equal to the average monthly charge payable based on the 12 month rolling forecast provided by the MVNO from time to time multiplied by 3. The Security Amount shall be recalculated each time the MVNO provides its 12 month rolling forecast as described in Section F below. MASCOM may drawdown on the Security in accordance with its terms at any time during or after termination of the MVNO Agreement to satisfy any amounts due and payable to MASCOM (including any charges) that remain unpaid by the relevant due date. The MVNO shall maintain the level of the applicable Security Amount and shall replenish the Security within 30 working days of (a) receipt of notice from MASCOM that it has drawn down on the Security or (b) the provision of its 12 month rolling forecast if there is a shortfall between the Security Amount calculated on the basis of that forecast compared to the Security Amount calculated in relation to the immediately preceding 12 month forecast.
15. All charges will be payable in Botswana Pula (BWP) and are exclusive of VAT.
16. MASCOM will issue invoices monthly, which shall be payable within 30 days.

D. PRICE INDEXATION

17. The commercially negotiated and agreed charges may be subject to retail price indexation. MASCOM and the MVNO shall negotiate in good faith a reasonable price indexation mechanism, taking into consideration the ability of the MVNO to offer competitive products and services to end-users. Reasonable price indexation mechanisms may include an index based on retail prices published by BOCRA or an index based on the prices of MASCOM.

E. IMPLEMENTATION AND IMPLEMENTATION FEE

18. The MVNO Agreement shall specify the technical implementation work required in order to provide wholesale access to the MASCOM Network, including the responsibilities of MASCOM and the MVNO and the agreed project plan.
19. MASCOM may charge the MVNO a set-up fee of *up to* BWP 200,000, payable in two equal instalments. The level of the set-up fee shall be reasonable and take into account the costs and resources relevant to the implementation of the MVNO agreement. The first instalment shall be payable on signature of the MVNO Agreement and the second instalment shall be payable on the earlier of the commercial launch by the MVNO of its retail services and 9 months from the signature of the MVNO Agreement. The implementation fee is subject to the Botswana consumer price index.

F. NON-DISCRIMINATION OBLIGATION

20. MASCOM shall, as far as is technically possible, supply the same quality of service and coverage to the MVNO in respect of the agreed wholesale access services and the MVNO customers as it does to its own customers and to those of other MVNOs on the MASCOM Network, including with respect to suspension of services for maintenance (including repairs, upgrades and modifications to the MASCOM network) and emergencies.
21. MASCOM has the right to manage the traffic flow on its network (including that of the MVNO customers) in order to maintain network integrity or to improve the service for a larger range of customers in a cell. The reduction of the portfolio of the relevant services offered by MASCOM to its customers could also result in comparable limitations on the services offered by the MVNO to its customers, subject to MASCOM providing the MVNO a lead time of 1 month.
22. For the avoidance of doubt, the retail offer by MASCOM to its customers of any new technologies or products which MASCOM has offered to the MVNO in accordance with Section B 3, and which the MVNO has chosen not to offer to its customers, shall not be considered a breach of the non-discrimination obligations contained in this Section F.
23. MASCOM shall be permitted to monitor and conduct internal analyses of the MVNO customers for the purpose of network quality assurance, as it does so with respect to its own customers and those of other MVNOs on the MASCOM Network. For the avoidance of doubt, such monitoring and internal analyses shall not be used for any other purpose than to assure network

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quality, and MASCOM shall not be allowed to use information of the MVNO's customers for the purpose of acquiring its existing customers.

G. FORECASTS

24. The MVNO Agreement shall include forecast requirements which shall be limited to the minimum extent necessary for capacity management purposes.
25. Following the commercial launch by the MVNO, the MVNO shall on an annual basis provide MASCOM, no later than on the 15th of September of each year (the "**Forecasting Date**"), a forecast for each month of the ensuing 12 month period from the September to the August inclusive and an annual forecast for a further 4 years (the "**Forecast**"). In the absence of any Forecast for the applicable 12 month period, the actual traffic volumes of the immediately preceding 12 month period (September to August inclusive) shall be deemed to be submitted as the Forecast.
26. Each Forecast shall show the volume of traffic per service expected to be generated by the MVNO's customers per calendar month within the 12 month Forecast and on an annual basis for the remaining 4 years of the forecasting period.
27. Each 12 month Forecast for each type of traffic shall be non-binding on the MVNO as long as the individual monthly forecasts (for each type of traffic) in any Forecast do not exceed the respective non-binding thresholds (the "**Maximum Non-Binding Forecast**"). The level of the non-binding threshold respectively shall be agreed on between MASCOM and the Requesting Party Any forecast for a particular traffic type in excess of the relevant Maximum Non-Binding Forecast shall be binding ("**Binding Forecast**"). For the avoidance of doubt, the Binding Forecast shall only refer to the first 12 month period of the Forecast.
28. In addition to the Forecast, the MVNO shall provide MASCOM with non-binding quarterly update forecasts which shall be taken into account for interim capacity planning purposes.
29. If on the basis of the Binding Forecast MASCOM envisages the need for investment in capacity upgrades to the MASCOM Network, MASCOM shall within 30 business days from receipt of the Forecast notify the MVNO in writing: (a) with its best estimate of the cost of such investment attributable to the MVNO on the basis of the proportion of traffic increase forecast by the MVNO relative to the total forecast increase in capacity required by MASCOM (for all retail and wholesale customers); and (b) the maximum possible volumes to be handled without the need for such investment. If the MVNO adjusts its Binding Forecast in writing within 10 business days from such notification, the updated Forecast shall be deemed to be the Forecast for the applicable Forecasting Date.
30. MASCOM shall provide for the required capacity to handle the forecasted traffic (including Binding Forecasts) on the condition that:

