



**ADDENDUM TO THE MTN SP SUBSCRIBER CONTRACT TERMS AND CONDITIONS, (this "Addendum") APPLICABLE TO CONSUMERS**

**IMPORTANT – PLEASE READ THIS ADDENDUM CAREFULLY - \*\*This Addendum is part of Your Contract with MTN SP. This Addendum contains changes to the MTN SP Consumer Subscriber Contract Terms and Conditions and also contains additional terms and conditions which are not included in the MTN SP Consumer Subscriber Contract Terms and Conditions, but will also form part of Your contract with MTN SP.**

By signing this Addendum, You and MTN SP agree as follows:

- The purpose of this Addendum** is to change some of the terms and conditions in the MTN SP Subscriber Contract Terms and Conditions (the "**MTN SP Consumer Subscriber Contract**"). These include changes to bring the MTN SP Consumer Subscriber Contract in line with the Consumer Protection Act, 68 of 2008 (the "**Consumer Protection Act**"). This Addendum also contains new terms and conditions which are not included in the MTN SP Consumer Subscriber Terms and Conditions and which will form part of Your contract with MTN SP.
- Contract Documents**: The MTN SP Consumer Contract Application Form signed by You, the MTN SP Consumer Subscriber Contract Terms and Conditions and this Addendum to the MTN SP Consumer Subscriber Contract Terms and Conditions ("this Addendum") together make up Your contract with MTN SP ( the "**Contract Documents**"). If there is any conflict or inconsistency between the content of this Addendum and the content of any of the other Contract Documents, the contents of this Addendum will prevail. Except to the extent expressly deleted or amended in this Addendum, the remaining provisions of the Contract Documents shall remain unchanged and of full force and effect.
- Please keep the Contract Documents and the following documents in a safe place** and provide them to MTN SP whenever You have a query or wish to exercise a consumer right:
  - MTN SP Customer Pick-up Document (CPD) or Proof of Delivery (POD); and
  - MTN SP Invoice.
- Read and Understand Important Terms and Conditions**: Please read and make sure You understand all the terms and conditions contained in the Contract Documents and Your legal rights and obligations that result from You signing the Contract Documents and the CPD or POD.  
Even though all the terms and conditions contained in the Contract Documents are important, **make sure that You take notice of**, and read and understand the **terms and conditions** that have been drawn to Your attention either by using **blocks, or which are written in bold, capital or italic letters**.  
**Please also pay special attention to Section D (Assumptions of risk and/or liability by You) and Section E (Acknowledgments of fact by You) of this Addendum which contain important notices for Your attention.**

**A. CONSUMER PROTECTION ACT:**

To the extent that the Contract Documents or any goods or services provided under the Contract Documents are governed by the Consumer Protection Act, 2008 (the "**Consumer Protection Act**"), no provision of the Contract Documents is intended to contravene the applicable provisions of the Consumer Protection Act, and therefore **all provisions of the Contract Documents must be treated as being qualified, to the extent necessary, to ensure that the applicable provisions of the Consumer Protection Act are complied with.**



## **B. DELETED TERMS:**

*The following clauses in the MTN SP Consumer Subscriber Contract are of no force or effect and are deleted from the MTN Consumer Subscriber Contract from the date that the MTN SP Consumer Contract Application Form is signed by You:*

- Clause 2.1.2;
- Clause 2.3;
- Clause 9.12.3;
- Clause 9.14 ;
- Clause 10.11.2;
- The whole of Part II: Conditions for sale of Mobile Device/s at a subsidised Price (including all of Clauses 11 to 11.11).

## **C. AMENDED TERMS:**

*The following clauses in the MTN SP Consumer Subscriber Contract are amended from the date that the MTN SP Consumer Contract Application Form is signed by You, in the way set out below:*

### **CLAUSE 2 - CANCELLATION OF CONTRACT & CANCELLATION CHARGES:**

Numbered clauses 2.1, 2.1.1 and 2.2 are amended as follows:

**Clause 2.1** - "This Contract will start on the date of Activation of a SIM Card issued to You by MTN SP ("commencement date") and will, subject to the further provisions of this Contract, continue for the Initial Contract Period. MTN SP shall provide You with notice, as required under the Consumer Protection Act, of (i) the end date of the Initial Contract Period; (ii) any material changes that would apply if the Contract is to be renewed or if it otherwise continues beyond the end of the Initial Contract Period (for example any increase in the fees applicable to Your Contract); and (iii) Your options to either terminate the Contract at the end of the Initial Contract Period, or to agree to a renewal of the Contract for a further fixed term Contract Renewal Period. At the end of the Initial Contract Period or any Contract Renewal Period (as the case may be) this Contract will continue automatically on a month to month basis, but it can be cancelled:"

