



Product Terms

Uncapped Wireless

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 Uncapped Wireless, Customer agrees that he/she/it has read, understand and is bound by:
 - 1.3.1 the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on our Legal Website; and
 - 1.3.2 the Product Terms set out herein,(collectively “the **MWEB Business Terms**”).
- 1.4 Customer’s use of Uncapped Wireless 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 Uncapped Wireless, as same may be amended from time to time in terms of the Agreement;
 - 1.5.2 “**Coverage Area**” means coverage area falling within the signal radius of the Wireless Network;
 - 1.5.3 “**CPE Device**” means the customer premises equipment which shall be installed by MWEB Business and/or its suppliers on the exterior of Customer’s premises;
 - 1.5.4 “**ECA**” means the Electronic Communications Act No 36 of 2005, as amended;
 - 1.5.5 “**Equipment**” means the router and the CPE Device (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 Uncapped Wireless selected by Customer in the Application Form, which is rented by MWEB Business to Customer in terms of the provisions of clause 7 below, to enable connectivity to the Wireless Link;
 - 1.5.6 “**Force Majeure**” means any of the following events to the extent such events are beyond the reasonable control of a party-
 - 1.5.6.1 acts of God;
 - 1.5.6.2 fires, floods or other catastrophes;
 - 1.5.6.3 acts or failures to act of any governmental authority;



Product Terms

Uncapped Wireless

1.5.6.4 acts of war or civil disturbances;

1.5.6.5 terrorism;

1.5.6.6 severe weather;

1.5.6.7 strikes and other labour actions;

1.5.6.8 theft and vandalism;

1.5.6.9 other external aggression, including cable cuts; and

1.5.6.10 other similar events beyond such party's reasonable control;

1.5.7 "**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**" and incorporated herein by reference;

1.5.8 "**Initial Period**" means the initial period during which MWEB Business shall provide the Uncapped Wireless, as selected by Customer in the Application Form;

1.5.9 "**Pre-Site Inspection**" means a document to be completed by MWEB Business and signed off by Customer and MWEB Business and/or its supplier which document shall confirm that Customer is: (i) within the Coverage Area; (ii) able to have the CPE Device installed on his/her/its premises; and (iii) able to have access to the Wireless Network via the Wireless Link;

1.5.10 "**Wireless Network**" means the PECN operated by MWEB Business in the unlicensed frequency spectrum in terms of the provisions of the ECA over which the CPE Device connects;

1.5.11 "**PECN**" means private electronic communications network as defined in the ECA;

1.5.12 "**Wireless Link**" means a wireless link created within the unlicensed frequency spectrum, over a public network and operated by MWEB Business, which wireless link is connected between CPE Device and the Wireless Network in order to enable access to and use of the MWEB Business' network infrastructure by Customer via the Uncapped Wireless;

1.5.13 "**Uncapped Wireless**" means the wireless services contemplated in these Product Terms, which MWEB Business renders to Customer in accordance with Customer's choices, as set out in the Application Form under such heading or description comprising of: (i) the leasing of the Wireless Link to Customer; (ii) configuration of the Equipment; and (iii) the management of the Wireless Link on behalf of Customer, as contemplated in clause 5 below.

2. DURATION



Product Terms

Uncapped Wireless

- 2.1 This Agreement will commence on the Effective Date. Notwithstanding the commencement of the Agreement, the Initial Period shall be calculated from the Activation Date. 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 Uncapped Wireless 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, Uncapped Wireless shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate Uncapped Wireless on 3 (three) calendar months written notice to the other to that effect.
- 2.4 Notwithstanding the provisions of clauses 2.1 and 2.2 above, Customer acknowledges that MWEB Business shall (without payment of any penalty of whatsoever nature), be entitled to terminate Uncapped Wireless at any time (during the Initial Period or any renewal period thereof) on 30 (thirty) days written notice to Customer:
- 2.4.1 should the Coverage Area be compromised;
 - 2.4.2 if the quality of the Wireless Link or the operation of the Wireless Network is adversely affected due to any act or omission of Customer;
 - 2.4.3 should MWEB Business suspend or terminate its wireless network deployment for whatever reason;
 - 2.4.4 should MWEB Business be required to do so by the Independent Communications Authority of South Africa ("ICASA") or in terms of any relevant legislation applicable to the usage of the unlicensed spectrum;
 - 2.4.5 should Customer be in breach of or acts contrary to any terms of the Agreement;
 - 2.4.6 upon request thereto by other telecommunication service providers due to breach by Customer of any of the terms and conditions applicable to the access and/or use of the Wireless Link;
 - 2.4.7 should Customer's access and/or use of Wireless Link be in contravention of MWEB Business' Terms or policies and/or any applicable legislation; and/or
 - 2.4.8 should the regulator make changes to the unlicensed spectrum which impacts on the provision of the Uncapped Wireless, Wireless Network and/or Wireless Link.



