



## Product Terms

### Equipment Rent to Own

#### 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 Equipment Rent to Own Customer agrees that he/she/it has read, understand and are bound by
- 1.4. the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on MWEB Business’ Legal Website; and
- 1.5. the Product Terms set out herein;  
(collectively the “**MWEB Business Terms**”).
- 1.6. Customer’s use of the Equipment indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.
- 1.7. Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-
  - 1.7.1. “**Application Form**” means the application form completed and signed by Customer for the initiation of Equipment Rent to Own, as same may be amended from time to time in terms of the Agreement;
  - 1.7.2. “**Equipment**” means any router, gateway, server, security device and/or any other equipment (including any software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation associated with it), selected by Customer in the Application Form to be the subject of Equipment Rent to Own;
  - 1.7.3. “**Equipment Rent to Own**” means the Services which MWEB Business renders to Customer in accordance with Customer’s selections as indicated by Customer in the Application Form under such heading or description in terms whereof the selected Equipment is rented to Customer with the intention that Customer will subject to the terms and conditions set out herein own such Equipment;
  - 1.7.4. “**Force Majeure**” means any of the following events to the extent such events are beyond the reasonable control of a party-



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- 1.7.4.1. acts of God;
- 1.7.4.2. fires, floods or other catastrophes;
- 1.7.4.3. acts or failures to act of any governmental authority;
- 1.7.4.4. acts of war or civil disturbances;
- 1.7.4.5. terrorism;
- 1.7.4.6. severe weather;
- 1.7.4.7. strikes and other labour actions;
- 1.7.4.8. theft and vandalism;
- 1.7.4.9. other external aggression, including cable cuts; and
- 1.7.4.10. other similar events beyond such party's reasonable control;

1.7.5. **“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;

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

## 2. DURATION

- 2.1. This Agreement will commence on the Effective Date. Notwithstanding the commencement of the Agreement, Equipment Rent to Own shall commence upon the earlier occurrence of the following events:
- 2.2. the Activation Date of the Equipment should MWEB Business be required to deliver and install the Equipment as envisaged in clause 6.4 below; or
- 2.3. the date of delivery of the Equipment to Customer or collection of the Equipment from MWEB Business by Customer as envisaged in clause 7 below.
- 2.4. Equipment Rent to Own shall endure for the Initial Period and/or until the full amount of the Services Fees is settled in full, whichever period is the latter of the two. Notwithstanding the aforesaid, the provisions of this clause 2.4 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.



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2.5. Upon termination of Equipment Rent to Own Services for any reason whatsoever, Customer shall be obliged to settle the full outstanding amount failing which, MWEB Business shall notwithstanding the provisions of the General Terms, immediately be entitled to take possession of the Equipment. 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 Service Fees specified in the Application Form, in accordance with the provisions set out in the General Terms.

3.2. Customer acknowledges and agrees that the Services Fees shall where applicable, include delivery, installation, travel and/or any other *ad hoc* fee chargeable by MWEB Business relating to the Equipment.

### 4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

4.1. Although MWEB Business use reasonable care and diligence to ensure that the Equipment rented as envisaged herein is accurate, complete, correct, error-free secure, and/or reliable MWEB Business including the suppliers do not warrant, represent or in any way guarantee, either expressly or by implication that the Equipment is accurate, complete, correct, error-free, secure, 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 Equipment is rented "as is" and is used at the Customers' own discretion and risk. Customer acknowledges that the following circumstances and events may impact upon its use of the Equipment and further that these circumstances and/or events are beyond MWEB Business' control:

4.1.1. limitations upon national and/or international bandwidth capacity; telecommunication service operator failures, which includes telecommunication links and line failures;

4.1.2. mobile telecommunication service operator failures;

4.1.3. mobile network failures;

4.1.4. wireless network service operator failures;

4.1.5. wireless network failures;

4.1.6. operating systems;

4.1.7. access technology failures;



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4.1.8. quality of service of the telecommunication links or lines;

4.1.9. quality of the service of the mobile network links and/or wireless network links

4.1.10. 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 Equipment; and

4.1.11. any other action, omission and/or failure not within MWEB Business' control which has an impact on the Equipment.

4.2. 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.

4.3. 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.

**5. TERMS AND CONDITIONS SPECIFIC TO EQUIPMENT RENT TO OWN** MWEB Business shall in accordance with Customer's choices as set out in the Application Form, rent the Equipment to Customer who accepts such rental. Customer acknowledges that ownership to the Equipment will remain with MWEB Business until the Services Fees are paid in full.

