

SUBSCRIBER SERVICE AGREEMENT FOR MTC SPECTRA

TERMS & CONDITIONS

1. Interpretation

- a. The headings to the clauses of this agreement are for reference and convenience purposes only and shall not aid in the interpretation of the clauses to which they relate.
- b. In this agreement unless a contrary intention clearly appears:
- (i) the singular shall include the plural and vice versa;
 - (ii) words indicating persons shall include partnerships, companies, closed corporations and other legal personae;
 - (iii) words indicating the one gender shall import and include the other genders.
- c. The following words shall have the meaning herein assigned to them unless the context otherwise indicates:
- (i) "Activation period" means the period from date of signature of the Service Agreement until effective date, or in the event of additional services, the date on which both parties to this agreement sign any proposal;
 - (ii) "Agreement" means the Application for Services and these Terms and Conditions
 - (iii) "Charges" - means such fees and charges applicable for the provision of services as set out in the tariff including but not limited to connection charges, monthly subscription charges, late payment charges, administrative- and/or reconnection fees and call charges and any other charges determined by MTC and notified to the Subscriber from time to time and which are payable by the Subscriber to MTC in consideration for the provision of the Services by MTC.
 - (iv) "Commencement Date" - means (i) if no conditions are imposed by MTC in terms of clause 6.(c)(ii) or 6.(c)(iii), the date upon which MTC signs the acceptance of the application by the Subscriber to conclude this agreement; and (ii) if conditions are imposed in terms of sub-clause 6.(c)(ii) or 6.(c)(iii), a date 11 (eleven) days after the date of such acceptance;
 - (iii) "Connection Date" means the installation date
 - (iv) "Connection Charges" - means the initial charge for connection to the network as set out in the tariff;
 - (v) "Contract Period" - means either a 12 (twelve), 24 (twenty-four) or 36 (thirty-six) month period as indicated by the Subscriber on the first page of the "Application for Services" Agreement.
 - (vi) "CRAN" means the Communications Regulatory Authority of Namibia;
 - (vii) "Critical Maintenance" means any maintenance in which MTC is unable to forewarn its customers. Critical Maintenance can occur immediately, during any time of the day and is usually due to factors outside the control of MTC. MTC reserves the right to have the critical maintenance considered as part of the service.
 - (viii) "Customer" means Subscriber and who is a natural person and/or legal entity who applies or subscribes to or utilizes the Service provided in terms of this Agreement. The reference to Customer and Subscriber may be used interchangeably.
 - (ix) "Customer premises equipment (CPE)" mean any telephone or other service provider equipment that is located on the customer's premises (physical location) rather than on the provider's premises or in between.
 - (x) "Days" means calendar days unless qualified by the word 'business', in which instance a "business day" shall mean any day other than a Saturday, Sunday or public holiday as set out in the Public Holidays Act, No. 26 of 1990;
 - (xi) "Due Date" - means the date 30 (thirty) days after the Preferred Billing Date;
 - (xii) "Emergency situation" means a situation which presents imminent danger to a natural person's life who is within the borders of the Republic of Namibia, which situation does not include a crime.
 - (xiii) "Fault" shall mean the failure of a service to the extent that the service or some aspects of the services are unavailable.
 - (xiv) "Leased Line" consist in offering circuits that offer a fixed "point-to-point" transmission capacity between termination points on the network.
 - (xv) "Leased line fee" means the fee to be paid by the Subscriber for the services to be provided in terms of the leased line.
 - (xvi) "License" - means the license granted to MTC by Communications Regulatory Authority of Namibia (CRAN) or its predecessor to operate the Network;
 - (xvii) "Monthly Subscription Charge" - means the monthly charge for being connected to the system as set out in the tariff;
 - (xviii) "Network" - means the GSM Telecommunications Network provided by MTC in Namibia, and any other GSM Telecommunications Network provided by an operator situated inside and or outside the Republic of Namibia with whom MTC may contract to provide services to subscribers to the Network in Namibia;
 - (xix) "Network Equipment" are physical devices which are required for communication and interaction between devices on a computer network.
 - (xx) "Network Telecommunications Equipment" - refers to hardware used mainly for telecommunications such as transmission lines, multiplexers and base transceiver stations. It encompasses different types of communication technologies including telephones, radios and even computers.
 - (xxi) "Offer" - shall mean the application appearing in the Application for Services Agreement made by the Subscriber to MTC or its Authorized Dealers to conclude this Agreement;
 - (xxii) "ONT Equipment" Optical Network Termination, also called ONU (Optical Network Unit), refer to the consumer end equipment in an optical Fiber to the Home (FTTH) link. The ONT/ONU receives downstream data from the OLT (Optical Line Termination) through the passive optical splitters and provides video, voice, and broadband services to the consumer.
 - (xxiii) "Preferred Billing Date" - means the preferred billing date selected by the Subscriber in section 2" Payment Details", in the Application for Services Agreement;
 - (xxiv) "Products" - means any handset or other piece of apparatus together with additional accessories thereto that MTC may deliver to the Subscriber in terms of this Agreement.
 - (xxv) "Services" - means basic telecommunication services providing two-way communication via the system and such other additional telecommunication services as MTC may at its discretion choose to make available from time to time by means of the system and or the sale, delivery and installation to the Subscriber by MTC.
 - (xxvi) "Subscriber" - means the Subscriber named on the Application for Services Agreement. The reference to Customer and Subscriber may be used interchangeably.
 - (xxvii) "The System" - as defined by the European Technical Standard Institute operated by MTC.
 - (xxviii) "The tariff" - means the tariff of charges as published and amended from time to time by MTC at its sole discretion;
 - (xxix) "Telecommunications" shall in these present Terms and Conditions include all electronic communications, with the exception of mobile services.