**Clause 2.1.1** - "by You, if You are a natural person,

- (i) at any time by giving MTN SP at least 20 (twenty) business days' notice of the cancellation in writing or in any other recorded manner and form; OR
- (ii) at the end of the Initial Contract Period or Contract Renewal Period (as the case may be) by giving to MTN SP notice of cancellation in writing or in any other recorded manner and form, no later than the end of the Initial Contract Period or Contract Renewal period (as the case may be); OR
- (iii) where this Contract is continuing on a month-to-month basis after the end of the Initial Contract Period or of a Contract Renewal Period (as the case may be) and has not yet been renewed by You and MTN SP for a further fixed



term, by giving MTN SP notice of cancellation in writing or in any other recorded manner and form, no later than the end of the relevant month.

The definition of 'writing" in clause 1.36 of the MTN SP Consumer Subscriber Contract will not apply to this clause 2.1.1."

**Clause 2.2** - "If this Contract is cancelled for any reason, including (but not limited) to situations where this Contract is cancelled before the end of the Initial Contract Period or a Contract Renewal Period (as the case may be), then You will be required to pay MTN SP all amounts which are unpaid and which are payable by You in terms of this Contract up to the date that this Contract ends. This includes, but is not limited to, the Charges, the Monthly Service charges and the Usage Charges that You have incurred up to and including the date that this Contract ends. Where this is allowed by the Consumer Protection Act, You will also be required to pay a reasonable cancellation penalty, which will be calculated taking into account the applicable requirements and factors which may be prescribed by law. This is in addition to Your other payment obligations in clause 4, where applicable."

Numbered clauses 2.1.3 and 2.4 remain unchanged.

### **CLAUSE 3 - SUPPLY OF SIM CARDS AND NETWORK SERVICES:**

Clause 3.3 is amended as follows:

**Clause 3.3** – "MTN SP will make every commercially reasonable effort to promptly comply with any supply and/or delivery requirements recorded in the Order."

The remainder of clause 3 remains unchanged.

### **CLAUSE 4 - CHARGES:**

Clause 4.9.2.1 is amended as follows:

**Clause 4.9.2.1** - "The unused portion of the inclusive value amount, airtime or data that may be collected for You to use, will depend on the MTN SP terms and conditions and business rules that govern that particular Package Option that You have chosen, requested and agreed to in the MTN SP Application Form."

The following new clauses 4.11 and 4.12 are added to clause 4 of the MTN SP Consumer Subscriber Contract, after clause 4.10:

**Clause 4.11** - "To the extent allowed by law, in addition to the other Charges and amounts payable by You, if You have defaulted on payment You will also pay MTN SP:  
4.11.1 a debit order to return fee of R11.40 (incl. Vat);  
4.11.2 interest at the Prime Rate on outstanding amounts, from due date until the date that You make payment."



**Clause 4.12** - "MTN SP will be required to pay legal costs on the scale as between attorney and own client reasonably incurred by You if You take any legal steps against MTN SP relating to MTN SP's breach of this Contract. MTN SP will also be required to pay collection costs reasonably incurred by You while trying to collect any amounts from MTN SP which are owed to You by MTN SP. You will be required to pay legal costs on the scale as between attorney and own client reasonably incurred by MTN SP if MTN SP takes any legal steps against You relating to Your breach of this Contract. You will also be required to pay collection costs reasonably incurred by MTN SP while trying to collect any amounts from You which are owed to MTN SP by You. All amounts required to be paid in terms of this clause 4.12, shall be required to be paid within 14 calendar days of demand in writing."

The remainder of clause 4 remains unchanged.

#### **CLAUSE 5 - SUSPENSION OF ACCESS TO NETWORK SERVICES:**

Clause 5.3 is amended as follows:

**Clause 5.3** – "Subject to the provisions of the Consumer Protection Act, and to the extent allowed by any other applicable law, if Your access to the Network Services is suspended, You will still be liable for the Monthly Service Charges during the time of suspension, unless MTN SP agrees in writing not to charge You. MTN SP will not withhold its agreement unreasonably."

The remainder of clause 5 remains unchanged.

