



Product Terms

Telco Neolink Line Rental

1. INTERPRETATION

- 1.1 Unless the context clearly indicates the contrary, any term defined in the General Terms when used herein, shall bear the same meaning as defined in the General Terms.
- 1.2 To the extent that there is any contradiction between the General Terms and these Product Terms the following order of precedence shall apply: (i) these Product Terms; and (ii) the General Terms.
- 1.3 By using or subscribing to the Telco Neolink Line Rental Customer agrees that he/she/it has read, understand and are bound by:
 - 1.3.1 the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on MWEB Business’ Legal Website; and
 - 1.3.2 the Product Terms set out herein;(collectively the “**MWEB Business Terms**”).
- 1.4 Customer’s use of the Telco Neolink Line Rental indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.
- 1.5 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-
 - 1.5.1 “**Application Form**” means the application form completed and signed by Customer for the initiation of the Telco Neolink Line Rental, as same may be amended from time to time in terms of the Agreement;
 - 1.5.2 “**Neolink Line**” means a Telco Neolink Line provided by Neotel which, depending on Customer’s selection as specified in the Application Form, is either a: (i) dedicated permanent open, secure, high quality point-to point connection between Customer and MWEB Business’ managed infrastructure over a digital transmission network; or (ii) electromagnetic radiation waves used to provide point to point connection between Customer and MWEB Business’ managed infrastructure microwave used to provide the Services contemplated in clause 1.5.14 (i) and shall include any software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation associated with it;
 - 1.5.3 “**Neolink Line Fees**” means the fees which are payable by Customer from time to time to MWEB Business in respect of all fees and charges levied by Neotel to MWEB Business, attributable to the rental of the Neolink Line, including, but not limited to application, installation maintenance, support and repair fees;
 - 1.5.4 “**ECA**” means the Electronic Communications Act, of 2005;

- 1.5.5 **“Equipment”** means the router (including software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation associated with it) which meets the requirements of the relevant Telco Neolink Line Rental selected by Customer in the Application Form, which router is either (i) provided by Customer; or (ii) owned by MWEB Business and rented to Customer in terms of the Equipment Rental Product Terms or Equipment Rent To Own Product Terms; or (iii) sold by MWEB Business to Customer in terms of the Equipment Purchase Product Terms;
- 1.5.6 **“Equipment Purchase Product Terms”** means the terms and conditions applicable to the purchase of the Equipment by Customer from MWEB Business which are available at <http://www.mwebbusiness.co.za/legal/ProductTerms.aspx> under the heading “Product Terms”;
- 1.5.7 **“Equipment Rental Product Terms”** means the terms and conditions applicable to the rental of the Equipment by MWEB Business to Customer which are available at <http://www.mwebbusiness.co.za/legal/ProductTerms.aspx> under the heading “Equipment Rental”;
- 1.5.8 **“Equipment Rent To Own Product Terms”** means the terms and conditions applicable to the purchase of the Equipment by MWEB Business to Customer which are available at <http://www.mwebbusiness.co.za/legal/ProductTerms.aspx> under “Equipment Rent To Own”;
- 1.5.9 **“Failover”** means a period within which the Neolink Line is not available to enable access and/or use of the Services being accessed via Neolink Line by Customer;
- 1.5.10 **“Failover Services”** means the (i) Broadband Services; (ii) MWEB ADSL Services; and (iii) MWEB Connectivity Services (as defined in the Failover Service Product Terms), used by Customer to access and/or use of the Services during Failover;
- 1.5.11 **“Failover Services Product Terms”** means the terms and conditions applicable to the Failover Services provided by MWEB Business to Customer in accordance with the Failover Product Terms, which can be found under the name “Failover” at <http://www.mwebbusiness.co.za/legal/ProductTerms.aspx> under the heading Product Terms. Such Product Terms shall be applicable to Customer during a Failover as set out in clause 7 below and shall for these purposes be deemed to be included in the Agreement;
- 1.5.12 **“Force Majeure”** means any of the following events to the extent such events are beyond the reasonable control of a party-
- i. acts of God;
 - ii. fires, floods or other catastrophes;
 - iii. acts or failures to act of any governmental authority;
 - iv. acts of war or civil disturbances;
 - v. terrorism;
 - vi. severe weather;
 - vii. strikes and other labour actions;
 - viii. theft and vandalism;
 - ix. other external aggression, including cable cuts; and

x. other similar events beyond such party's reasonable control;