Product Terms

Uncapped Wireless

- 2.5 In the event of a termination, Customer's use and access of Uncapped Wireless shall be deemed terminated. However, in the event that Customer logs on to Uncapped Wireless 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 Uncapped Wireless without notice to Customer.
- 2.6 To the extent that Uncapped Wireless 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 Uncapped Wireless, but Customer shall still be liable to pay the Service Fees during such suspension.
- 2.7 Upon termination of the Uncapped Wireless for any reason whatsoever Customer shall provide MWEB Business with the necessary co-operation and assistance to arrange for the removal of the Equipment from Customer's premises.

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 Customer acknowledges that in the event that he/she/it moves and/or relocates to a different location and/or premises, MWEB Business shall charge Customer for the moving and/or relocation of the Equipment to new premises and/or location which includes without limitation the: (i) installation fees; (ii) line transfer fees; and/or (iv) set up fees. 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.
- 3.3 Customer shall remain liable for all Services Fees or any other amount due to MWEB Business under the Agreement regardless of termination.

4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with Uncapped Wireless including the Wireless Network on a 24 (twenty four) hour per day basis on each and every day for the continued duration of the Uncapped Wireless.



Product Terms

Uncapped Wireless

- 4.2 Although MWEB Business uses reasonable care and diligence to ensure that the Uncapped Wireless including the Wireless Network is 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 Uncapped Wireless including the Wireless Link and the Wireless Network are 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 Uncapped Wireless including the Wireless Link and the Wireless Network are rendered "as is" and "as available" and are used at Customers' own discretion and risk.
- 4.3 Customer acknowledges that the following circumstances and/or events may impact upon its access and/or use of Uncapped Wireless including the Wireless Link and the Wireless Network and further that these circumstances and/or events are beyond MWEB Business' control: (i) use of Uncapped Wireless including the Wireless Link and the Wireless Network by other customers; (ii) use of the unlicensed spectrum by other telecommunication service providers including customers of such telecommunication service providers; (iii) limitations upon national and/or international bandwidth capacity including Wireless Network capacity; (iv) telecommunication service operator failures, which includes without limitation: (a) telecommunication links/lines; (b) wireless link; (v) CPE Device; (vi) operating systems; (vii) access technology failures; (viii) quality of the: (a) unlicensed spectrum; (b) Wireless Network and Wireless Link; and/or (c) service of telecommunication links, e-line or lines; (ix) atmospheric conditions including without limitation, bad weather conditions and/or any other causes of interference; (x) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on Uncapped Wireless, Equipment and/or Wireless Link; (xi) environmental conditions; (xii) trees, power poles, base stations and/or buildings; and (xiii) any other action, omission and/or failure not within MWEB Business' control which has an impact on the Uncapped Wireless including Wireless Network and/or Wireless Link.
- 4.4 Customer shall not have any claim against MWEB Business whatsoever as a result of any losses or damages suffered by Customer as a result of any event listed in 4.3 above.
- 4.5 Customer shall not hold MWEB Business liable under any circumstances, 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 this Agreement and 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 claims instituted against MWEB Business by a third party as a result of this Agreement, or arising out of or relating to a breach of the Agreement by Customer or any undertakings or warranties made by Customer in terms of this Agreement.