2. Purpose of Agreement

Present agreement defines the terms and conditions under which MTC shall provide FTTO (Fiber to the Office market) and FTTH (Fiber to the Home) Services (MTC Spectra) to its Subscribers.

3. Duration of Offer

The Offer shall be irrevocable for a period of 30 (thirty) days from date of signature of the application overleaf, and this agreement, with the exception of clause 7, shall only come into operation upon the acceptance by MTC of the Offer before the expiry of the said period.

4. Application for Service

- a. A Subscriber who wishes to subscribe to the Services shall do so by way of an "official" application to MTC. The application shall be accompanied by all relevant documents as stipulated by MTC on the application "form" and any additional documents as required at the time of submission of the application form.
- b. The Subscriber upon application assumes implicit acceptance of any possible constraints imposed by CRAN and/or any third party and/or any situation which MTC has no control over.
- c. The Subscriber upon application acknowledges that MTC will provide access to the Services and remedy any network disturbances in accordance with its service quality obligations and telecommunication quality obligation.

make the connection



d. The rights and obligation of this Agreement will only become enforceable once installation takes place and client will only be charged once Services has been activated.

e. Should the customer cancel the application prior to approval, the Subscriber shall bear the cost of any expenses incurred by MTC and or any third party during the application.

5. Undertakings by the Subscriber

The Subscriber acknowledges that the information and/or documents supplied by him to MTC as appearing on the overleaf is correct and may be submitted by MTC to any credit reference agency.

6. Rights of MTC in respect of Offer

a. MTC shall have the right, without furnishing any reason therefore, to accept or reject the Offer.

b. In the event of the Offer being rejected by MTC, MTC shall forthwith notify the Subscriber of such rejection.

c. In the event of the Offer being accepted by MTC such acceptance may be unconditional, subject only to the terms of this Agreement, or may be subject to:

(i) A limit on the type and/or value of services to be made available to the Subscriber;

(ii) A limit on the type and or value of services to be made available, and payment of a deposit to be determined by MTC;

(iii) A pre-payment and or a deposit in an amount to be determined by MTC for any charges to be made.

d. In the event of the Offer being accepted, MTC shall forthwith notify the Subscriber thereof, and shall notify him/her whether such acceptance is unconditional or subject to any of the conditions imposed in terms of clause 6(C), provided however that all or any of the conditions imposed in terms of the aforesaid clause 6(c) shall at all times be subject to the relevant provisions of this agreement.

e. The initiative for this Agreement emanated from the Subscriber and this Agreement shall be deemed to have been concluded at the premises of MTC.

