Subscriber Service Agreement Terms & Conditions

1. Interpretation

1.1 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.

1.2 In this agreement, unless a contrary intention clearly appears:
a) The singular shall include the plural and vice versa;
b) Words indicating persons shall include partnerships, companies, closed corporations and other legal persons;

1.3 The following words shall have the meaning herein assigned to them unless the context otherwise indicates:

a) **"Agreement"** - means the Application for Services and these Terms and Conditions

b) **"Call Charge**" - means the charge for a specified unit of time set out in the tariff.

c) **"Cellular Number** - means the Mobile Station International Subscriber Directory Number programmed into each SIM card by MTC;

d) **"Charges"** - means the connection charges, monthly subscription charges, late payment charges, administrative and/or reconnection fees, 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;

e) **"Commencement Date"** - means (i) if no conditions are imposed by MTC in terms of the clause 6.3 (b) or 6.3 (c), 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 6.3 (b) or 6.3 (c), a date 11 (eleven) days after the date of such acceptance;

f) **"Connection Charges"** - means the initial charge for connection to the network as set out in the tariff;

g) **"Contract Period"** - means the selected Contract month period as indicated by the Subscriber on the first page of the "Application for Services" Agreement.

h) **"CRAN"** - means the Communications Regulatory Authority of Namibia

i) **"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;

j) **"Delivery"** - means the delivery of the Mobile Product to the Subscriber;

k) **"Due Date"** - means the date 30 (thirty) days after the Preferred Billing Date;

l) **"Emergency Situation''** - means a situation which presents imminent danger to the holder of the SIM card's life who is within the borders of the Republic of Namibia, which situation does not include a crime.

m) **"License"** - means the license granted to MTC by Communications Regulatory Authority of Namibia (CRAN) or its predecessor to operate the Network;

n) **"Minimum Service Plan"** - means any standard package with a reduced subscription fee, where such reduction is equivalent to the cost of the handset;

o) **"Mobile Product"** - means any handset, together with additional accessories thereto that MTC may deliver to the Subscriber in terms of this Agreement.

p) **"Monthly Subscription Charge"** - means the monthly charge for being connected to the system as set out in the tariff, inclusive of the monthly charge payable in respect of a Mobile Product, where applicable;

q) **"Network"** - means the GSM Cellular Mobile Telecommunications Network provided by MTC in Namibia, and any other GSM Cellular Mobile 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;

r) **"Offer"** - shall mean the application appearing in the Application for Services Agreement made by the Subscriber to MTC or its Authorised Dealers to conclude this Agreement;

s) "**Preferred Billing Date"** - means the preferred billing date selected by the Subscriber in section 2 ''Payment Details", in the Application for Services Agreement;

t) **"Router"** - means a device that is used to connect two or more computers or devices to each other and usually to the internet, via wired cables, or through a wireless signal.

u) **"Services"** - means that basic telecommunication service providing two-way communication of speech by wireless telephony 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, if applicable, of a Mobile Product to the Subscriber by MTC;

v) **"SIM Card"** - means a Subscriber Identification Module being a card issued the Subscriber which, when activated by MTC, enables the Subscriber to access the Service provided by MTC;

w) **"Subscriber"** - means the Subscriber named on the Application for Services Agreement;

x) **"The System"** - means the digital cellular mobile telecommunication system using the GSM standard as defined by the European Technical Standard Institute operated by MTC.

y) **"The tariff"** - means the tariff of charges as published and amended from time to time by MTC at its sole discretion;

z) **"Units"** - means minutes, SMSs or mb's;

2. Governing Law

This agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of Namibia.

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 4, shall only come into operation upon the acceptance by MTC of the Offer before the expiry of the said period.

