**PARTICIPATION AGREEMENT**

entered into by and between:

**[insert full name of State Beneficiary]**

**(hereinafter referred to as the "State Beneficiary"**

**and**

**VODACOM (PROPRIETARY) LIMITED**

**Registration Number 1993/003367/07**

**(hereinafter referred to as “Vodacom”)**

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1. **RECITAL AND BACKGROUND**

1.1. This Participation Agreement (hereinafter referred to as the "**Participation Agreement**") is concluded pursuant to a Participation Letter submitted by the State Beneficiary and attached hereto.

1.2. The Master Transversal Services Agreement concluded between The National Treasury and Vodacom enables State Beneficiaries in possession of a valid Participation Letter to enter into Participation Agreements with Vodacom. The terms of the Master Transversal Services Agreement are incorporated into this Participation Agreement by reference as if set forth in full in this Participation Agreement and as per the provisions of clause 3.1 below all such Participation Agreements shall be separate agreements based substantially upon the terms of the Master Transversal Services Agreement.

1.3. Order of precedence: In the event of any conflict between the provisions of this Participation Agreement (as read with Master Transversal Services Agreement), the following shall be the order of precedence (highest level of precedence first):

1.3.1. the commercial terms contained in Annexe B of this Participation Agreement;

1.3.2. the Service Specific Terms and Conditions applicable to this Participation Agreement;

1.3.3. any other schedules or attachments to this Participation Agreement;

1.3.4. the main body of this Participation Agreement; and

1.3.5. the terms of the Master Transversal Services Agreement in the hierarchy contemplated in clause 2.2 therein.

2. **INTERPRETATION AND DEFINITIONS**

2.1. The interpretations set forth in the Master Transversal Services Agreement shall apply *mutatis mutandis* to this Agreement.

2.2. Unless the context otherwise provides, any terms used in this Participation Agreement and for which no definition is provided in this Participation Agreement, shall bear the meaning ascribed thereto as defined in the Master Transversal Services Agreement (and cognate terms shall bear corresponding meanings). In addition, the following definitions apply to this Participation Agreement:

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2.2.1. "**Parties**" under this Participation Agreement means the parties (or either of them) indicated on the front page of this Participation Agreement, who concluded this Participation Agreement; and

2.2.2. "**Start Date**" shall mean _____ being the date on which this Participation Agreement will commence.

3. **TERMS OF THE MASTER TRANSVERSAL SERVICES AGREEMENT**

3.1. The terms of the Master Transversal Services Agreement are incorporated into this Participation Agreement by reference as if set forth in full in this Participation Agreement subject to any variations (as set out in Clause 3.2 below) to the terms of the Master Transversal Services Agreement as described in this Participation Agreement.

3.2. This Participation Agreement may vary the terms and conditions of the Master Transversal Services Agreement in respect of the Commercials Terms, only with respect to the subject matter of this Participation Agreement. Insofar as this Participation Agreement specifically amends the Commercial Terms of the Master Transversal Services Agreement, such amended provisions in this Participation Agreement shall prevail in respect of this Agreement only, notwithstanding the provisions of Clause 3.3 below.

3.3. Save to the extent agreed upon to the contrary in this Participation Agreement, the Parties to this Agreement shall be bound to the terms and conditions of the Master Transversal Services Agreement, as described in Clause 3.1 above.

3.4. Any lawful modifications or amendments to the terms of the Master Transversal Services Agreement, executed in accordance with the provisions of that agreement, shall also be applicable to this Participation Agreement, without requiring any further amendment to be executed under this Participation Agreement.

4. **TERM AND TERMINATION**

4.1. This Participation Agreement will commence on the Start Date and shall endure until [**Drafting note: Insert expiry date which shall be a minimum of two years from the Start Date**], provided that any Subscription shall endure beyond the aforementioned date for the duration contemplated in the Master Transversal Services Agreement.

4.2. The effect of terminating this Participation Agreement will be to terminate the ability of State Beneficiary to enter into subsequent Subscriptions.

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4.3. The termination of a Subscription prior to the expiry of the Minimum Subscription Term will attract, where applicable, a Subsidy Recovery Charge. The termination rights set forth in the Master Transversal Services Agreement shall apply mutatis mutandis to this Agreement.

5. **SERVICES**

5.1. Vodacom hereby agrees to provide the Services selected by the State Beneficiary as more fully defined Annexe "A" to this Participation Agreement to the State Beneficiary.

5.2. Customised Services will be provided in terms of a Work Order, which will be concluded between the Parties as contemplated in the Master Transversal Services Agreement. For avoidance of doubt such Work Order shall include Service Specific Terms and Conditions and shall be accorded the same status as a Service Schedule.

6. **COMMERCIAL TERMS**

6.1. The Charges payable by the State Beneficiary to Vodacom for performing the Services shall be as set out in Annexe "**B**" to this Participation Agreement.

6.2. The Parties may agree to further Charges in a Work Order concluded hereunder.

7. **DISPUTES AND CLAIMS**

7.1. All disputes shall be dealt with in accordance with the procedure set forth in Annexe **"D"** of the Master Transversal Services Agreement.