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- a. the MVNO acknowledges and accepts that MASCOM is permitted to manage the traffic in relation to, and selectively for, the MVNO's customers if and to the extent that the actual usage is in excess of 125% of the Forecast and if such excess usage would cause degradation of the quality of the MASCOM Network; and
- b. if actual usage falls short of 75% of the Binding Forecast and MASCOM has invested in the capacity upgrade of the MASCOM Network earlier than necessary for its own forecasted traffic in order to meet volumes in the Binding Forecast, and MASCOM has duly notified the MVNO, MASCOM is entitled to charge the MVNO reasonable financing costs for such investment. Provided that the financing costs shall only be payable by the MVNO if: (i) the period is more than 6 months between the actual investment made by MASCOM to the time the MVNO's actual usage meets 75% of the highest monthly volume in the Binding Forecast or (ii) the period is more than 6 months between the actual investment made by MASCOM to the time when such investment becomes necessary for MASCOM's own traffic requirements plus the actual usage of the MVNO. If neither event occurs, and will not foreseeable occur within 5 years from the Forecasting Date, the MVNO shall be responsible for both the financing costs and the investment costs. The amount of the investment costs for this purpose shall be capped at the charges which would have become due and payable for the shortfall between the actual usage and 75% of the Binding Forecast.

H. ACCESS TO AND USE OF MVNO CUSTOMER INFORMATION

31. To the extent that MASCOM personnel have access to the forecast information provided under Section G above or to data relating to the MVNO's customers, MASCOM shall ensure that access is limited to persons who require access solely for the purposes described in Section G above (in relation to the forecast information) and paragraph 32 below (in relation to any customer data).
32. MASCOM and the MVNO shall agree that customer data provided by the MVNO to MASCOM shall be limited to the minimum necessary for the purposes described below. The MVNO shall permit MASCOM to use traffic and location data related to the MVNO customers, and to supply such data to third parties, solely to the extent necessary for the purposes of legal interception, billing, capacity management, traffic management, fraud detection, routing and cell identification and other technical purposes required for the provision of wholesale access to the MVNO or otherwise in order to comply with applicable laws or the directions of a competent authority.

I. NUMBERING

33. Unless otherwise agreed on between MASCOM and the Requesting Party, and in any case, subject to adherence to Botswana law, the MVNO shall be solely responsible for meeting its numbering requirements under Botswana law and MASCOM shall be under no obligation to manage any part of its numbering requirements.

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34. In order to allow proper system configuration and unique user identification by MASCOM, the MVNO shall provide MASCOM with (a) the IMSI range to be used by the MVNO's customers on the MASCOM Network (including any sub-ranges being used by the MVNO's customers) and (b) the MSISDN range to be used by the MVNO's SIMs on the MASCOM Network.

J. PRIVACY AND DATA PROTECTION

35. MASCOM and the MVNO shall each comply with relevant data protection and privacy laws with respect to the processing of the MVNO customer data (including traffic and location data).

K. USE OF THE MASCOM NETWORK

36. The MVNO shall take all reasonable steps to maintain the quality of the MASCOM Network.
37. The MVNO shall:
- (a) not use the wholesale access services or allow any customer or other third party to use the services for any immoral, obscene, harmful, offensive or unlawful purpose;
 - (b) not connect or allow any customer or other third party to connect to the MASCOM Network any mobile device (whether a handset, USIM or other device) unless the device is compliant with international technical standards;
 - (c) provide MASCOM with information on all planned UE (user equipment) / CPE (customer premises equipment) at least 10 business days before the MVNO makes such equipment commercially available to ensure compatibility of the equipment;
 - (d) not connect or allow any customer or other third party to duplicate MVNO SIM cards (with one and the same IMSI) or manipulate MVNO SIM cards for roaming fraud, premium rate service abuse, SMS spamming/faking, interconnect fraud, subscription fraud or similar fraud and abuse;
 - (e) not connect or allow any customer or other third party to connect or continue the connection of any equipment that allows the bypass of interconnect costs through terminating any internationally originated traffic destined for the MASCOM Network by disguising it as nationally originated traffic;
 - (f) monitor activities involving fraud, artificially inflated traffic and any other breaches of security connected with the use of the MASCOM Network including the unauthorised use of any Gateway, and notify MASCOM immediately of such activities;
 - (g) comply with any safety and security requirements in relation to access to the MASCOM Network and systems, and comply with all