1.5.13 **"General Terms"** means the terms and conditions set out in the general terms and conditions for MWEB Business' customers, which are available at <http://www.mwebbusiness.co.za/legal/GeneralTerms.aspx> under the heading "General Terms";

1.5.14 **"Neotel"** means Neotel (Pty) Ltd;

1.5.15 **"Telco Neolink Line Rental"** means the agreement signed by Customer which authorizes MWEB Business to apply for the Neolink Line in MWEB Business' name and sublease the access and usage of such line to Customer as envisaged in clause 5 below subject to these Product Terms and the Neotel terms and conditions applicable to such Neolink Line.

2. DURATION

2.1 Telco Neolink Line Rental shall commence with effect from the date of activation of the Neolink Line by MWEB Business and endure for an initial period selected by Customer in the Application Form (hereinafter referred to as the **"Initial Period"**). Notwithstanding the aforesaid, the provisions of this clause 2.1 are subject to Customer's termination rights detailed in clauses 7.5, 7.6 and 7.11 of the General Terms where clauses 7.5, 7.6 and 7.11 of the General Terms are applicable to Customer.

2.2 Either Party may terminate the Telco Neolink Line Rental at the end of the Initial Period by giving the other Party 3 (three) calendar months written notice of termination prior to the end of the Initial Period. Any notice of termination given by Customer during the Initial Period shall only become effective upon the expiry of the Initial Period.

2.3 If neither Party has given notice as contemplated in clause 2.2 above, the Telco Neolink Line Rental shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate the Telco Neolink Line Rental on 3 (three) calendar months written notice to the other to that effect.

2.4 Notwithstanding the provisions of clauses 2.1 and 2.3 above, MWEB Business shall be entitled to terminate these Product Terms including the Agreement, (without payment of any penalty of whatsoever nature), at any time, on 30 (thirty) days written notice to Customer should MWEB Business' agreement with Neotel terminate.

2.5 In the event of a termination, Customer's use of the Telco Neolink Line Rental shall be deemed terminated. However, in the event that Customer logs on to the Telco Neolink Line Rental following a termination, the terms and conditions of the Agreement will apply to Customer and Customer shall be liable to pay the full usage costs to MWEB Business however, this shall in no way constitute a revival of the Agreement between the Parties and MWEB Business shall furthermore be entitled to terminate the Telco Neolink Line Rental without notice to Customer.

2.6 To the extent that the Telco Neolink Line Rental provided to Customer is suspended by MWEB Business in terms of the provisions of clauses 9 and 12 of the General Terms or for any other reason whatsoever, Customer acknowledges that it will forfeit its access to and/or use of the Telco Neolink Line Rental, but Customer shall still be liable to pay the Service Fees during such suspension.