7. Payment on approval of Application

a. The Subscriber shall upon approval of the Offer, pay to MTC an amount that covers the installation cost and a full month's subscription charge as determined by MTC and notified to the Subscriber at the time of signature of the Offer. Future monthly subscription charges shall be payable monthly in advance.

b. Any pro rata usage from date of connection will be billed with the second subscriber invoice

c. The installation costs payable by the Subscribers shall be as follows:

(i) Home Subscribers shall pay an amount of N\$ 2 600. (excluding VAT).

(ii) Enterprise Subscribers shall pay an amount of N\$ 6 000. (excluding VAT).

(iii) The installation cost can vary subjected to the lay-out of the premises or building or due to special request made by the customer

(iv) In the event of clause (iii) MTC will supply the customer with a detailed quotation, upon approval and signature of same by the customer MTC shall proceed with installation.

8. Duration of the Agreement

a. This Agreement shall commence on the Commencement Date and shall endure for the Contract Period, subject to the provisions of Section 19, where after it shall continue indefinitely unless substituted by another Subscriber Service Agreement in respect of the services or terminated by either party giving to the other not less than 30 (thirty) days written notice of termination; provided that should the License be suspended or terminated by CRAN or other lawful authority, MTC may cancel this Agreement without notice, and/or suspend the Services until such time as the License is reinstated. Should the Subscriber decide to terminate this Agreement prior to the expiry of the initial Contract Period, for whatsoever reason, then and in such an event the Subscriber shall remain liable to MTC for his monthly Subscription Charges for the remaining months of the Contract Period.

b. In the event that the Subscriber giving 30 days' notice of his intention to terminate this Agreement as envisaged in clause 19 hereof, but requires to use the Service during the notice period, in that event MTC shall only disable the Services on the expiry of the notice period, however the account shall remain current and shall only be closed 60 days thereafter calculated from the first day of the Subscriber's notice of intention to terminate the Agreement.

9. Service Plans

a. A Subscriber may either elect an Enterprise Subscription Service Plan or a Home Subscription Service Plan.

b. Home Subscription Service Plan is only applicable for residential use, whereas Enterprise Subscription Service Plan is only applicable for use by Corporate Subscribers.

c. The Subscriber may apply to change from one Service Plan to the other during the currency of the contract period subject to MTC's prior approval and subject further to the following terms and conditions:

(i) The Subscriber has been on his current Service Plan for not less than 3 months;

(ii) The Subscriber shall pay a migration fee determined by MTC;

(iii) A Subscriber may only downgrade to a lower Service Plan at the discretion of MTC;

(iv) The change to the new Service Plan shall take effect as soon as the Subscriber pays the required fees and the system has provisioned the new Service Plan.

d. MTC shall have the right from time to time to amend the limit for the carry forward of included units as detailed in the tariffs.

e. Approval of the Subscriber's application for migration to a lower Service Plan is not guaranteed, it is subject to MTC's sole discretion.

f. Service plans and access to internet on all Home Spectra packages is subject to best contention rate of which MTC guarantees no less than 80% of the applied speed of the packages selected by the Subscriber.

g. Subscribers on the Enterprise Subscription Service Plans will receive a one-on-one download and upload ratio with no contention.

h. The Subscriber agrees that Home Subscriber Service Plans shall entail the following:

(i) Services shall be limited to best effort service provision;

(ii) Subscriber shall have access to torrent downloads (buffered to 512k);

(iii) (iii) MTC guarantees no contention, however, only guarantees speed of 80% of the applied speed of the subscriber package selection;

(iv) MTC shall provide upload/download at 3:1;

(v) The Home Subscriber Service Plan shall include a router, which shall be the property of the Subscriber;

(vi) This Service Plan shall only allow one static IP and /32 free IP address.

i. The Subscriber agrees that Enterprise Service Plans shall entail the following;

(i) MTC guarantees the Subscriber dedicated services;

(ii) MTC guarantees no Contention;

(iii) MTC shall provide upload/download at 1:1;

(iv) QoS at request for MPLS services

(v) MTC guarantees an SLA of 99.5%;

(vi) The Enterprise Subscriber Service Plans shall include a Router, which shall be the property of the Subscriber;

(vii) The Subscriber shall be provided with /30 free IP ranges.