#### **CLAUSE 6 - LIMITATION OF LIABILITY:**

Clause 6 of the MTN SP Consumer Subscriber Contract is replaced with the following new clause 6 and is also subject to Section A (Consumer Protection Act) in this Addendum:

**"NOTE: *The following clauses contain assumptions of risk and/or liability by You and limit and exclude liabilities, obligations and legal responsibilities which MTN SP will have towards You and other persons. These clauses also limit and exclude Your rights and remedies against MTNSP and place various risks, liabilities, obligations and legal responsibilities on You. MTN SP may also have claims and other rights against You.***

**Clause 6.1** Subject to the provisions of the Consumer Protection Act, to the extent allowed by any other applicable law and also subject to clauses 6.2 and 6.3 below, MTN SP will not be liable to You or to any other person for any loss or damage suffered (whether it is direct or indirect):-

- 6.1.1** if MTN SP does not supply or deliver any Mobile Device or SIM Card/s on the required date or time; or
- 6.1.2** if the Network Services are interrupted, suspended, or cancelled, for whatever reason; or
- 6.1.3** if MTN SP does not suspend the provision of the Network Services to You after You have specifically requested MTN SP to do so; or



**6.1.4 if the loss or damage was caused by any negligent act or failure to act by MTN SP, its employees or agents; or**

**6.1.5 as a result of the use of any Mobile Device supplied to You by MTN SP relating to this Contract.**

**6.2 Clause 6.1 does not limit or exclude any warranties or obligations which are implied into this Contract by the Consumer Protection Act (to the extent applicable) or which MTN SP gives under the Consumer Protection Act (to the extent applicable), to the extent that the law does not allow them to be limited or excluded.**

**6.3 Clause 6.1 does not limit or exempt MTN SP from liability for any loss directly or indirectly attributable to the gross negligence of MTN SP or any person acting for or controlled by MTN SP to the extent that the law does not allow this. Clause 6.1 also does not limit or exclude the liability of MTN SP for death or personal injury caused to You through an act or omission of MTN SP subject to section 61(1) of the Consumer Protection Act, to the extent that the law does not allow this. Clause 6.1 also does not require You to assume risk or liability for these kinds of losses to the extent that the law does not allow this. "**

#### **CLAUSE 7 - BREACH:**

Clauses 7.1 and 7.5 are amended as follows:

**Clause 7.1** - "Without limiting any of MTN SP's other remedies and rights against You, this Contract may be cancelled by MTN SP immediately on written notice to You if You are in breach of this Contract (which may include, but is not limited to, where You fail to pay any amount to MTN SP on due date) and You have failed to remedy that breach within 20 business days after MTN SP has given You notice of such breach. "

**Clause 7.5** - "In addition to all remedies You may have in law, including in terms of the Consumer Protection Act, You will be entitled to refer any dispute between You and MTN SP relating to the availability of the Network Services, to any Telecommunications Representative who may be appointed by the Independent Communications Authority of South Africa ("ICASA")."

The remainder of clause 7 remains unchanged.

#### **CLAUSE 9 - GENERAL:**

Clauses 9.12.1 and 9.13 are amended as follows:

**Clause 9.12.1** – "by hand, by fax or by email during normal business hours of MTN SP, at the receiving person's fixed addresses set out in clause 1.18, as may be amended in terms of clause 9.10. Unless the opposite is proved, a fax or email will be presumed to have been received 48 (forty-eight) hours after the time that it was sent. You must make sure that You get proof of receipt; or"



**PERMISSION TO MARKET: Clause 9.13** - "To the extent allowed by law, by ticking the box on the MTN SP Consumer Contract Application Form, You give MTN SP express permission to contact You by telephone, fax, SMS, MMS or email at the contact number/s and/or addresses You provided to MTN SP, for the purposes of marketing its products and/or services to You. This permission does not prevent You from opting out of receiving marketing communications from MTN SP (or opting in again) at any time in the future, and is subject at all times to Your rights and obligations in terms of the Consumer Protection Act or any other applicable law to register a pre-emptive block or to demand that MTN SP no longer send You any direct marketing communications."

Except for clauses 9.12.3 and 9.14 (which have been deleted), the remainder of clause 9 remains unchanged.