3. SERVICE FEES

- 3.1 Customer shall pay MWEB Business the Services Fees specified in the Application Form in accordance with the provisions set out in the General Terms.
- 3.2 Insofar, as the Parties have agreed that the provisions contained in clause 5 below shall be applicable to this Telco Neolink Line Rental Service, the Neolink Line Fees payable by Customer shall be deemed to be Service Fees and all the provisions in the Agreement relating to the payment of the Service Fees will be applicable to Neolink Line Fees. Neolink Line Fees might not be payable in advance, but in arrears however, MWEB Business may include such Neolink Line Fees in the Service Fees even if it is not due or paid by MWEB Business to Neotel yet, provided that Neotel has invoiced MWEB Business for such fees and charges.
- 3.3 Customer acknowledges that in the event that he/she/it moves to a different location and/or premises, MWEB Business shall charge Customer any fee chargeable by Neotel for the relocation of the Neolink Line to new premises and/or location which includes without limitation the: (i) installation fees; (ii) penalty fees; (iii) line transfer fees; (iv) set up fees; and/or (v) any other fee that might be imposed on MWEB Business by Neotel. Customer acknowledges and agrees that the aforementioned fees shall be included in Customer's monthly invoice, which shall be payable by Customer in accordance with the provisions of the General Terms.
- 3.4 Customer acknowledges and agrees that such Neolink Line Fees are payable until the termination date and shall include any costs involved in the moving and/or relocation of the Neolink Line from Customer's premises and/or locations, to new premises and/or location. Customer undertakes to pay all such Neolink Line Fees even if MWEB Business holds Customer liable for it after the termination date of the Telco Neolink Line Rental.
- 3.5 A certificate signed by a Financial Manager of MWEB Business, whose appointment, qualification and authority need not be proved, shall be *prima facie* proof of any existence and amount of Neolink Line Fees due and payable by the Customer from time to time.

4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with Telco Neolink Line Rental on a 24 (twenty four) hour per day basis on each and every day for the continued duration of the Telco Neolink Line Rental.
- 4.2 Although MWEB Business uses reasonable care and diligence to ensure that the Telco Neolink Line Rental and Neolink Line are available, accurate, complete, correct, error-free, secure, up-to-date and/or reliable, MWEB Business does not warrant, represent or in any way guarantee, either expressly or by implication that the Telco Neolink Line Rental including the Neolink Line is available, accurate, complete, correct, error-free, secure, up-to-date and/or reliable. MWEB Business furthermore does not warrant, represent or in any way guarantee, either expressly or by implication the merchantability or fitness for a particular purpose. Customer therefore agrees that the Telco Neolink Line Rental is rendered "as is" and "as available" and is used at the Customers' own discretion and risk.
- 4.3 Customer acknowledges that the following circumstances and events may impact upon its use of the Neolink Line and further that these circumstances and/or events are beyond MWEB Business' control: (i) use of the Neolink Line by other customers; (ii) limitations upon national and/or international bandwidth capacity; (iii) telecommunication service operator failures, which includes telecommunication links and line

failures; (iv) operating systems; (v) access technology failures; (vi) quality of service of telecommunication links or lines; (vii) atmospheric conditions including without limitation bad weather conditions, buildings, and/or other causes of interference; (viii) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on the Neolink Line; and (ix) any other action, omission and/or failure not within MWEB Business' control which has an impact on the Neolink Line and/or the provision of the Telco Neolink Line Rental.

5. TERMS AND CONDITIONS SPECIFIC TO NEOLINK LINE RENTAL

5.1 MWEB Business will provide Customer with Telco Neolink Line Rental in accordance with Customer's selection, as indicated in Application Form subject to the Product Terms set out herein.

5.2 Customer acknowledges that:

5.2.1 Telco Neolink Line Rental Services are provided either by fibre connectivity or microwave connectivity;

5.2.2 in order to have access to the Telco Neolink Line Rental Services, a Neolink Line and the Equipment are required;

5.2.3 MWEB Business will contract directly with Neotel in its own name for the type of Neolink Line selected by Customer in the Application Form in order to enable Customer's access to and use of the Neolink Line;

5.2.4 Neolink Line is provided subject to ECA, Neotel's terms and conditions applicable to the Neolink Line and all applicable laws and regulations applicable from time to time;

5.2.5 MWEB Business will only provide Customer with access and/or use of the Neolink Line provided Customer pays the Services Fees set out in the Application Form;

5.2.6 MWEB Business will manage the Neolink Line on behalf of Customer.

5.3 Upon receipt of Customer's signed Application Form, MWEB Business shall submit its application form for the Neolink Line to Neotel in order to enable Neotel to carry out a feasibility study for purposes of establishing whether the Neolink Line can be installed or not. Customer acknowledges and agrees that:

5.3.1 acceptance of the Application Form by MWEB Business does not in any manner whatsoever guarantee and/or confirm that the installation of the Neolink Line is feasible;

5.3.2 MWEB Business can only guarantee and/or confirm the feasibility of the installation of the Neolink Line upon receipt of Neolink's technical and installation report;

5.3.3 Should the installation of the Neolink Line not be feasible, MWEB Business shall (subject to the provisions of clause 5.10 below), be entitled to terminate the Telco Neolink Line Rental at any time on written notice to Customer.