10. Access to Services

a. MTC shall upon approval of the application implement the resources required to provide the Subscriber the Services for which the Subscriber has been approved for.

b. Upon approval of the Subscriber's application, the Subscriber shall submit themselves to a survey to be conducted by MTC.

c. The Customer undertakes to sign and agree to MTC's standard indemnity agreement prior to any survey to any inspections by MTC staff or any third party contractors appointed by MTC.

d. The purpose of the survey is to determine the physical conditions within the Subscriber's premises in order to determine the length of time to install the Equipment and provide the Service to the Subscriber.

e. It shall be the Subscriber's sole cost and responsibility to ensure that an underground access duct is available at the Subscriber's premises.

f. In the event the customer decide to do his own installation it shall be on the customers own cost and risk and installation will only continue after MTC inspects the equipment and deem it fit to proceed with the installation

11. Installations and Network Equipment

- a. Upon approval of an Enterprise Subscriber's application, the Enterprise Subscriber and MTC shall conclude a Service Level Agreement, in terms of which MTC guarantees the Subscriber a quality service for the duration of the Agreement.
- b. MTC shall upon approval of the application, attend to the installation of the Network Telecommunication Equipment on the premises on which the Services are required as stipulated on the application form;
- c. The Enterprise Subscriber agrees that any Network Equipment supplied by MTC and all related proprietary rights thereto shall remain the exclusive property of MTC and MTC shall in its sole discretion have the right to remove the Network Equipment on termination of this Agreement.
- d. The type and make of the Network Equipment installed at the Subscriber's premises may vary from time to time at MTC's sole discretion.
- e. Ownership of the CPE (Consumer Premises Equipment) shall pass to the Home Subscriber upon acceptance of the Offer by MTC, however, the ONT Equipment shall remain the sole property of MTC.
- f. The Enterprise Subscriber shall have an option to purchase or lease the Network Equipment from MTC upon termination of this Agreement.
- g. MTC shall advise on the internal installation and positioning of Network Equipment, however the overall installation and positioning of internal Network Equipment remains the responsibility of the Subscriber.
- h. If at the request of the Subscriber, MTC carries out internal installation, such costs shall be borne by the Subscriber. Such costs are expressly excluded from the installation fee.
- i. Notwithstanding any specific installation that may apply to a given Service, the cost of the standard installation of a connection to MTC's Network shall only cover the installation of the first telephone socket. Any additional work requested shall be invoiced to the Subscriber's account.
- j. The Subscriber shall provide MTC free of charge with a facility intended to receive the installations that has appropriate dimensions and is dry, clean and equipped with a fully functioning electrical socket. The Subscriber is bound to carry out at his own expense, the improvements necessary to be compliant, failing which MTC may refuse to carry out the said installation.
- k. If the Subscriber is not the owner of the premises on which the Services are to be provided and the owner opposes the installation on the premises, the installation will be deferred until such time that the dispute between the Subscriber and the owner is resolved. MTC shall not be held liable for the period of delay.
- l. Material that can disturb or deteriorate the Network Equipment and the telecommunication installation must not be connected to the network. MTC reserves the right to suspend the Services at any time if there exists any material that may cause interference with the Network, Network Equipment and/or pose health hazards to human life.
- m. All risk in and to any Network Equipment supplied by MTC shall pass to the Subscriber on the date on which the Network Equipment is installed at the Subscriber's premises;
- n. If the Network Equipment or part thereof is stolen, lost or damaged, the Subscriber shall immediately notify MTC in writing and until such notification has been received. The Subscriber shall remain fully liable for the costs and Network Equipment pertaining to such services.
- o. The Subscriber shall have an option to either hire their own contractors or utilize MTC's contractors at a cost.
- p. The Subscriber indemnifies MTC of any damages or disruptions that may occur at the Subscriber's premises.

12. Transfer and Installation of Network Equipment

- a. The Subscriber shall not transfer any Network Equipment to a third party.
- b. The Subscriber shall not abandon any of the Network Equipment. Should the Subscriber move from the premises, the subscriber shall give 30 days' notice of such intention to move and request the transfer of the Network Equipment to the new premises.
- c. The Subscriber shall be responsible for the installation charges at the new premises.
- d. Should the Subscriber abandon the Network Equipment, MTC reserves the right to terminate the services, however the Subscriber shall remain liable for the entire subscription period and any damages to the Network Equipment as a result of such abandonment.
- e. Prior to a Subscriber deciding to move or transfer to a different location, it is the Subscriber's responsibility to determine whether MTC can provide the same Service at the new address.
- f. When a Subscriber terminates a contract, due to the fact that MTC cannot transfer or move the Service to the new address, it shall be deemed as breach of contract.