4. Payment on Application

The Subscriber shall upon approval of the Offer pay to MTC an amount equal to a connection fee 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, and MTC may require, in its exclusive discretion, the Subscriber to pay a deposit in an amount as determined by MTC, and which deposit shall be held on a non-interest bearing account by MTC. At the expiration of this Agreement, all charges still outstanding at such date will be set-off against the said deposit. The remaining balance, if any, shall be refunded to the Subscriber. Any shortfall after set-off as aforesaid, shall be paid by the Subscriber within 7 (seven) days after the termination date of this Agreement.

5. Undertakings by the Subscriber

The Subscriber acknowledges that the information 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

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

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

6.3 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:

a) A limit on the type and/or value of services to be made available to the Subscriber;
b) A limit on the type and/or value of services to be made available, and payment of a deposit to be determined by MTC;
c) A pre-payment and/or a deposit in an amount to be determined by MTC for any charges to be made.

6.4 In the event of the Offer being accepted, MTC shall forthwith notify the Subscriber thereof, and shall notify him whether such acceptance is unconditional or subject to any of the conditions imposed in terms of clause 6.3, provided however that all or any of the conditions imposed in terms of the aforesaid clause 6.3 shall at all times be subject to the relevant provisions of clause 12 hereunder.

6.5 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. Service Plans

7.1 The Subscriber shall have an option of four Service Plans in terms of this Agreement namely:

a) Service Plan;
b) Service and Mobile Product Plan;
c) The Revived Service Plans; and or
d) Out of Bundle Service Plan.

7.1.1 Service plan
a) The Subscriber shall pay a monthly subscription fee in exchange for the use of the network and bundled services offered in terms of the Service Plan, such Services being voice minutes, SMSes, and data, for the period subscribed to.
b) The Subscriber shall not be eligible for a Mobile Product under the Service Plan.
c) Should a Subscriber opt to migrate to the Service and Mobile Product Plan, the subscriber will pay a buy-out fee to the value of the Agreement.
d) All Services utilized after the bundled services have been depleted will be charged on the out of bundle rate.

7.1.2 Service and Mobile Product Plan
a) The Subscriber shall pay a monthly subscription fee in exchange for the use of the network, a Mobile Product and bundled Services offered in terms of the Service and Mobile Product Plan, such Services being voice minutes, SMSes and data for the period subscribed to.
b) The Subscriber shall be charged simple interest at 10% per annum, subject to amendment at MTC's sole discretion.
c) The Subscriber's Service Plan and Mobile Product Plan must run concurrently. The Subscriber cannot have a Mobile Product Plan without a Service Plan and the duration of the Mobile Product Plan may not exceed that of the Service Plan.
d) All services utilized after the bundled services have been depleted will be charged on the out of bundle rate;
e) The Subscriber shall upon expiry of the agreement, continue to pay a subscription fee for the use of services and the network only, unless terminated in terms of clause 8 below.

7.1.3 Out of Bundle Service Plan
a) The Subscriber shall pay a monthly subscription fee in exchange for the use of the network and unbundled services offered in terms of the Out of Bundle Service Plan only.
b) Such services being voice minutes, SMSes and data for the period subscribed to.
c) The Services utilized in terms of this plan will be charged at out of bundle rate.

7.1.4 Netman
a) The Subscriber shall pay a monthly subscription fee in exchange for the use of the network and bundled Services offered in terms of the Netman packages, such Services being data.
b) Subscribers on specified packages shall receive a Router to enable the use of the Services, which Router shall remain the ownership of the Subscriber during and at the termination of the Agreement.
c) Unused Free Fair Use Policy bundle as per Service Plan will not be carried over to the next month/Bill Cycle.

7.2 The Subscribers on the Service Plan and Mobile Product Plan & Service Plan, shall have the right to change from one Service Plan to another during the currency of the contract period subject to MTC's prior approval and subject further to the following terms and conditions:

a) The Subscriber must have been on the current Service Plan for no less than 3 months;
b) At the discretion of MTC a Subscriber may migrate to a lower Service Plan, upon which the Subscriber shall have to pay a migration fee. Such migration fee will be equivalent to 6 months subscription fees or the number of months remaining on the Agreement, whichever is lesser.
c) In the event the Subscriber is upgrading to a higher Service Plan and has accumulated units, he shall carry over the units to the new Service Plan but he shall not be entitled to a replacement of his Mobile Product
d) 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.
e) 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.

