



## Product Terms

## Equipment 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 Equipment 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 Equipment 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 Equipment Rental, as same may be amended from time to time in terms of the Agreement;
  - 1.5.2 “**Equipment**” means any router, gateway, server, security device and/or any other equipment selected by Customer in the Application Form to be the subject of 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;
  - 1.5.3 “**Equipment Rental**” 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 in terms whereof the selected Equipment is rented by MWEB Business to Customer;
  - 1.5.4 “**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/ProductTerms.aspx> under the heading “General Terms”; and
  - 1.5.5 “**Primary Services**” means the Services indicated on the Application Form in terms of which the Equipment is intended to be used.

### 2. DURATION



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2.1 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, the Equipment Rental shall commence upon the earlier occurrence of the following events:

2.1.1 MWEB Business' acceptance of Customer's application for the Equipment Rental; or

2.1.2 Customer's first use of any aspect of the Equipment Rental.

2.2 If the Equipment Rental forms part of any other Services provided in terms of the Agreement then the duration and termination of the Equipment Rental shall be the same as the duration and termination of such Services.

2.3 If Customer has selected Equipment Rental in terms of the Application Form then:

2.3.1 the initial period applicable to the Primary Services shall be the initial period applicable to the Equipment Rental (hereinafter referred to as the "Initial Period"). Any provisions regarding the termination of the Primary Services at the end of the applicable Initial Period of such Primary Services shall apply to the Equipment Rental. Any notice of termination given by Customer during the Initial Period shall only become effective upon the expiry of the Initial Period;

2.3.2 if neither Party has given notice as contemplated in clause 2.3.1 above or if neither Party has terminated the Primary Services, then the Equipment Rental shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate the Equipment Rental on 3 (three) calendar months written notice to the other to that effect. Customer acknowledges that in the event of a termination of the Primary Services, the Equipment Rental shall automatically terminate together with the Primary Services.

2.4 Upon termination of the Equipment Rental as envisaged in clause 2.3.2 above MWEB Business shall notwithstanding the provisions of the General Terms, immediately be entitled to take possession of the Equipment.

2.5 To the extent that the Equipment Rental provided to Customer are 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 Equipment Rental.

### 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



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- 4.1 Although MWEB Business use reasonable care and diligence to ensure that the Equipment rented is 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 Equipment is 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 Equipment is rented "as is" and is used at the Customers' own risk.
- 4.2 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: (i) limitations upon national and/or international bandwidth capacity; (ii) telecommunication service operator failures, which includes telecommunication links and line failures; (iii) mobile telecommunication service operator failures; (iv) mobile network failures; (v) operating systems; (vi) access technology failures; (vii) quality of service of telecommunication links or lines; (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 Equipment; and (ix) any other action, omission and/or failure not within MWEB Business' control which has an impact on the Equipment.

## 5. TERMS AND CONDITIONS SPECIFIC TO EQUIPMENT RENTAL

- 5.1 MWEB Business shall, in accordance with Customer's choices as set out in the Application Form, lease the Equipment to Customer who accepts such rental. The Equipment will at all times remain the property of MWEB Business and Customer acknowledges that he/she/ it will never become owner thereof.
- 5.2 Customer acknowledges and agrees that it shall only use the Equipment in conjunction with the Primary Services or if Equipment Rental forms part of another Service then in terms of such Services.
- 5.3 Customer acknowledges that the specifications of the Equipment is known to him/her/it and accepts that it is suitable for the purpose for which it will be used.
- 5.4 Customer shall prior to the delivery date supply MWEB Business with specific requirements pertaining to the installation and configuration of the Equipment and MWEB Business will confirm if Customer's requirements are acceptable or not and the reasons for the non acceptance of such requirements.
- 5.5 Should MWEB Business accept Customer's requirements, MWEB Business shall prior to the delivery date; (i) supply Customer with the specifications that will enable MWEB Business to install and connect the Equipment to Customer's network; (ii) configure the Equipment to meet Customer's requirements.
- 5.6 Customer shall prior to the delivery date ensure that:
- 5.6.1 Customer's premises are prepared for delivery and installation purposes to the standard set out in the specification;