13. Time Limits on Installation, Maintenance and or Repairs of Network Equipment

- a. MTC shall carry out the installation as quickly as possible subject to technical limitations and work load. The Network Equipment shall be delivered to the customer's premises within 15 business days' however, the period of installation shall be advised to the customer upon the completion of surveys to determine factors such as distance between the Subscriber's premises and existing FTTX distribution network, access from the street to the Subscriber's premises etc.;
- b. Should the premises not have the availabilities for the said connection, the Subscriber shall at its cost ensure that the premises are fully equipped for the said connection, by ensuring there is access from within the customer's premises to the pavement for the installation of the fiber cable and ensure an electrical connection point is available where the ONT (Optical Network Terminal) is.
- c. The Subscriber shall immediately notify MTC of any fault or error that may arise with the Network Equipment and MTC shall attend to the investigation of such notice with five business days.
- d. Upon investigation of the fault or error MTC shall advise the Subscriber on the period for the repair which shall not exceed 14 business days, unless the fault or error requires additional time for repair.
- e. MTC shall carry out maintenance on the Network Equipment installed at the Subscriber's premises on a bi-annual basis, or as frequently as required, at MTC's sole discretion.

14. Provision of Services by MTC

- a. MTC shall:
 - (i) Use its best endeavors to provide and maintain the availability of the Services to the Subscriber throughout the period of this Agreement, but does not warrant that the same will be provided without interruption including but not limited to interruptions that may occur as a result of force majeure and further does not warrant that the Services will not be suspended and or disconnected once the usage limit (if applicable) is attained by the Subscriber;
 - (ii) Rectify any fault in the Services at the earliest possible time and as prescribed by regulations as amended from time to time;
 - (iii) Employ qualified staff to render the Service and provide for the efficient and effective operation of the Services;
 - (iv) Provide the Subscriber with proper instructions in relation to the operation of the Services;
 - (v) Maintain a suitable information system to properly control the provision of the Services to the Subscriber.
- b. MTC shall provide the Services with effect from the Commencement Date provided that the Subscriber:
 - (i) Shall have paid the installation, connection and monthly subscription charges in advance, and
 - (ii) Shall have complied with any condition imposed in terms of sub-clauses 6. (c)(ii) or 6.(c)(iii).
- c. MTC shall provide the Services in terms of this Agreement to the best of its ability, but shall not be held liable for any faults and or losses attributable to force majeure. The Subscriber shall be liable for any repairs resulting from an occurrence of force majeure.

15. Reporting of Service Interruptions and or Faults and Maintenance of Telecommunication Services

- a. MTC shall maintain the Services against the payment of subscription fees payable for the first and subsequent duration of the Agreement as from date on which the Service has been provided;
- b. MTC reserves the right to levy charges in respect of any after-hours call-out maintenance where such fault is as a result of the Subscriber, its agents or employees' due to conduct, negligence, tempering, moving or adding of third party software or hardware to the standard equipment installed by MTC.
- c. MTC reserves the right to levy charges in respect of any callout made and where such a fault is caused by the Subscriber's own CPE (telecommunication-or-computer equipment), which is not type approved as per the applicable Regulations.
- d. A service is deemed to be in good order until MTC is advised otherwise by Subscriber.
- e. MTC shall attend to faults and or service interruptions within the time frame as prescribed in clause 12 of this Agreement.

16. Improper Use and Fair Usage Policy

- a. The Subscriber acknowledges that MTC is unable to exercise control over the content of information transmitted via its network. In these circumstances MTC does not accept liability of any kind for the transmission or reception by the Subscriber, or the Subscriber of infringing information of whatever nature;
- b. The Subscriber expressly agrees to indemnify MTC from any claim brought by third parties alleging that use of MTC Network by the Subscriber has infringed any intellectual property rights of any kind or any applicable Namibia or International legislation.
- c. If in MTC's reasonable opinion, the Subscriber is deemed to be abusing the Services in any way, MTC may ask the Subscriber to moderate behavior and in extreme cases, MTC may limit the speed, block access to data services or may disconnect the Subscriber.
- d. Currently the Subscriber's speed and data remains uncapped, however, same is subject to change at MTC's sole discretion on notice to customers. At which point best effort download and upload fair usage speed shall apply to the applicable service as set out in each data service plan product description. Fair usage policy will commence once a customer depletes the included data volume as set out in specific service plan Best Effort/ Download/Upload plan.
- e. The Subscriber's connection speed will depend on various factors, inter alia router, area of the Subscriber and/ or but not limited to network related issues.