#### **CLAUSE 10 - MOBILE NUMBER PORTABILITY:**

Clauses 10.10, 10.11.1, 10.11.3 and 10.11.4 are amended as follows:

**Clause 10.10** – "If You port Your mobile number and You cancel Your Contract, then You will be responsible to pay MTN SP for all amounts which are unpaid and which are payable by You in terms of this Contract up to the date that this Contract ends. This includes, but is not limited to, the Charges, the Monthly Service charges and the Usage Charges that You have incurred up to and including the date that this Contract ends. Where this is allowed by the Consumer Protection Act, You will also be required to pay a reasonable cancellation penalty, which will be calculated in the way set out in Clause 2.2 above. This is in addition to Your other payment obligations in clause 4, where applicable."

**Clause 10.11.1** - "You must give Your donor service provider 20 (twenty) business days' (stated as thirty calendar days in the ICASA Mobile Number Portability Regulations) notice to cancel Your Contract, otherwise it will stay in force."

**Clause 10.11.3** - "To the extent allowed by law and subject to the ICASA Mobile Number Portability Regulations, You will lose any redeemed, accumulated and unused minutes, SMSs or value that You do not use before You port. This happens because You are no longer a Subscriber to MTN SP once You port."

**Clause 10.11.4** - "To the extent allowed by law and subject to the ICASA Mobile Number Portability Regulations, You will lose any access to messages or data that You do not access before You port. This happens because You are no longer a Subscriber to MTN SP once You port."

Except for clause 10.11.2 (which has been deleted), the remainder of clause 10 remains unchanged.

#### **D. ASSUMPTIONS OF RISK AND/OR LIABILITY BY YOU:**

**NOTE:** *The following clauses in the MTN SP Consumer Contract Application Form and in*



***the MTN SP Consumer Subscriber Contract (as amended by this Addendum) contain assumptions of risk and/or liability by you and limit and exclude liabilities, obligations and legal responsibilities which MTN SP will have towards You and other persons. These clauses also limit and exclude Your rights and remedies against MTNSP and place various risks, liabilities, obligations and legal responsibilities on You. These clauses may result in you being responsible for paying increased or additional costs and amounts and MTN SP may also have claims and other rights against you:***

**Declaration in the MTN SP Consumer Subscriber Contract:**

By signing the Declaration in the MTN SP Consumer Contract Application Form You are also agreeing that You are liable and responsible for amounts owed to MTN SP in terms of this Contract if any third party that has agreed to make payment of these amounts fails to do so;

**Clause 3.3** - MTN SP's supply and delivery requirements specified in an Order;

**Clause 3.4** - All risk for loss, damage, or theft of SIM Cards and Mobile Devices supplied by MTN SP to You will pass to You on delivery of the SIM Card and the Mobile Device (as the case may be) to You or to any person You have chosen to accept receipt of such SIM Card or Mobile Device on Your behalf;

**Clause 4.5** – Debit Order and Breach of Contract by You;

**Clause 4.6** – Bill Deemed Correct if not disputed by You within the required period;

**Clauses 4.11 and 4.12** – Charges if You have defaulted on payment to MTN SP (as inserted by this Addendum);

**Clause 5** – Suspension of Network Services by MTN SP;

**Clause 6** - Limitation of Liability (as amended by this Addendum);

**Clause 7** – Non-payment by You to MTN SP and reporting You to Credit Bureau in terms of the National Credit Act;

**Clauses 10.10 and 10.11** – Number Portability Rules and Cancellation Charges (as amended by this Addendum).

**E ACKNOWLEDGMENTS OF FACT BY YOU:**

**NOTE:** *The MTN SP Consumer Contract Application Form and the following clauses of the MTN SP Consumer Subscriber Contract and of this Addendum, contain statements which are acknowledgments of fact by you. You must ensure that all the statements in the MTN SP Consumer Contract Application Form and the following clauses are correct as you will not be able to deny the truth of the statements. MTN SP may also have claims and other rights against you as a result of such statements or if they are not correct:*

- **Clause 3.7** - Warranties and acknowledgments by You;
- **Clause 7** – Breach of Contract;
- **Clause 9.9** – Fixed Addresses for official notices and court documents;
- **Clause 9.13** – Permission to Market;
- **Clause 10** – Mobile Number Portability;

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- **Section F (Agreement by Consumer)** below in this Addendum.

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| <b>F AGREEMENT BY CONSUMER:</b> |
|---------------------------------|

- 1. I confirm that I have read and I understand the terms and conditions of the Contract Documents and I agree to be bound by them.**
- 2. I confirm that I am over the age of 18 years and that I am legally able to agree to the terms and conditions contained in the Contract Documents and to make the promises and undertakings therein.**

**Customer Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Sales Consultant Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_