7.3 The Subscribers on the Revived Service Plans, shall have the right to change from one Service Plan to another during the currency of the Contract Period subject to MTC's prior approval and subject further to the following terms and conditions:

a) The Subscriber should have been on their current Service Plan for not less than 3 months;
b) Charges to be determined based on the Service Plan a Subscriber would be migrating from and migrating to.
c) In the event the Subscriber is upgrading to a higher Service Plan and has accumulated units, he shall carry over the units to the new Service Plan but he shall not be entitled to a replacement of his Mobile Product until the expiry of the contract period and only upon renewal of his Agreement on a Service Plan that includes a Mobile Product;
d) 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.
e) 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.

8. Duration of the Agreement

8.1 Service Plan
a) This Agreement shall commence on the Commencement Date and shal endure for the Contract Period, subject to the provisions of clause 13, 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 any other lawful authority, MTC may cancel this Agreement without notice, and/ or suspend the Services until such time as the License has been reinstated.
b) 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.

8.2 Service Plan and Mobile Product Plan
a) This Agreement shall commence on the Commencement Date and shall endure for the Contract Period subject to the provisions of clause 13 and 7.2 (c), 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.
b) 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.
c) Thirty (30) days prior to the expiry of the initial Contract Period, MTC shall, in writing notify the Subscriber that his/her contract is lapsing on a specific date and that he or she is entitled to extend the Agreement for a further Contract Period. The extension of the Subscription Agreement in accordance with this clause shall be in writing and shall be signed by or on behalf of both parties. In the event of such an extension, the remaining provisions of the Subscription Agreement will apply.
d) Where the Agreement is not extended in accordance with the provisions of clause 8.2 (c), the Subscriber shall be afforded a three months grace period within which the Subscriber shall either renew or terminate the Agreement. Should the Subscriber not renew or terminate the Agreement within the specified period the Subscriber shall be automatically transferred to the minimum Service Plan.

8.3 Netman
a) This agreement shall commence on the commencement date and shall endure for the Contract Period, subject to the provisions of clause 13, where after it shall continue indefinitely unless 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 any other lawful authority, MTC may cancel this Agreement without notice, and/ or suspend the Services until such time as the License has been reinstated.
b) In the event that the Subscriber gives 30 days' notice of his intention to terminate this Agreement as envisaged in clause 13 hereof, but requires to use the Services during the notice period, in that event MTC shall only disable the SIM card 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. Provision of Services by MTC

9.1 MTC shall:

a) Use its best endeavors to provide and maintain the availability of the System to the Subscriber throughout the period of this Agreement, but does not warrant that the same will be provided without interruption and does not warrant that the Services will not be suspended/disconnected once the usage limit (if applicable) is attained by the Subscriber.
b) Rectify any fault in the System at the earliest possible time;
c) Employ qualified staff to render the Services and provide for the efficient and effective operation of the System;
d) Provide the Subscriber with proper instruction in relation to the operation of the System;
e) Provide the Subscriber with a Cellular number, SIM card and connect the Subscriber to the Network pursuant to the provisions of this Agreement;
f) Maintain a suitable information system to properly control the provision of the Services to the Subscriber.

9.2 MTC shall provide the Services with effect from the Commencement Date provided that the Subscriber:

a) Shall have paid the connection and monthly subscription charges in advance, and
b) Shall have complied with any condition imposed in terms of sub-clauses 6.3 (b) or 6.3 (c).

9.3 Notwithstanding the provision of the above, the Subscriber acknowledges and agrees that the billing of charges that relate to roaming charges made and received by the Subscriber, are dependent on the receipt of the call records from the relevant roaming network thus the Subscriber may exceed his usage limit without the service being suspended or disconnected. Therefore, the roaming charges will only be billed to the Subscriber's account upon receipt of these records by MTC.