17. Obligations of Subscriber

The Subscriber shall:

- a. Use only authorized Network Equipment;
- b. Not tamper with or in any way knowingly damage MTC's Network Equipment or cause any interference to the Network;
- c. Grant access to MTC, to its premises, Network Equipment, telephone ports and infrastructure;
- d. Forthwith inform MTC in writing of any change in his address;
- e. Not do or omit to do any act or thing, or act in any way which may damage any property or system or however cause the quality of the Services to be impaired;
- f. Comply with all reasonable or necessary requests for information made by MTC and comply with all other necessary or reasonable requests made by MTC;
- g. Comply with all reasonable instructions given by MTC in relation to the use of the Services;
- h. Not use or allow others to use the Services for any improper, immoral or unlawful purpose;
- i. If the Service includes the provision of Network Equipment:
 - (i) The Subscriber shall at his own expense, take out insurance cover on each and every Network Equipment utilized, and proof of such insurance shall be provided to MTC upon request;
 - (ii) The Subscriber's insurance cover shall include cover for Force Majeure.
- j. The Subscriber hereby undertakes that he shall not re-sell the Service Plan in order to make a profit or derive any income therefrom, unless the Subscriber specifically indicated same in their application form.

18. Assignment

- a. The Subscriber shall not cede, assign, transfer, encumber or delegate any of his rights or obligations in terms of this agreement to any third party without MTC's prior written consent.
- b. MTC shall be entitled at any time to cede, assign, transfer, encumber or delegate any of its rights, title, interest or obligation in terms of this Agreement to any third party without the Subscriber's consent and if, for any reason whatsoever, the consent of the Subscriber may be required, the Subscriber shall be deemed to have consented thereto in terms of this agreement.

19. Payment

- a. Notwithstanding any special conditions imposed in terms of clause 6.(c) the Subscriber shall pay to MTC all the Charges no later than the due date.
- b. Should the Subscriber fail to pay on or before the due date any amount falling due or payable to MTC under or arising from this agreement, then, without prejudice to such rights as may accrue to MTC consequent upon such failure, such overdue amounts shall bear interest at three percentage points above the prime overdraft rate charged from time to time by MTC's Banker.
- c. In the event of a Subscriber having elected to forward payment by mail, the payment shall only be deemed to be received upon MTC having received and processed same.
- d. In the event of a Subscriber having elected to effect payment by electronic banking or bank deposit, the payment shall only be deemed to have been received upon MTC receiving notification of such via bank statement.
- e. The Subscriber shall, if so required by MTC effect payments of all amounts payable hereunder by way of direct debit order or other recognized method of payment. The Subscriber shall not be entitled to withdraw or revoke such payment method during the period of this Agreement, without the prior written consent of MTC.
- f. If the Subscriber has selected the direct debit order option in Section 2 "Payment Details" of the Application for Services Agreement, he shall be deemed to have instructed and authorized MTC to draw against the account indicated with the bank/building society indicated, all charges due and payable by the Subscriber.

20. Suspension and/or Disconnection of Services

- a. MTC shall have the right without prejudice to any other right it may have in terms of this Agreement or in law, at any time and without notice to the Subscriber, to suspend the services or any part thereof (and MTC shall not be liable for losses incurred by the Subscriber as a result). The Subscriber to continue to pay the monthly charges in any of the following circumstances:
 - (i) For so long as the Subscriber remains in breach of any of its obligations in terms of this Agreement;
 - (ii) For so long as the Subscriber acts contrary to any of the provisions contained in this Agreement;
 - (iii) If the quality or the operation of the System or Services is adversely affected due to any act or omission on the part of the Subscriber;
 - (iv) If the Subscriber infringes the intellectual property rights of any person in relation to the provisions of this service;
 - (v) If the Subscriber should at any time, without the prior written consent of MTC, exceed the Usage Limit, if any, determined by MTC as set out in this Agreement;
- b. If the Services to the Subscriber are interrupted and/or suspended as a result of Subscriber's non- or insufficient payment, MTC shall automatically debit the Subscriber's account with a late payment charge / administrative charge and the Subscriber shall be liable to pay an administrative- and/or reconnection fee in an amount to be determined by MTC.
- c. Should the Services in terms of this Agreement be terminated by either Party before the end of the Contract Period at the request or due to any act or omission of the Subscriber, MTC shall be entitled, without prejudice MTC's rights in terms of this Agreement or in law, to claim from the Subscriber all payments agreed to in terms of this Agreement in lieu of such Services for the remainder of the contract.

