

Product Terms ADSL Uncapped

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 ADSL Uncapped you agree that you have read, understand and are bound by:
 - 1.3.1 the General Terms and Conditions and other notices under “General” on our Legal Notices Webpage; and
 - 1.3.2 these terms that apply specifically to ADSL Uncapped, (collectively “the Terms”).
- 1.4 Your use of ADSL Uncapped indicates your acceptance without modification of the Terms, which will constitute a legal agreement between you and MWEB Business.
- 1.5 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-
 - 1.5.1 **“ADSL Line”** Asymmetric Digital Subscriber Line provided by Telkom in accordance with the provisions of Telkom’s PSTN licence (including any conversion of that licence in terms of section 93 of the Electronic Communications Act) and the provisions of the Electronic Communications Act at Customer’s cost;
 - 1.5.2 **“ADSL Uncapped”** means the Services MWEB Business renders to Customer in accordance with Customer’s selections as indicated by Customer in the Application Form under such heading or description comprising of (i) Unlimited Access via an ADSL Line as selected by Customer in the Application Form; (ii) the rental of Equipment; and (iii) if selected by Customer the number of static IP addresses, as stipulated in the Application Form;
 - 1.5.3 **“Application Form”** means the application form completed and signed by Customer for the initiation of ADSL Uncapped, as same may be amended from time to time in terms of the Agreement;
 - 1.5.4 **“Equipment”** means depending on the Customer’s selections as indicated by Customer in the Application Form under the heading or description of ADSL Uncapped the router owned by MWEB Business and rented to Customer, in terms of the Product Terms for Equipment Rental and shall include any software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation associated with it;
 - 1.5.5 **“General Terms”** means the terms and conditions set out in the general terms and conditions for MWEB Business’ customers, which is available at <http://www.mwebbusiness.co.za/legal.aspx> under the heading General Terms;
 - 1.5.6 **“Premises”** means the Customer’s premises specified in the Application Form at which the Equipment will be installed;

1.5.7 **“Product Terms for Equipment Rental”** means the terms and conditions applicable to the rental of the Equipment, which can be found under the name “Equipment Rental” at :<http://www.mwebbusiness.co.za/legal.aspx> and under the heading Product Terms. The Product Terms for Equipment Rental will be deemed to form part of the Agreement for this purpose;

1.5.8 **“Telkom”** means Telkom SA Limited and/or its successors; and

1.5.9 **“Unlimited Access”** means subject to the provisions of this ADSL Uncapped and/or the Agreement an unlimited amount of data of whatever nature downloaded, uploaded and/or transmitted, to and from an ADSL Line connected to ADSL Uncapped, which includes e-mail.

2 **DURATION**

2.1 ADSL Uncapped shall commence with effect from the date of activation of the ADSL Uncapped 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 ADSL Uncapped 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, ADSL Uncapped shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate ADSL Uncapped on 3 (three) calendar months written notice to the other to that effect.

2.4 In the event of a termination, Customer's use of ADSL Uncapped shall be deemed terminated. However, in the event that Customer logs on to ADSL Uncapped 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 ADSL Uncapped without notice to Customer.

2.5 To the extent that ADSL Uncapped provided to Customer is suspended by MWEB Business in terms of clause 9.12 of the General Terms or for any other reason whatsoever, Customer acknowledges that it will forfeit its access to and/or use of ADSL Uncapped, 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.

4 **UNDERTAKINGS AND ACKNOWLEDGEMENTS**

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

- 4.2 Although MWEB Business uses reasonable care and diligence to ensure that ADSL Uncapped 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 ADSL Uncapped 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 ADSL Uncapped 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 ADSL Uncapped and further that these circumstances and/or events are beyond MWEB Business' control: (i) use of ADSL Uncapped 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 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 ADSL Uncapped; (ix) any other action, omission and/or failure not within MWEB Business' control which has an impact on ADSL Uncapped.

5 TERMS AND CONDITIONS SPECIFIC TO ADSL UNCAPPED

- 5.1 MWEB Business shall provide Customer with ADSL Uncapped via Equipment installed on the Premises and shall, if selected, provide Customer with the number of public IP Addresses, as specified on the Application Form, to be configured on the Equipment.
- 5.2 Customer acknowledges and agrees that the nature and specifications of ADSL Uncapped are known to Customer and accepts that it is suitable for the purpose it is intended and will be used.
- 5.3 Customer acknowledges that:
- 5.3.1 ADSL Uncapped is a satellite service and therefore has higher latency to that of fibre, unless specified otherwise in the Application Form;
 - 5.3.2 ADSL Uncapped is a best effort service;
 - 5.3.3 the quality of the Uncapped ADSL Service may be experienced as a result of atmospheric conditions which includes without limitation bad weather conditions and other causes of interference;
 - 5.3.4 it shall use ADSL Uncapped only for the purposes it was designed;
 - 5.3.5 ADSL Uncapped allows Customer Unlimited Access, but Customer shall not use ADSL Uncapped in a manner that will not affect other customer's access, use and/or enjoyment of ADSL Uncapped; and
 - 5.3.6 MWEB Business is entitled in its own discretion to monitor Customer's usage and to limit the Unlimited Access without notice should MWEB Business, in its sole discretion, deem it appropriate under the circumstances.
- 5.4 If Customer has selected Uncapped ADSL 4MB in the Application Form, Customer acknowledges and agrees that:
- 5.4.1 Uncapped ADSL 4MB is dependant on the ADSL Line from Telkom and will therefore only be able to receive up-to 4Meg line speed; and

5.4.2 Uncapped ADSL 4MB has a threshold of 100GB and should Customer download more than 100GB within a month, the Uncapped ADSL will automatically be degraded to a line speed of 128kbps.