10. Obligations of Subscriber

The Subscriber shall:
10.1 Use only authorized SIM cards;

10.2 Not tamper with or in any way knowingly damage the SIM card;

10.3 Forthwith inform MTC in writing of any change in his address;

10.4 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;

10.5 Comply with all reasonable or necessary requests for information made by MTC and comply with all other necessary or reasonable requests made by MTC;

10.6 Comply with all reasonable instructions given by MTC in relation to the use of the Cellular Number, the SIM card and the Services;

10.7 Not use or allow others to use the Services for any improper, immoral or unlawful purpose;

10.8 If the Service includes a Mobile Product:
10.8.1 The Subscriber shall at his own expense, take out insurance cover on each and every Mobile Product subscribed to, and proof of such insurance shall be provided to MTC upon request;
10.8.2 The Parties hereby agree that the ownership in the Mobile Product shall pass to the Subscriber at the Commencement Date, provided that the Subscriber shall have paid all the payments stipulated under clause 4 (including the monthly subscription charges, the connection fee and a deposit amount) in respect of the Contract Period in full;
10.8.3 Risk in the Mobile Product shall pass and remain with the Subscriber upon its delivery to the Subscriber by MTC or its Authorized Dealer.
10.8.4 Notwithstanding any provision to the contrary, this Agreement shall not be affected by the theft or loss or damage of the Mobile Product. The Subscriber shall continue to be liable for payment of monthly subscription fee and all charges arising from this Agreement.

10.9 The Subscriber hereby undertakes that he shall not re-sell the Service Plan in order to make a profit or derive any income therefrom.

10.10 Unless otherwise specified, the Subscriber shall comply with the Code of Conduct of MTC.

11. Assignment

11.1 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.

11.2 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.

12. Payment

12.1 Notwithstanding any special conditions imposed in terms of clause 6.3 the Subscriber shall pay to MTC all the Charges no later than the due date.

12.2 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, 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.

12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 In the event that MTC is undergoing maintenance on its network or system for a period longer than one hour and is unable to control the usage limit during that period, it will inform Subscribers via text message on their dedicated cellular numbers, and any activity done during that period will be billed offline. The Subscribes specifically agrees that in the event his or her usage limit is exceeded during that period or as a result of usage during that period, he/she will be liable for the full charges used. MTC's failure to disconnect or suspend the Services of the Subscriber, when the Subscriber's charges have reached/exceeded the usage limit during that period shall not in any way entitle the Subscriber to withhold payment of all or any charges on due date.

13. Suspension and/or Disconnection of Services

13.1 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 shall continue to pay the monthly charges in any of the following circumstances:

13.1.1 For so long as the Subscriber remains in breach of any of its obligations in terms of this Agreement;
13.1.2 For so long as the Subscriber acts contrary to any of the provisions contained in this Agreement;
13.1.3 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;
13.1.4 If the Subscriber infringes the intellectual property rights of any person in relation to the provisions of this Service;
13.1.5 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.

13.2 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.

13.3 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 the Subscriber all payments agreed to in terms of this Agreement in lieu of such Services for the remainder of the Agreement.

14. Variation of Charges and Terms

14.1 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 at its sole discretion.

14.2 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.

14.3 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.

15. Termination

15.1 Notwithstanding any other provision of this Agreement, MTC shall at any time terminate this Agreement in its entirety without cause if it deems the conduct of the Subscriber to not be within the public interest, immoral or contravening any law, provided that a thirty (30) day written notice is given to the Subscriber of MTC's intent to terminate.

15.2 Notwithstanding any other provisions of Agreement, 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:

15.2.1 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;
15.2.2 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.