5.4 Upon receipt of the technical and installation report from Neotel, MWEB Business shall notify Customer on the date of installation of the Neolink Line and/or Equipment (where applicable), which notification shall in MWEB Business' discretion be in writing.

5.5 Customer shall supply the necessary consents and co-operation required by MWEB Business to enable MWEB Business to arrange for the installation of the Neolink Line;

- 5.6 Customer shall allow MWEB Business, its agents and Neotel all reasonable access to its premises for the purposes of the installation, set-up, configuration and maintenance and repair of the Neolink Line;
- 5.7 Customer warrants that it shall have the necessary permissions to install the Neolink Line at its premises;
- 5.8 MWEB Business shall be responsible for the costs and charges payable to Neotel relating to the Neolink Line and undertakes to pay such amounts when due; and
- 5.9 Upon termination of the Telco Neolink Line Rental for any reason whatsoever, Customer shall supply the necessary consents and co-operation required by MWEB Business, to enable MWEB Business to arrange for the removal of the Neolink Line from Customer's premises. Customer shall furthermore allow MWEB Business, its agents and Neotel all reasonable access to its premises for the purposes of the removal of the Neolink Line.
- 5.10 Customer shall, without limiting the generality of the General Terms, not be able to hold MWEB Business liable under any circumstances: (i) for any loss, damage, costs, expense or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit, loss of anticipated savings, loss of goodwill, loss of revenue, loss of customers or clients, caused by or arising in any manner whatsoever (directly or indirectly) from: (i) Customer's breach of the aforementioned undertakings or warranties in clauses 5; and/or (ii) for any damages caused to Customer's premises because of the installation of the Neolink Line. Customer furthermore hereby unconditionally and irrevocably indemnifies MWEB Business and agrees to hold MWEB Business harmless from and against any costs, losses, harm, liabilities, expenses, damages, fines or injury of whatever nature, directly and/or indirectly suffered or incurred by MWEB Business or for any such claims instituted against MWEB Business by a third party, including Neotel, arising out of or relating to a breach of the aforementioned undertakings or warranties in clause 5 and/or for any damages caused to Customer's premises because of the installation of the Neolink Line.
- 5.11 Customer acknowledges that:
- 5.11.1 Neolink Line is provided subject to the provisions of the ECA, Neotel's terms and conditions and any other applicable legislation and/or regulation applicable from time to time;
- 5.11.2 the quality of the Neolink Line is dependent upon the quality and capacity available to Neotel and Customer shall therefore not be entitled to terminate Neolink Line as a result of any impairment to the quality of the Neolink Line and/or quality and/or capacity of Neotel network which impacts on Customer's access and usage of the Neolink Line;
- 5.11.3 it may not terminate Telco Neolink Line Rental, other than as contemplated in clause 2 above or in terms of clause 7.11 of the General Terms where clause 7.11 of the General Terms is of application to Customer, should such Neolink Line not be available to Customer at any stage during the term of the Telco Neolink Line Rental for any reason whatsoever;
- 5.11.4 the provision and/or availability of the Neolink Line is *inter alia* subject to the operation of Neotel's network. MWEB Business does not have any control over such network and therefore cannot take responsibility for any failures of the Neolink Line and/or Neotel network. MWEB Business shall however, use its reasonable commercial endeavours to attend to such failures in terms of any obligations placed on it in terms of these Product Terms and/or its agreement with Neotel.