21. Variation of Charges and Terms

- a. MTC may vary all or any of its charges by publishing an amended tariff, such variation to have immediate effect unless otherwise decided by MTC in its sole discretion.
- b. MTC reserves the right to vary the terms and conditions of this Agreement at its sole discretion, whether as a result of new legislation, statutory instruments, government licenses, amendments to the standard terms and conditions of MTC, any similar event or not and the Subscriber hereby consents to the said variation. MTC may at its sole discretion, elect to notify the Subscriber of any variation in writing or to publish such variation on its website and or at its principal place of business.
- c. MTC reserves the right, without cause or penalty to itself, to alter any name, code or number allocated by MTC from time to time for use in connection with the Services and the Subscriber indemnifies MTC against any liability arising from such alteration.

22. Termination

- a. Without prejudice to any other claims or remedies which MTC may have against the Subscriber arising from or pursuant to this Agreement or otherwise, MTC may terminate this Agreement by giving notice to the Subscriber with immediate effect in any of the following circumstances:
 - (i) Should the Subscriber fail to comply with any of the terms of this Agreement including but not limited to failure to pay any Charges on Due Date;
 - (ii) Should the Subscriber make or offer to make any arrangement or compromise with his creditors or commit any act or acts which may render the Subscriber liable to proceedings under the Insolvency Act 1936 or any statutory amendment or re-enactment thereof or where proceedings are commenced against the Subscriber under that Act or any similar Act.
- b. Should the Subscriber fail to pay any charges in terms of this Agreement, or should MTC terminate this agreement from

whatever cause arising, or should MTC institute action against the Subscriber pursuant to a breach by the Subscriber of this Agreement, then MTC shall be entitled to recover all legal and other costs incurred by it, which shall include but not be limited to:

- (i) Costs in connection with the tracing of the subscriber;
- (ii) All legal costs on the attorney and own clients scale;
- (iii) Collection commission that may legally be recovered from the Subscriber by MTC attorney or collection agent on the amount collected;
- (iv) MTC shall have the right to deduct such default amounts from any other existing bank or building society account(s) of the Subscriber as it deems fit, this right shall extend to third parties.

23. Business Subscriber

A Subscriber who utilizes the Business Package undertakes that he shall only cause Product users who are bona fide employed by the Subscriber to be connected to his Business Package. In the event it is established that he has connected non-employees to the Package he shall forfeit the benefits accruing to his account at the sole discretion of MTC.

24. Internal Law Enforcement

a. MTC may at any time disclose otherwise sensitive and confidential information to law enforcement agents requesting this information if presented with a warrant.

25. Theft or Loss of Product

- a. The Subscriber shall notwithstanding the loss, damage or other destruction of the Network Equipment, continue to pay MTC or any charges raised or levied by MTC.
- b. The Subscriber undertakes to notify MTC forthwith upon becoming aware of such damage or destruction and in this regard MTC shall not be liable to the Subscriber for loss incurred prior to the receipt of such written notification notwithstanding any loss, liability, damages or expenses howsoever incurred or suffered by the Subscriber pursuant thereto including, but not limited to, the fraudulent or other misuse of the products by any third party.