Product Terms

Uncapped Wireless

5. WIRELESS NETWORK AND WIRELESS LINK

5.1 Customer acknowledges and agrees that:

- 5.1.1 Uncapped Wireless is a *best effort* service and is not guaranteed by MWEB Business in any manner whatsoever;
- 5.1.2 Wireless Network is created over the unlicensed frequency spectrum;
- 5.1.3 Wireless Link is operated within the unlicensed frequency spectrum;
- 5.1.4 functionality and/or operation of the Wireless Link may be impaired by the use of the unlicensed frequency spectrum by other wireless operators from a nearby location in the same frequency band;
- 5.1.5 he/she/it shall (without prejudice to MWEB Business' rights to claim payment for any outstanding amount for the services rendered), not be entitled to terminate Uncapped Wireless should the Wireless Link remain unavailable due to *Force Majeure*. If *Force Majeure* event continues for a period of more than 60 (sixty) days, then the Customer may terminate this Agreement by written notice to MWEB Business by reason of *Force Majeure*. Customer shall remain liable to pay MWEB Business the Services Fees or any other fees due during *Force Majeure* or the period of unavailability;
- 5.1.6 the quality of the Wireless Link is dependent upon the quality and capacity available to the Wireless Network which is subject to any technological constraints affecting the Wireless Network. Customer shall therefore not be entitled to terminate Uncapped Wireless as a result of any impairment to the quality of the Wireless Link and/or quality and/or capacity of the Wireless Network which impacts on Customer's access and usage of the Uncapped Wireless;
- 5.1.7 Wireless Network including the Wireless Link are created over the unlicensed frequency spectrum and although MWEB Business uses reasonable commercial endeavours to: (i) ensure the: (a) operation; (b) availability; and (c) functionality of the Wireless Network including the Wireless Link; and (ii) , attend to any unavailability including failures and/or errors impacting on the Wireless Network, including the Wireless Link, in terms of any obligations placed on it in terms of these Product Terms, MWEB Business cannot guarantee the operation, availability or functionality of the Wireless Network, including the Wireless Link;
- 5.1.8 although MWEB Business shall use its reasonable commercial endeavours to ensure the security of the Wireless Link, MWEB Business does not in any manner whatsoever warrant, represent and/or guarantee the security of the Wireless Link, Customer is therefore advised to ensure the security of its network infrastructure.



Product Terms

Uncapped Wireless

5.1.9 As stated above, MWEB Business does not in any manner whatsoever warrant, represent and/or guarantee availability, quality, capacity and security of the Wireless Network including the Wireless Link and to that effect MWEB Business shall (without limiting the provisions of the General Terms and/or the law), not be liable under any circumstances 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 the: (i) unavailability of the Wireless Network, including the Wireless Link; (ii) impairment on the quality or capacity of the Wireless Network and/or Wireless Link; and/or (iii) breach of the security of the Wireless Link and/or Customer's network infrastructure.

6. TERMS AND CONDITIONS SPECIFIC TO UNCAPPED WIRELESS

6.1 Customer acknowledges that:

6.1.1 in order for the Uncapped Wireless to be provided to Customer, the Equipment is required to enable Customer's access to and use of the Uncapped Wireless;

6.1.2 the Equipment will be rented to Customer subject to the provisions of clause 7 below;

6.1.3 Uncapped Wireless is provided subject to the MWEB Business Terms and all relevant laws and regulations applicable from time to time;

6.1.4 MWEB Business will only provide Customer with access and/or use of the Uncapped Wireless provided Customer pays the Services Fees set out in the Application Form.

6.2 MWEB Business will manage the Uncapped Wireless on behalf of Customer.

6.3 Upon submission of the duly signed Pre-Site Inspection, MWEB Business shall notify Customer with regard to the installation date and time. MWEB Business cannot guarantee the installation date and time, but will use reasonable efforts to ensure anticipated installation date and times are met. MWEB Business will inform Customer as soon as possible if it is unable to attend a set appointment. Customer shall not be allowed to move the installation date and time, without MWEB Business' consent. Customer shall also not be entitled to cancel Uncapped Wireless or refuse to accept installation, set-up and or configuration as a result of MWEB Business' failure to meet anticipated installation date and times.

6.4 Customer shall prior to the installation date: (i) appoint a designated person to manage the installation project on Customer's behalf; (ii) prepare the premises and/or the area where installation will be done for installation purposes; and (iii) notify its staff, other tenants/owners on the premises, the landlord and/or governing bodies (where relevant) about the installation date and time.