5.2. Customer acknowledges and agrees that the specifications of the Equipment are known to him/her/it and accepts that it is suitable for the purpose for which it will be used.

5.3. Customer acknowledges and agrees that until ownership passes to him/her/it as envisaged in clause 5.1 above:

5.3.1. the Equipment shall at all times remain the property of MWEB Business;

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



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5.3.3. MWEB Business shall have the right to enter Customer's premises in order to remove the Equipment in the event that Customer terminates the Agreement without paying the full Services Fees;

5.3.4. he/she/it 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;

5.3.5. he/she/it or anyone else shall not (under any circumstances), 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;

5.3.6. access to the Equipment shall be restricted to MWEB Business' staff or its duly authorized agents and/or contractors only.

5.4. MWEB Business will not be responsible for Customer's network infrastructure and Customer will be solely responsible for his/her/its network infrastructure.

5.5. Customer acknowledges and agrees that if the site at which the Equipment is to be installed is rented, Customer shall:

5.5.1. advise MWEB Business in writing of the name and address of the landlord as well as any changes thereto;

5.5.2. inform the landlord that the Equipment belongs to MWEB Business and can therefore not be subject to a lien or hypothec, it being agreed that MWEB Business may notify the landlord of this fact should Customer fail to do so; and

5.5.3. not move the Equipment without MWEB Business' prior written consent.

## 6. DELIVERY AND INSTALLATION (IF SELECTED/APPLICABLE)

6.1. Customer acknowledges and agrees that MWEB Business will only delivery and install the Equipment at Customer's premises if:

6.1.1. Customer has selected delivery and installation in the Application Form; or

6.1.2. due to supplier's terms and/or the nature of the Equipment it is compulsory for MWEB Business to delivery and install the Equipment.



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- 6.2. Upon submission of the Application Form, MWEB Business shall notify Customer with regard to the delivery and 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 withdraw or cancel the order of the Equipment or refuse to accept delivery, installation, set-up and or configuration as a result of MWEB Business' failure to meet anticipated deliver and installation date and times.
- 6.3. Customer shall prior to the installation date and if required, supply MWEB Business with his/her/its technical requirements to enable MWEB Business to:
- 6.3.1. install and connect the Equipment to Customer's network;
- 6.3.2. set up and/or configure the Equipment to meet Customer's requirements.
- 6.4. MWEB Business will (if required), confirm if Customer's requirements are acceptable or not and the reasons for the non acceptance of such requirements. In the event that MWEB Business accepts Customer's requirements, MWEB Business shall prior to the delivery and installation date:
- 6.4.1. supply Customer with the specifications that will enable MWEB Business to install and connect the Equipment to Customer's network;
- 6.4.2. set up and/or configure the Equipment to meet Customer's requirements.
- 6.5. Customer acknowledges that MWEB Business shall not be responsible for any loss and/or damage caused to Customer's network infrastructure and/or Equipment as a result of the setting up and/or configuration of the Equipment. Customer is therefore advised to keep a back up of all its data.
- 6.6. MWEB Business shall at its own costs and expense deliver the Equipment at Customer's premises, however, if Customer's premises are situated beyond 100km (one hundred kilometres) from MWEB Business' offices, MWEB Business will charge Customer for the delivery costs incurred by MWEB Business. 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.
- 6.7. Upon delivery of the Equipment as envisaged in clause 6.6 above, Customer shall bear all risk of loss, theft, damage and/or destruction of the Equipment whilst housed at Customer's premises for an amount equal to the full replacement value thereof. Customer shall make his/her/its own arrangements regarding the insurance of the Equipment.



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- 6.8. Customer shall prior to the installation: (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.
- 6.9. Customer warrants that:
- 6.9.1. the premises and/or the area where installation will be done, meet the requirement of the Occupational Health and Safety Standards;
- 6.9.2. 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
- 6.9.3. 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.
- 6.10. 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 clause 6.9 above.
- 6.11. MWEB Business including any of its respective agents or contractors shall on the installation date and during business hours, attend to:
- 6.11.1. the installation of the Equipment; and
- 6.11.2. set-up and/or configuration of the Equipment (if required).
- 6.12. 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 6.9.1 and 6.9.2 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.
- 6.13. 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.
- 6.14. Customer acknowledges that:



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- 6.14.1. 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;
- 6.14.2. 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;
- 6.14.3. 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 and/or agents.
- 6.14.4. in the event that any limitation or similar provision contained in these Product Terms is held to be invalid for any reason whatsoever, the entire liability of MWEB Business including its authorised agents for any damage of whatsoever nature from any cause related to or arising out of these Product Terms, regardless of any form of action, whether in contract or in *delict* will not exceed the aggregate of the Services Fees paid by Customer under this Agreement for a period of 6 (six) months preceding Customer's written notice to MWEB Business of such claim. For the avoidance of doubt, the Parties record and agree that Customer shall only have 1 (one) month calculated from the installation date to lodge such claims in writing, directly with MWEB Business.