- 5.12 Notwithstanding anything that might indicate the contrary, Customer shall at all times comply with all terms and conditions and/or limitations imposed by Neotel on the Neolink Line for the duration of the Telco Neolink Line Rental Services.
- 5.13 Customer acknowledges and agrees that MWEB Business shall be entitled to terminate the Telco Neolink Line Rental and/or Neolink Line, at any time during the Initial Period and/or renewal thereof:
- 5.13.1 for so long as Customer remains in material breach of its obligations in terms of these Product Terms and/or Agreement after receiving such due notice of such breach and after expiry of the period which the breach was to have been remedied;
- 5.13.2 for so long as Customer acts contrary to the provisions contained in these Product Terms and/or Agreement;
- 5.13.3 if the quality of the Neolink Line or the operation of Neotel's network is adversely affected owing to any act or omission of Customer;
- 5.13.4 if any Customer equipment and/or device infringes the intellectual property rights of any person, MWEB Business and/or Neotel; or
- 5.13.5 upon request thereto by Neotel pursuant to a breach by Customer of any of the terms and conditions applicable to the access and/or use of the Neolink Line;
- 5.13.6 if Customer's access and/or use of the Neolink Line is in contravention with MWEB Business' policies, ECA and/or any Act or regulation applicable to the access and/or use of the Neolink Line.
- 5.13.7 Customer acknowledges that in the event of a *Force Majeure* (which has been approved by Neotel as *Force Majeure*), and such *Force Majeure* continues for a period of 60 (sixty) consecutive days, Customer shall subject to Neotel's approval of the termination, be entitled to terminate this Agreement by written notice to MWEB Business.

6. NEW PREMISES AND/OR LOCATION

- 6.1 Customer acknowledges that in the event that he/she/it decide to move to a different location and/or premises, MWEB Business:
- 6.1.1 shall subject to the provisions of clause 3.3 above, move Customer's Neolink Line to the new premises and/or location;
- 6.1.2 may extend Customer's Agreement including these Product Terms to the same term that was originally selected by Customer in the Application Form.

7. FAILOVER (IF SELECTED)

- 7.1 Customer further acknowledges and agrees that:
- 7.1.1 in the event of a Failover of the Neolink Line, MWEB Business shall in its own discretion route Customer's current services ("the **Services**"), with MWEB Business to any the Failover Services selected by Customer in the Application Form for Failover purposes;
- 7.1.2 MWEB Business shall provide Customer with access to and use of the Services subject to: (i) the terms and conditions applicable to each of the Services; and (ii) the Failover Services Product Terms;

7.1.3 MWEB Business will only provide Failover Services if Customer has selected Failover Services in the Application Form; and

7.1.4 termination of the Failover Services will not terminate the Telco Neolink Line Rental Services.

8. SERVICE LEVEL AGREEMENT

8.1 All service requests and technical support calls can be logged 24 hours per day, 365 days per year with MWEB Business' Technical Assistance Centre by:

8.1.1 E-mail premier@mweb.com

8.1.2 Telephone 0860 000 158

8.2 Customer will be required to provide the Technical Assistance Centre with its name, customer number, contact person, contact details and a complete description of the problem.

8.3 MWEB Business will endeavour to resolve the problem immediately. Should MWEB Business' Technical Assistance Centre not be able to resolve the problem immediately, the problem will be escalated as follows:

8.3.1 Supervisor – Technical Assistance Centre

8.3.2 Manager – Technical Assistance Centre

8.3.3 Second Level Support Manager

8.3.4 Technical Operations Manager

8.4 MWEB Business will keep Customer informed of the progress of the problem resolution. MWEB Business will endeavour to adhere to the following times (in business hours) with regard to feedback:

8.4.1 Critical Disruptions: Total loss of all services 4 hour

8.4.2 Service Disruptions: Serious degradation of services 4 hours

8.4.3 Service Incidents: Minor loss/degradation of services 8 hours

8.4.4 Service Queries: No loss/degradation of services 8 hours

8.5 For the avoidance of doubt, Customer acknowledges and agrees that the above-mentioned response time, shall not in any manner whatsoever include any fiber breaks on the local loop.