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- 5.6.2 MWEB Business' technicians or its agents have full access to Customer's premises in order to install and connect the Equipment; and
- 5.6.3 Customer's premises are protected from any destructive elements including without limitation, lightning, flooding, and/or fire.
- 5.7 MWEB Business shall at its own costs and expense deliver and install the Equipment at Customer's premises, however, if Customer's premises are situated beyond 100km (one hundred kilometres) from MWEB Business' offices, MWEB Business may charge Customer for the delivery and installation costs incurred by MWEB Business.
- 5.8 Customer shall accept installation of the Equipment by allowing MWEB Business or its agents, reasonable access to its premises and by activating the service whenever tendered by MWEB Business. Customer shall pay MWEB Business the installation charges specified in the Application Form.
- 5.9 A signed delivery note by Customer (including his/her/its employee, representative, carrier, agent or nominee) shall constitute prima facie proof that the Equipment was delivered to and received by Customer in good condition.
- 5.10 A signed confirmation by Customer (including his/her/its employee, representative, carrier, agent or nominee) that installation and/or set-up and/or configuration, whichever is/are applicable, of the Equipment was done shall constitute prima facie proof of the fact that it was done according to specification and agreement.
- 5.11 MWEB Business shall use its reasonable endeavours to comply with the agreed delivery and/or installation and/or set-up and/or configuration date/s, whichever is/are applicable, but Customer shall not be entitled to cancel this Equipment Rental or refuse to accept delivery, installation, set-up and or configuration because of MWEB Business' failure to do so on such date/s.
- 5.12 Customer shall, without limiting the generality of the General Terms, not be able to hold MWEB Business or its agents 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 or arising in any manner whatsoever from the delivery and/or installation and/or set-up and/or configuration of the Equipment or failure to do so on the agreed date/s.
- 5.13 Customer acknowledges that the Equipment shall be locked and sealed by MWEB Business. Under no circumstances will Customer or anyone else be allowed to: (i) unlock and/or break the seal; or (ii) access, open and/or tamper with the Equipment. Access shall only be restricted to MWEB Business' staff or its duly authorized agents; (iii) move the Equipment to any other location without the express written permission of MWEB Business; and (iv) use the Equipment for any other purpose than for the intended MWEB Business Services.



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- 5.14 MWEB Business will not be responsible for Customer's network infrastructure and Customer will be solely responsible for its network.
- 5.15 Customer shall remain responsible for the Equipment supplied by, or on behalf of, MWEB Business in connection with the service. Customer shall bear all risk of loss, 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.
- 5.16 Customer shall not allow any third party to take possession of the Equipment at any time, unless duly authorised 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. Notwithstanding the foregoing, the Equipment shall at all times remain the property of MWEB Business.
- 5.17 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.
- 5.18 If the site at which the Equipment will be installed is rented, Customer shall:
- 5.18.1 advise MWEB Business in writing of the name and address of the landlord as well as any changes thereto;
  - 5.18.2 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
  - 5.18.3 not move the Equipment without MWEB Business' prior written consent.
- 5.19 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, copy, sell, re-sell, lease, rent, lend, license, sub-license the Equipment in whole or in part in any way whatsoever to any third party without MWEB Business' prior written consent.
- 5.20 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.

## 6. SUPPORT SERVICES

- 6.1 MWEB Business may in its discretion provide support and management services on the Equipment either remotely or at the Customer's premises.



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- 6.2 Should it be required to provide support and management services at Customer's premises, Customer shall allow MWEB Business' support staff or its agents reasonable access to its premises and the Equipment for the purposes of performing support and management services as envisaged in clause 5.1 above and/or to effect any repairs or replacement of the Equipment. 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 such support, management, repair and/or replacement services fees.
- 6.3 Except if otherwise indicated on the Application Form in the event that the Equipment requires to be repaired and/or replaced at Customer's premises, MWEB Business will use its reasonable commercial endeavours to repair and/or replace Customer 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.

## 7. SOFTWARE

- 7.1 When applicable, MWEB Business grants to Customer non-transferable, personal, non-exclusive sub-license 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, convert the whole or any part of the Software from object code into source code.
- 7.2 MWEB Business will not be responsible for: (i) Customer's software, applications and/or any component thereof required and used by Customer; (ii) 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 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.