26. Liability

- a. This clause 26 specifies the entire liability of MTC including liability for negligence and in particular, without limitation, all other statutory, expressed, implied or collateral terms and conditions or warranties are excluded.
- b. MTC shall not be liable (including liability for negligence) for any loss or damages or injury to the Subscribers whatsoever no matter when or how, arising out of the provision of the Services or otherwise whether direct or indirect, consequential or contingent or whether foreseeable or not and in particular not be liable for the financial loss or loss of profits, contract, business anticipated, saving, use or goodwill.
- c. The Subscriber indemnifies MTC against any damages, costs or liability (including liability for MTC negligence) and services to the Subscriber, its employees, directors and/or agents together with all legal costs relating to any claim arising therefrom.
- d. Under no circumstances will MTC's liability, whether in contract or otherwise exceed a sum equal to the monthly subscription charges due for the remaining contract period payable at the date of the claim.
- e. The Subscriber indemnifies MTC against any damages, cost or liability arising from any illness or personal injuries suffered by the Subscriber as a result of the use of the product, irrespective of when or how and whether foreseeable or not together with all legal costs relating to any claim arising therefrom.
- f. The Subscriber acknowledges MTC's right to inform third parties of any breach by the Subscriber of its obligation in terms of this Agreement and the Subscriber indemnifies MTC in respect of any claim whatsoever arising from MTC's exercising of this right.

27. Consent to Jurisdiction

The Subscriber hereby consents to the jurisdiction of the Magistrate Court having jurisdiction over his person in respect of any action by MTC arising from this agreement or the cancellation hereof. This consent does not oust the jurisdiction of another competent court having jurisdiction and MTC shall be entitled in its discretion to institute action against the Subscriber in any court of competent jurisdiction. The parties agree that this consent is severable and shall apply even in cancellation of this agreement.

28. Out of Box Failure (OBF) Returns

- a. Where the selected Network Equipment are returned by the Subscriber within 10 (ten) days after delivery, because it is allegedly defective or faulty then MTC will replace the selected Network Equipment with equivalent products, provided such returned product are accompanied with proof of purchase indicating that such product has in fact been purchase from MTC.
- b. No return will be accepted by MTC unless the Subscriber:
 - (i) Can provide proof of purchase, which shall be in the form of a sales record or an invoice; and
 - (ii) Returns the complete unit of the selected Product including packaging, accessories (including but not limited to CD's containing software, manuals, AC Adapter (charger) and any other inclusive part of the selected Product).
 - (iii) Describe what caused the selected Product to malfunction; and
 - (iv) Allow MTC to inspect the selected Product for physical damage and/ or signs of liquid damage. There must not be any physical damage to the Product or it's accessories or signs of neglect due to physical abuse, liquid damage, screen scratched, dents or marks;
- c. The acceptance of any returned selected Product by MTC from the Subscriber is subject to the following terms and conditions:
 - (i) The selected product will be sent to the MTC Technical Centre for further testing and analysis.
 - (ii) Acceptance of the selected Product is not an admission of liability by MTC, that the selected Product is defective and faulty.
 - (iii) MTC will notify the Subscriber as soon as is reasonably possible of the results of any inspection, test and analysis. Should MTC not accept responsibility of the defect or failure due to physical damage and/or liquid damage to the Product, the Subscriber will be liable for the cost of the Product. MTC will bill the cost of the Product to the Subscriber's account within the next month of informing the Subscriber.

29. Notices and Domicilium

- a. For all purposes of this Agreement, the parties do hereby choose their domicilia citandi et executandi as follows:
 - (i) MTC at MTC Head Office, Corner of Mosé Tjitendero & Hamutenya Wanehepo Ndadi Street, Olympia Windhoek, Namibia;
 - (ii) The Subscriber at the Address selected in Section 1 "Subscription Details" in the Application for Services Agreement, as the case may be.
- b. Notices may be given either by delivery at the domicilium citandi et executandi selected in terms of clause 24 (a), of this, or shall be given by prepaid letter addressed to:
 - (i) MTC at P O Box 23051 Windhoek, Namibia
 - (ii) The Subscriber at the Address selected in Section 1 "Subscription Details" in the Application for Services Agreement provided that any notice given by the Subscriber to MTC by letter shall be given by prepaid registered letter.
- c. Any notice given by either party to the other shall:
 - (i) If delivered to the domicilium citandi et executandi of such person, be deemed to have been received upon such delivery
 - (ii) If posted by letter, be deemed, unless the contrary be proved, to have been received 7(seven) working days after delivery of such letter to the Post Office for posting.

30. Whole Agreement

This Agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreement, representation or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties save and except for the provision of the clause relating to the variation of the charges and terms.