6.5 Customer warrants that:



Product Terms

Uncapped Wireless

- 6.5.1 the premises and/or the area where installation will be done, meet the requirement of the Occupational Health and Safety Standards;
- 6.5.2 in the case of rented premises the landlord and/or the governing body(ies) are aware of: (i) the installation work to be done; (ii) what such installation entails; and (iii) the installation date and time; and
- 6.5.3 in the case of rented premises the landlord and/or governing body(ies) have given Customer the necessary written approvals to allow MWEB Business to commence the installation work.
- 6.6 Customer hereby indemnifies MWEB Business against all losses or damages it sustains or incurs as a result of breach by the Customer of the warranties contained in this clause.
- 6.7 MWEB Business including any of its respective agents or contractors shall on the installation date and during business hours, attend to:
- 6.7.1 the installation of the Equipment; and
- 6.7.2 set-up and/or configuration of the Equipment.
- 6.8 Customer shall allow MWEB Business including its agents or contractors, all reasonable access to Customer's premises and/or property for the purposes set out in clauses 6.7.1 and 6.7.2 above. A signed confirmation by Customer (including his/her/its employee, representative, carrier, agent or nominee), that installation and set-up and/or configuration of the Equipment was done shall constitute *prima facie* proof that it was done according to specification and Agreement.
- 6.9 Customer acknowledges and agrees that MWEB Business may be required to: dig, drill, remove pavement, carpets, tiles, ceilings, apply glue or perform any other act in order to install the Equipment ("**Installation Work**"). Customer hereby gives MWEB Business the permission to perform such Installation Work and Customer further warrants that he/she/it has received written permission from the landlord and/or any governing body(ies) (where required) to perform such Installation Work.
- 6.10 Customer acknowledges that:
- 6.10.1 MWEB Business will use reasonable commercial endeavours to ensure that the Installation Work is performed in a professional manner without causing any damage to Customer's or any other third party's premises or property;
- 6.10.2 MWEB Business cannot guarantee that work will be performed without errors, faults and/or causing damages of whatsoever nature to Customer's or any other third party's premises or property;



Product Terms

Uncapped Wireless

6.10.3 in the event of any such damage to Customer's or any other third party's premises, installation area or property, Customer shall indemnify MWEB Business from any claim arising as a result of such damage and Customer shall not hold MWEB Business, its contractors and/or agents liable under any circumstances, for any loss, damage, costs or expense whatsoever caused by or arising in any manner whatsoever from any action or omission of MWEB Business or its contractor's.

6.11 Customer shall when required, allow MWEB Business and its agents all reasonable access to its premises for the purposes of the re-installation, re-set-up, re-configuration and maintenance and repair of the Equipment.

6.12 Customer acknowledges and agrees that:

6.12.1 MWEB Business shall be entitled to change the Uncapped Wireless Services (which may include without limitation the amendment of the technical parameters and/or specification relating to the Uncapped Wireless), at any time during the Initial Period and/or any renewal thereof on 30 (thirty) business days written notice to Customer;

6.12.2 he/she/it may not terminate Uncapped Wireless, other than as contemplated in clause 2 above, should such Wireless Link not be available to Customer at any stage during the term of Uncapped Wireless for any reason whatsoever;

6.12.3 the provision and/or availability of the Uncapped Wireless is *inter alia* subject to the operation of the Wireless Network and the Wireless Link;

6.13 Notwithstanding anything that might indicate the contrary, Customer shall at all times comply with all terms and conditions and/or limitations imposed by MWEB Business on the Wireless Link including Wireless Network for the duration of the Uncapped Wireless.

7. EQUIPMENT RENTAL

7.1 MWEB Business hereby leases the Equipment to Customer who accepts such rental. Customer acknowledges and agrees that:

7.1.1 the Equipment will at all times remain the property of MWEB Business and Customer agrees that he/she/ it will never become owner the Equipment;

7.1.2 the Equipment shall at all times be regarded as a movable property and shall not become part of the property;

7.1.3 MWEB Business shall have the right to enter Customer's premises in order to remove the Equipment upon termination of the Uncapped Wireless.

7.2 MWEB Business shall at its own costs and expense deliver the Equipment at Customer's premises. A signed delivery note by Customer (including his/her/its employee, representative or nominee) shall constitute *prima facie* proof that the Equipment was delivered to and received by Customer in good condition.