15.3 Should the Subscriber fail to pay any charges in terms of this Agreement, 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:

15.3.1 Costs in connection with the tracing of the Subscriber or the Mobile Product;
15.3.2 All legal costs on the attorney and own clients scale;
15.3.3 Collection commission that may legally be recovered from the Subscriber by MTC attorney or collection agent on the amount collected;
15.3.4 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
15.3.5 The cost relating to the evaluation, removal, transport, repairs, maintenance and storage of the Mobile Product and all costs \ incurred in order to obtain possession of the Mobile Product.

15.4 Notwithstanding the provisions of this clause, a subscriber may terminate his Service and Mobile Plan Agreement on 30 days' notice and upon payment of a penalty fee equivalent to the full value of the remaining period of the Agreement a Subscriber on the Out of Bundle Service Plan may terminate his contract on 30 days' notice to MTC.

15.5 A Subscriber may terminate his current Agreement if they wish to downgrade to a lower Plan upon payment of a penalty fee equivalent to 6 months' subscription fees or the value of the remainder of the Agreement whichever is lesser.

16. Business Subscriber

A Subscriber who utilizes the Business Package undertakes that he shall only cause Mobile 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.

17. Netman Subscribers

17.1 Should a Subscriber subscribe to the Netman Services and is unable to receive the Services where they are currently residing;

17.1.1 The Subscriber will have 15 days to report that they do not have network signal at their current place of residence;
17.1.2 The technical team will complete an investigation to ensure that this indeed the case;
17.1.3 If the technical team determines that this is the case and an antenna is required in order to provide the Service, Subscribers currently on the unlimited package or the 20 GB package will not need to pay to have the antenna installed. However, if a Subscriber subscribes to any other package, the Subscriber will need to pay for the installation or has the option to upgrade to one of the two packages mentioned above in order not to have to pay for the installation and equipment.
17.1.4 MTC will bear the costs of the installation and removal of the antenna if the Subscriber is currently on the Unlimited and 20 GB packages or if the Subscriber opts to migrate to the Unlimited and 20 GB packages, however if a Subscriber is on a lower package, the Subscriber will bear the costs of the installation and removal of the antenna.
17.1.5 Notwithstanding the above, the antenna will always remain the property of MTC.
17.1.6 If the Subscriber is unable to receive the service or does not wish to upgrade in order to get the free antenna and installation, the Subscriber may return the Netman within 15 days and be refunded. The termination fee will be waived.
17.1.7 Should the Subscriber not return the Netman within 15 days, the Subscriber accepts that that they are satisfied with the services received, as such the Agreement will not at a later stage be cancelled based on network related issues.

17.2 Should the Subscriber relocate to another town within Namibia and or another suburb after having subscribed to the Netman Services and the process in clause 6 has been complied with at the initial address chosen by the Subscriber to receive the Services and the Subscriber is unable to use the Services at the new address, then the Subscriber will be liable for the remainder of the Contract Period.

17.3 Should the Subscriber move to another country during the Contract Period, the Subscriber will be liable for the remainder of the Agreement.

18. Internal Law Enforcement

18.1 MTC may disclose otherwise sensitive and confidential information relating to the whereabouts of a SIM card holder to law enforcement agents requesting this information for purposes of an emergency situation;

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

19. Theft or Loss of SIM card or Mobile Product

19.1 The Subscriber shall notwithstanding the loss, damage or other destruction of the SIM card or the mobile product with or without the SIM card, continue to pay MTC or any charges raised or levied by MTC.

19.2 The Subscriber undertakes to notify MTC forthwith upon becoming aware that the SIM card is lost, stolen, damaged or destroyed 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 SIM card by any third party.

19.3 MTC may at its discretion, and without any obligation to do so, replace such lost, stolen, damaged or destroyed SIM card as soon as it is reasonable possible to do so and may charge for the replacement of such SIM card.

20. Liability

20.1 This clause 20 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.

20.2 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.

20.3 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.

20.4 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.

20.5 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 Mobile Product, irrespective of when or how and whether foreseeable or not together with all legal costs relating to any claim arising therefrom.

20.6 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.