7.2. Any claims under this Participation Agreement shall be dealt with in accordance with clause 3.5 of the Master Transversal Services Agreement.

8. **SHARING OF REPORTS AND CONFIDENTIAL INFORMATION**

8.1. Pursuant to the terms of the Participation Letter as well as the terms of the Master Transversal Services Agreement and this Participation Agreement, the State Beneficiary acknowledges, hereby expressly consents and agrees that any information pertaining to this Participation Agreement (including but not limited to use and consumption of the Services) may be shared with The National Treasury without prior notification to the State Beneficiary.

9. **SOLE AGREEMENT**

9.1. This Agreement, read together with the annexures hereto, constitutes the sole and entire record of the agreement between the Parties with regard to the subject matter thereof and

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supersedes and overrides and replaces all prior agreements and negotiations, terms, conditions, offers, promises, representations, quotations, agreements and understandings of the Parties with respect thereto, whether written or oral.

9.2. If any provision contained in this Participation Agreement is rendered void, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Participation Agreement shall not in any way be affected or impaired.

## 10. RELATIONSHIP

No provision contained in this Participation Agreement shall be construed as establishing a relation of employer and employee or agent and principal between the State Beneficiary and Vodacom. Each Party shall have complete charge of its personnel and shall be fully responsible and liable for its personnel's acts and omissions and the Services as performed by them.

## 11. DOMICILIA CITANDI ET EXECUTANDI

The Parties choose the following addresses as their respective *domicilia citandi et executandi* for purposes of giving any legal notice and serving any legal process:

State Beneficiary:

Vodacom: Corporate Park Building, 082 Vodacom Boulevard, Vodavalley, Midrand
Private Bag X9904, Sandton, 2146
Fax: 011 653 6011
For attention: Chief Legal Officer

## 12. APPLICABLE LAW

This Participation Agreement shall be governed, constituted and interpreted in accordance with the law of the Republic of South Africa.

## 13. CESSION AND DELEGATION

13.1. The State Beneficiary shall not cede its rights, nor delegate its obligations in terms of this Participation Agreement in whole or in part, to any third party (including the National Treasury) without first obtaining the written consent of Vodacom.

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13.2. To the extent permitted under applicable legislation, Vodacom shall be entitled to assign this Participation Agreement, and/or to cede its rights and / or delegate its obligations under this Participation Agreement to any affiliate or any third party (not blacklisted by the Customer) without the prior written consent of the State Beneficiary or the Customer.

## 14. PUBLICITY

14.1. Vodacom shall be entitled issue a news release, advertisement or other form of publicity concerning efforts in connection with this Participation Agreement and shall obtain the written consent of the Customer and the State Beneficiary prior to the release of such publicity.

14.2. The State Beneficiary hereby binds itself not to do anything, directly or indirectly, which will or may prejudicially affect Vodacom's reputation and image in the local and international markets and industries or jeopardise Vodacom's relationship with its stakeholders, suppliers or service providers and customers.

## 15. GENERAL

15.1. Third-Party Beneficiaries

15.1.1. This Participation Agreement is an agreement between the applicable parties to this Participation Agreement and confers no rights upon any third parties including the National Treasury or of the Parties' personnel, agents, or contractors, or upon any other person.

15.2. Authorised signatories

15.2.1. The Parties agree that this Participation Agreement shall not be valid unless signed by an authorised signatory of the State Beneficiary. The State Beneficiary shall upon request furnish Vodacom with such documentation as may reasonably be required by Vodacom to establish the authority of the proposed authorised State Beneficiary signatories.

15.2.2. The Parties further agree that this Participation Agreement shall not be valid unless signed by an authorised signatory of Vodacom.

15.3. Counterparts

15.3.1. This Participation Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the

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same Participation Agreement concluded hereunder as at the date of signature of the Party last signing one of the counterparts.

15.4. Benefits of the Agreement

15.4.1. The rights and benefits granted hereunder to the State Beneficiary may not be exercised and/or enjoyed by any other State Beneficiary

15.4.2. The Parties specially agree that:

15.4.2.1. any claims by the State Beneficiary may only be instituted by such State Beneficiary (and not by the National Treasury or any other State Beneficiary); and

15.4.2.2. all invoices for Services directly under this Participation Agreement shall be addressed and submitted by Vodacom to the State Beneficiary, and not to any other State Beneficiary, and the State Beneficiary shall be responsible for the payment of such invoices, subject to the terms of this Participation Agreement.

16. **COSTS**

16.1. Each Party shall bear its own costs related to the negotiation, conclusion and execution of this Participation Agreement.

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**SIGNED** at _____ on _____

**As Witnesses**

1_____

2_____

For and on behalf of

**VODACOM (PTY) LTD**

_____

Who warrants that he/she is duly authorised

Name:

Designation:

**SIGNED** at _____ on _____

**As Witnesses**

1_____

2_____

For and on behalf of

_____

Who warrants that he/she is duly authorised

Name:

Designation:

SPECIMEN

at _____ on _____

**As Witnesses**

1_____

2_____

For and on behalf of

**STATE BENEFICIARY**

_____

Who warrants that he/she is duly authorised

Name:

Designation:

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