5.5 Without limiting the generality of the General Terms and Use Policies, Customer undertakes to use ADSL Uncapped solely for internal purposes and shall not be entitled to directly or indirectly transfer, distribute, re-distribute, copy, sell, re-sell, lease, rent, lend, license, sub-license ADSL Uncapped in whole or in part in any way whatsoever to any third party without MWEB Business' prior written consent.

6 **ADSL LINE AND TELKOM/ MWEB BUSINESS' SERVICE PROVIDER**

6.1 In order to have access to ADSL Uncapped, an ADSL Line, which is not included in ADSL Uncapped, is required and Customer may apply for the ADSL Line from Telkom or request MWEB Business to apply for the ADSL Line on Customer's behalf. If on the Application Form Customer has selected:

6.1.1 to apply for the ADSL Line directly from Telkom, Customer acknowledges that, it shall be solely responsible for applying for, installing and maintaining the ADSL Line, all costs and charges relating thereto and to adhere to Telkom's standard terms and conditions relating to the ADSL Line. Customer acknowledges further that its failure to do so will have a material impact on MWEB Business's ability to provide the Internet Access ADSL Services; or

6.1.2 that MWEB Business must apply for the ADSL Line on Customer's behalf and manage Customer's relationship with Telkom the Parties shall sign an agency agreement in terms of which MWEB Business will be appointed as an agent to perform and take all necessary actions, on behalf of Customer, with regard to the provision of the ADSL Line. MWEB Business as the duly appointed agent of Customer will complete all the necessary applications and do all things necessary to lease the ADSL line from Telkom on behalf of Customer to enable MWEB Business to provide ADSL Uncapped to the Customer. Customer however acknowledges that he/she/it shall be solely responsible for the costs and charges relating to the ADSL Line and to adhere to Telkom's standard terms and conditions relating to the ADSL Line.

6.2 Customer acknowledges and agrees that:

6.2.1 ADSL lines are not available everywhere and it is Customer's responsibility to ensure that any such ADSL Line required is available for installation, before Customer subscribes to ADSL Uncapped;

6.2.2 Except if otherwise agreed it shall be solely responsible to apply, install and maintain the ADSL Line, as well as for all costs and charges relating thereto. Customer acknowledges further that its failure to do so will have a material impact on MWEB Business' ability to provide ADSL Uncapped;

6.2.3 it shall be solely responsible for complying with all terms and conditions and/or limitations imposed by Telkom on the ADSL Line/s; and

6.2.4 it may not terminate ADSL Uncapped, other than is contemplated in clause 3 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 ADSL Line/s not be available to Customer at any stage during the term of ADSL Uncapped for any reason whatsoever.

6.3 Customer acknowledges that MWEB Business uses Telkom's network and/or MWEB Business' upstream provider's network to provide ADSL Uncapped. ADSL Uncapped is therefore provided subject to the limitations and terms imposed by Telkom and/or

MWEB Business' upstream provider upon MWEB Business in this regard, which includes limitations on bandwidth and/or any and all data of whatever nature downloaded, uploaded and/or transmitted, to and from an ADSL Line via ADSL Uncapped, which includes e-mail during a given period of time. Should Telkom or MWEB Business' upstream provider amend any of the said terms and/or conditions, which may have an impact on ADSL Uncapped then MWEB Business may amend ADSL Uncapped accordingly or terminate ADSL Uncapped without liability, provided that it uses its reasonable endeavours to provide Customer with reasonable notice of such amendments or termination.

7 IMPROPER USE OF ADSL UNCAPPED AND TERMINATION RIGHTS

7.1 In addition to the Use Policies, Customer agrees not to (nor to authorise or permit any other person to) use ADSL Uncapped and/or MWEB Business' network:

7.1.1 in a manner which is offensive, unlawful, in breach of codes of conduct binding on MWEB Business, in violation of legislation (including regulations) or the common law generally, in violation of the requirements and rules of any regulatory authority or in a manner which may cause harm to the name, goodwill and reputation of MWEB Business, its affiliates, and its business partners;

7.1.2 to engage in any abuse of e-mail or spamming, which shall include, but is not limited to the posting or cross posting of unsolicited articles with the same message (or substantially the same message) to an unacceptably high number of e-mail and newsgroup recipients that did not request to receive such messages;

7.1.3 to post or transmit any message, data, image or programme which is defamatory, or violates any other personality rights;

7.1.4 to post or transmit any message, data, image or programme which is illegal, offensive, threatening, abusive, harassing, harmful or hateful;

7.1.5 to post or transmit any message, data, image or programme which violates the intellectual property rights of others;

7.1.6 to post or transmit any file which contains viruses or any other destructive features, regardless of whether or not damage is intended by the Customer;

7.1.7 to compromise the security or tamper with system resources or account(s) on computer(s) at MWEB Business, or at any other site; and/or

7.1.8 to violate the privacy of any person, which shall include but shall not be limited to, hacking.