21. Password and/or One Time PIN

If the Subscriber has a password or One Time PIN (OTP) sent to his or her SIM Card or stored on his or her Mobile phone, the Subscriber herewith undertakes to keep it secure and that no other person shall use the Service utilising the Subscriber's password or OTP, and further acknowledges that he or she are responsible for ensuring that no unauthorized access to the password or OTP is obtained, and that you shall be liable for all such activities conducted pursuant to such use, whether authorised or not.

22. Disputes

Any unresolved dispute between the Subscriber and MTC may be referred to CRAN for adjudication.

23. Mobile Product Warranties

MTC shall provide warranty of the handset for a period of 12 months or 24 months, dependent on the duration of the Agreement subscribed too. The Subscriber shall however, be responsible for the insurance of the handset.

24.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.

25. Abuse of Emergency 112 Number.

25.1 The Subscriber acknowledges and agrees that his number can be blocked by MTC in the event the Subscriber abuses the emergency number 112 in any manner, and at the discretion of MTC;

25.2 The Subscriber further acknowledges that MTC shall impose a penalty fee of N$ 100.00 to enable the Subscriber to unblock his/her number.

26.Out of box Failure (OBF) Returns

26.1 Where the selected Mobile Product is returned by the Subscriber within 10 (ten days after delivery, because it is allegedly defective or faulty then MTC will replace the selected Mobile Product with equivalent Mobile Products, provided such returned product is accompanied with proof of purchase indicating that such product has in fact been purchased from MTC.

26.2 No return will be accepted by MTC unless the Subscriber:
26.2.1 Can provide proof of purchase, which shall be in the form of a sales record or an invoice; and
26.2.2 Returns the complete unit of the selected Mobile 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 Mobile Product).
26.2.3 No return will be accepted if it is due to the Subscriber's Personal preference of Mobile Product model or Mobile Product color. On return of the selected Mobile Product, the Subscriber shall:
26.2.3.1 Describe what caused the selected Mobile Product to malfunction; and
26.2.3.2 Allow MTC to inspect the selected Mobile Product for physical damage and/ or signs of liquid damage. There must not be any physical damage to the Mobile Product or it's accessories or signs of neglect due to physical abuse, liquid damage, screen scratched, dents or marks;

26.3 The acceptance of any returned selected Mobile Product by MTC from the Subscriber is subject to the following terms and conditions:

26.3.1 The selected Mobile Product will be sent to the MTC Technica Centre for further testing and analysis.
26.3.2 Acceptance of the selected Mobile Product is not an admission of liability by MTC, that the selected Mobile Product is defective and faulty.
26.3.3 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 Mobile Product, the Subscriber will be liable for the cost of the Mobile Product. MTC will bill the cost of the Mobile Product to the Subscriber's account within the next month of informing the Subscriber.

27. Marketing

MTC reserves the right to notify Subscribers of any information which MTC in its sole discretion deems relevant and reserve the right to market its products by way of SMS.

28.Notices and Domicilium

28.1 For all purposes of this agreement, the parties do hereby choose their domicilia citandi et executandi as follows:

28.1.1 MTC at MTC Head Office, Corner of Mosé Tjitendero & Hamutenya Wanehepo Ndadi Street, Olympia Windhoek, Namibia;
28.1.2 The Subscriber at the Address selected in section 1 "Subscription Details" in the Application for Services Agreement, as the case may be.

28.2 Notices may be given either by delivery at the domiciilium citandi et executandi selected in terms of clause 24 (a), of this, or shall be given by prepaid letter addressed to:

28.2.1 MTC at P O Box 23051 Windhoek, Namibia
28.2.2 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.

28.3 Any notice given by either party to the other shall:

28.3.1 If delivered to the domicilium citandi et executandi of such person, be deemed to have been received upon such delivery
28.3.2 If posted by letter, be deemed, unless the contrary be proved, tohave been received 7 (seven) working days after delivery of such letter to the Post Office for posting.

29. 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.