Product Terms

Uncapped Wireless

- 7.3 Upon delivery of the Equipment as envisaged in clause 7.2 above, Customer shall bear all risk of loss, theft, damage and/or destruction of the Equipment while housed at Customer's premises for an amount equal to the full replacement value thereof. Customer shall make its own arrangements regarding the insurance of the Equipment.
- 7.4 Customer shall not allow any third party to take possession of the Equipment unless duly authorised thereto by MWEB Business. Should any third party take possession of the Equipment without the said authorisation, the replacement value thereof shall immediately be due and payable by Customer.
- 7.5 If the premises at which the Equipment will be installed is rented:
- 7.5.1 Customer shall:
- 7.5.1.1 advise MWEB Business in writing of the name and address of the landlord as well as any changes thereto;
- 7.5.1.2 not move the Equipment without MWEB Business' prior written consent;
- 7.5.2 Customer warrants that the landlord and/or governing body(ies) have been informed that the Equipment belongs to MWEB Business and can therefore not be subject to a *lien* or landlord *hypothec*. Customer hereby indemnifies MWEB Business against all losses or damages it sustains or incurs as a result of breach by the Customer of the warranty contained in this clause.
- 7.6 Customer acknowledges and agrees that it shall only use the Equipment in conjunction with the Uncapped Wireless Services. Under no circumstances will Customer or anyone else be allowed to: (i) access and/or tamper with the Equipment. (ii) move the Equipment to any other location without the express written permission of MWEB Business; and (iii) use the Equipment for any other purpose. Access to the Equipment shall be restricted to MWEB Business' staff or its duly authorized agents only.
- 7.7 Without limiting the generality of the General Terms and Use Policy, Customer undertakes to use the Equipment solely for internal purposes and shall not be entitled to directly or indirectly transfer, distribute, re-distribute, sell, re-sell, lease, sub-lease and/or lend the Equipment in any manner whatsoever to any third party without MWEB Business' prior written consent.
- 7.8 Customer shall ensure that MWEB Business may at any time enter the premises where the Equipment is installed to inspect it, provided that MWEB Business supplies Customer with reasonable prior notification of such.

8. NEW PREMISES AND/OR LOCATION

- 8.1 Customer acknowledges that in the event that he/she/it decide to move and/or relocate to a different location and/or premises, MWEB Business:
- 8.1.1 shall subject to the provisions of clause 3.2 above, move and/or relocate Customer's Equipment to the new premises and/or location;



Product Terms

Uncapped Wireless

8.1.2 may extend Customer's Agreement including these Product Terms to the same term that was originally selected by Customer in the Application Form.

8.2 Customer acknowledges and agree that:

8.2.1 Wireless Network is not available everywhere;

8.2.2 he/she/it is responsible for ensuring that Wireless Network is available should he/she/it decide to move and/or relocate to another premises or locations;

8.2.3 he/she/it shall remain liable to pay the set up fees incurred by MWEB Business to install, set up and/or configure the Equipment at the new location and/or premises;

8.2.4 he/she/it shall not be allowed to terminate Uncapped Wireless including the Agreement should he/she/it move to a location and/or premises where the Wireless Network is not available. In the event of termination, Customer shall remain liable to pay MWEB Business for the remainder of the Initial Period or the renewal period, as the case may be, should he/she/it terminate Uncapped Wireless and/or the Agreement prior to the expiry of such Initial Period and/or renewal period.

9. UPGRADES AND DOWNGRADES

9.1 Customer further acknowledges and agrees that:

9.1.1 he/she/it is allowed to upgrade the line speed of the Wireless Link at any time during the Agreement provided that one calendar months written notice of upgrade is submitted to MWEB Business Sales Department available at **011 340 8400**;

9.1.2 any notice received by MWEB Business during the course of the month for the upgrade of the line speed as envisaged in clause 9.1.1.above, shall only be effective from the 1st of the following month;

9.1.3 these Product Terms including the upgraded Uncapped Wireless shall with effect from the activation of the upgraded Uncapped Wireless, be extended for a further period selected by Customer in the Application Form;

9.1.4 the duly upgraded Uncapped Wireless shall be provided by MWEB Business subject to the provision of the MWEB Business Terms and the Agreement;

9.1.5 .he/she/it shall not be allowed to downgrade the line speed of the Uncapped Wireless during the Initial Period.