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- reasonable instructions issued by MASCOM in relation to the use of the wholesale access services;
- (h) comply with MASCOM cyber- and information security requirements, and allow MASCOM to audit its compliance with the requirements, alternatively carry-out an independent audit of its compliance and share such independent audit report and findings with MASCOM;
 - (i) comply with any prevailing legal and regulatory requirements for registration of prepaid customers;
 - (j) not make any disparaging remarks about the MASCOM Network, nor mislead or make any false statements or representations in respect of the MASCOM Network;
 - (k) comply with all directions issued by MASCOM reasonably necessary to assist it in complying with any regulatory requirement;
 - (l) not use the wholesale access purchased from MASCOM in conjunction with services it has acquired from another mobile network operator in Botswana (excluding, for the avoidance of doubt, interconnection);
 - (m) not use the MASCOM Network to allow a third party to provide mobile communications services in Botswana to end customers;
 - (n) not seek to sell MVNO services to any customer whose residence or place of business is outside Botswana; and
 - (o) not act in a manner which would lead to a lower quality of service and coverage for MASCOM's customers compared to the customers of the MVNO.
38. MASCOM may suspend or terminate an MVNO's customer if the customer is using devices or other equipment which is defective or illegal or non-compliant with international technical standards, the customer is causing technical problems on the MASCOM Network, the customer is suspected of fraudulent or unauthorised use or authentication of the subscription is not possible. Prior to any suspension or termination, MASCOM will inform the MVNO unless it is not expedient to do so in which case it will inform the MVNO immediately thereafter.
39. MASCOM may request the MVNO to block a SIM card used contrary to the prohibited uses above and the MVNO shall investigate such request and block the relevant SIM to the extent the MVNO deems it so required, acting reasonably.
40. If either MASCOM or the MVNO suspects any kind of fraud or abuse which involves the services offered by the MVNO under the wholesale access offer they shall inform each other immediately and co-operate in good faith and use all appropriate means to identify, eliminate and the prevent the fraud or abuse as soon as feasible.

L. INTELLECTUAL PROPERTY AND BRANDING

41. All intellectual property rights which are owned by, or proprietary to, a party shall remain the exclusive property of that party.
42. All intellectual property rights in the MASCOM marks and the MASCOM Network shall remain the property of MASCOM. The MVNO shall not brand or promote its services under the MASCOM brand.
43. All intellectual property rights in the MVNO marks shall remain the property of the MVNO.

M. COMPLIANCE WITH ALL APPLICABLE LAWS

44. Each party to the MVNO Agreement shall comply with all applicable laws, regulations and rules applicable to its obligations under the MVNO Agreement, including for the avoidance of doubt Botswana telecommunications laws.

N. LIMITATIONS OF LIABILITY AND WARRANTIES

45. Subject to the limitations set out in the MVNO Agreement, the liability of the parties shall be governed by Botswana law. The parties shall only be liable for damages caused by intentional misconduct or gross negligence. Liability for negligence shall to the extent legally permitted be excluded. Neither party will be liable to the other, whether for negligence, breach of contract, misrepresentation or otherwise for loss of profit or revenue, or indirect loss/damage or consequential loss/damage suffered by the other party whether or not foreseeable.
46. The MVNO Agreement shall contain standard representations and warranties regarding the capacity and authority to enter into the Agreement, the holding of all necessary permits, registrations, filings and licences and the compliance with applicable laws.

O. TERM AND TERMINATION

47. The term of the MVNO Agreement will be for an initial term of 3 years, and thereafter be renewable for additional 3 years, unless either Party gives at least 6 months prior notice for termination. The MVNO may terminate the Agreement giving MASCOM at least 6 months prior notice provided that any due payments are fully settled before end of the notice period.
48. Each party will have the right to terminate the MVNO Agreement for material breach, insolvency events and force majeure. It will be deemed to be a material breach if the MVNO is 2 months or more late in paying any invoice.
49. MASCOM shall have a right to terminate the MVNO Agreement if (a) the MVNO is acquired (directly or indirectly) by another MNO in Botswana or (b) the MVNO holds spectrum frequency licence(s) with respect to which it has achieved outdoor coverage exceeding 10% of the Botswana population or (c)

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the MVNO holds spectrum frequency licence(s) which contain outdoor coverage obligations exceeding 10% of the Botswana population.

P. GOVERNING LAW AND JURISDICTION

50. The MVNO agreement shall be governed by the laws of Botswana.
51. The competent court in Botswana shall have sole and exclusive jurisdiction over any disputes between the parties arising in connection with the execution of the MVNO Agreement.

END OF WHOLESALE REFERENCE OFFER FOR MVNO'S