## 7. DELIVERY AND COLLECTION OF THE EQUIPMENT (IF SELECTED)

7.1. Customer acknowledges and agrees that if he/she/it has:

- 7.1.1. selected delivery to be made by MWEB Business in the Application Form, Customer shall upon delivery of the Equipment, bear all risk of loss, theft, damage and/or destruction of the Equipment for the full replacement value thereof. Customer shall make his/her/its own arrangements regarding the insurance of the Equipment;
- 7.1.2. selected to collect the Equipment from MWEB Business, Customer shall upon the collection of the Equipment from MWEB Business, bear all risk of loss, theft, damage and/or destruction of the Equipment for the full replacement value thereof. Customer shall make its own arrangements regarding the insurance of the Equipment.

## 8. USE AND SUPPORT AND WARRANTY OF THE EQUIPMENT



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- 8.1. Customer acknowledges and agrees that it shall only use the Equipment for the purposes it is intended to be used.
- 8.2. 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.
- 8.3. Where appropriate, third party vendor equipment supplied by MWEB Business may be covered by the vendor's standard warranties and guarantees. Customer shall not engage in any action which contravenes or voids the vendor's terms of warranty or guarantee. In the event that Customer engages in any action which contravenes or voids the vendor's warranty, Customer shall bear the costs of any repairs, replacements or extended warranties and guarantees.
- 8.4. MWEB Business shall subject to the supplier's terms and conditions in respect of the Equipment provide Customer with a hardware warranty for the Equipment.
- 8.5. Where the Equipment is still under warranty:
  - 8.5.1. MWEB Business may in its discretion provide support services on the Equipment either remotely or at the Customer's premises. Customer consents and 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 inspection.
  - 8.5.2. 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.
  - 8.5.3. If Customer's premises are situated beyond a radius of 100km from MWEB Business' offices, Customer acknowledges that MWEB Business reserves the right to charge reasonable fees for travel.
  - 8.5.4. In the event that the Equipment is to be repaired and/or replaced at Customer's premises, MWEB Business will use its reasonable commercial endeavours to repair and/or replace Customer's Equipment within: (i) 2 (two) business days if Customer's premises are situated within 100KM radius from MWEB Business' offices or (ii) 4 (four) business days if Customer's premises are situated beyond 100KM from MWEB Business' office.



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- 8.6. Customer acknowledges that in the event that he/she/it has allowed any third party not authorized by MWEB Business to gain access to the Equipment prior to the passing of ownership as envisaged in these Product Terms, Customer's warranty shall be null and void and all support services, repairs and/or maintenance shall be done at a costs to Customer. Customer agrees to pay these fees in accordance with the provisions of the General Terms.
- 8.7. Customer acknowledges that MWEB Business reserves the right to charge reasonable fees for travel, support, management, repair and/or replacement services fees if the warranty in respect of the Equipment has expired.

## 9. SOFTWARE

- 9.1. Where applicable, MWEB Business grants to Customer a non-transferable, personal, non-exclusive sublicense to use any software provided with the Equipment (the "Software"), and shall use such Software solely on and in conjunction with the Equipment on the terms and conditions provided by the vendor to MWEB Business. Customer shall not copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software or convert the whole or any part of the Software from object code into source code.
- 9.2. MWEB Business will not be responsible for:
- 9.2.1. Customer's software, applications and/or any component thereof required and used by Customer;
- 9.2.2. the licensing of Customer's software, application and/or any component thereof required and used by Customer. Without limiting the generality of the General Terms or any of the rights of the relevant software and/or application vendors against Customer, any failure to license such software and/or application correctly may result in the termination and/or suspension of the Agreement and/or any Services, including the Equipment Rental Product Terms and Customer furthermore indemnifies MWEB Business from any losses, damages, costs, claims, penalties, fines of whatever nature resulting from Customer's failure to license the software and/or applications correctly and/or at all.