



## 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 the ADSL Uncapped, 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 ADSL Uncapped 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 “**ADSL Line**” Asymmetric Digital Subscriber Line provided by Telkom in accordance with the provisions of Telkom’s PSTN license (including any conversion of that license 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; (iii) international access via satellite technology or fibre technology; and (iv) the number of static IP addresses;
  - 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 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 as envisaged in clause 8 below and shall include any software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation associated with it;



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- 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/GeneralTerms.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 **“Operator** means Telkom SA Limited and/or any other operator that may be used by MWEB Business for the provision of the ADSL Uncapped Service; and
- 1.5.8 **“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 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 ADSL Uncapped, but Customer shall still be liable to pay the Service Fees during such suspension.

## 3. SERVICE FEES



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- 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 where MWEB Business has applied for the ADSL Line in its own name, MWEB Business shall pass the ADSL Line fees chargeable by the Operator to Customer and such ADSL Line fees shall form part of the Service Fees and all provisions in the Agreement relating to the payment of the Service Fees will be applicable to the ADSL Line fees. MWEB Business may include such ADSL Line fees in the Service Fees even if it is not due or paid by MWEB Business to the Operator yet, provided that the Operator has invoiced MWEB Business for such fees and charges.
- 3.3 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. If Customer has selected a debit order as a method of payment in the Application Form, Customer hereby authorizes MWEB Business to debit his/her/its bank account with all fees chargeable by MWEB Business as envisaged in this clause.
- 3.4 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 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.



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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) Equipment and operating systems failures; (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 Customer acknowledges and agrees that:

5.1.1 ADSL Uncapped may be provided via satellite or fibre technology for international access;

5.1.2 MWEB Business will (unless specified otherwise in the Application Form), provide ADSL Uncapped via satellite technology;

5.1.3 in order to have access to the ADSL Uncapped, an ADSL Line and Equipment are required and for these purposes:

5.1.3.1 depending on Customer's choices as set out in the Application Form, Customer shall either apply for the ADSL Line directly from the Operator or instruct MWEB Business to apply for the ADSL Line on Customer's behalf as envisaged in clause 6 below;

5.1.3.2 MWEB Business shall rent the Equipment to Customer as envisaged in clause 8 below.

5.1.4 ADSL Uncapped is a *best effort* service;

5.1.5 ADSL Uncapped is dependent on the ADSL Line and will therefore only be able to receive the speed up-to the Operator line speed installed at the Premises;

5.1.6 ADSL Uncapped is provided subject to any terms that the Operator and/or MWEB Business' upstream providers may impose from time to time;

5.1.7 functionality and operation of the ADSL Uncapped is depended upon the functionality and operation of the ADSL Line;

5.1.8 the quality and capacity of the ADSL Uncapped is dependent upon the quality and capacity available to the ADSL Line and/or MWEB Business' upstream providers network. Customer shall therefore not be entitled to terminate ADSL Uncapped as a result of any impairment to the quality of the ADSL Line and/or quality and capacity of the ADSL network which impacts on Customer's access and usage of the ADSL Uncapped.



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5.2 MWEB Business shall provide Customer with:

5.2.1 ADSL Uncapped via Equipment installed at the Premises;

5.2.2 the number of public IP Addresses which public IP Addresses will be configured on the Equipment.

5.3 Customer acknowledges and agrees that:

5.3.1 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;

5.3.2 he/she/it shall use ADSL Uncapped only for the purposes it was designed;

5.3.3 ADSL Uncapped allows Customer Unlimited Access, but Customer shall not use ADSL Uncapped in a manner that will affect other customer's access, use and/or enjoyment of ADSL Uncapped; and

5.3.4 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 Customer acknowledges and agrees that where ADSL Uncapped is provided via satellite technology (hereinafter referred to as "**ADSL Uncapped Satellite**"), the following will apply:

5.4.1 ADSL Uncapped Satellite is a satellite service and therefore has higher latency to that of fibre,

5.4.2 satellite technology shall be used for international access;

5.4.3 the quality of the ADSL Uncapped Satellite may be experienced as a result of atmospheric conditions which includes without limitation bad weather conditions and other causes of interference;

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

5.5 Customer acknowledges and agrees where ADSL Uncapped is shaped (hereinafter referred to as "**ADSL Uncapped – Shaped**"), the following will apply:

5.5.1 ADSL Uncapped – Shaped will be provided via fibre technology;

5.5.2 fibre technology shall be used for international access;

5.5.3 MWEB Business will provide a high priority to the following protocols: HTTP; FTP; HTTPS; SSH; TELNET; POP3, SMTP and IMAP on the network;

5.5.4 all other protocols not forming part of the list above will be supported at lower priority on the network;

5.5.5 the order of priorities as set out in clause 5.5.3 is not guaranteed;



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5.5.6 the Operator may change the order of priority at any time during the Initial Period including the renewal thereof and Customer shall not be entitled to terminate the ADSL Uncapped – Shaped as a result of the amendment on the order of priority of protocols;

5.5.7 MWEB Business shall not be liable to Customer for any damage of whatsoever nature resulting from any delay caused by or arising from the order of priority of the protocols and/or the amendment thereof.

## 6. ADSL LINE AND OPERATOR / MWEB BUSINESS' SERVICE PROVIDER

6.1 In order to have access to ADSL Uncapped via satellite technology and/or fibre technology, an ADSL Line, which is not included in ADSL Uncapped, is required and Customer may apply for the ADSL Line from the Operator 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 the Operator 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 the Operator 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 Operator'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 the Operator on the ADSL Line/s; and



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6.2.4 it may not terminate ADSL Uncapped, other than is contemplated in clause 2 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 the Operators 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 the Operator 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 the Operator 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 authorize 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;



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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.

## 8. EQUIPMENT RENTAL AND INSTALLATION

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

8.1.1 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;

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

8.1.3 MWEB Business shall have the right to enter Customer's Premises in order to remove the Equipment upon termination of the ADSL Uncapped.

8.2 Upon acceptance of Customer's Application Form, MWEB Business shall notify Customer with regard to the delivery, installation date and time. MWEB Business cannot guarantee the delivery, installation date and time, but will use reasonable efforts to ensure that the anticipated delivery, 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 delivery, installation date and time without MWEB Business' written consent. Customer shall also not be entitled to cancel ADSL Uncapped or refuse to accept delivery, installation, set-up and or configuration of the Equipment as a result of MWEB Business' failure to meet anticipated installation date and times.

8.3 Customer shall prior to the delivery and 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.

8.4 Upon delivery of the Equipment, Customer shall bear all risk of loss, theft, damage and/or destruction of the Equipment while housed at the Premises for an amount equal to the full replacement value thereof. Customer shall make its own arrangements regarding the insurance of the Equipment.

8.5 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.

8.6 If the Premises at which the Equipment will be installed is rented:

8.6.1 Customer shall:



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

8.6.1.2 not move the Equipment without MWEB Business' prior written consent;

8.6.1.3 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.

8.7 Customer warrants that:

8.7.1 the Premises and/or the area where installation will be done, meet the requirement of the Occupational Health and Safety Standards;

8.7.2 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

8.7.3 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.

8.7.4 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.

8.7.5 MWEB Business including any of its agents or contractors shall on the installation date and during business hours, attend to:

8.7.5.1 the installation of the Equipment; and

8.7.5.2 set-up and/or configuration of the Equipment.

8.8 Customer shall allow MWEB Business including its agents or contractors, all reasonable access to the Premises and/or property for the purposes set out in clauses 8.7.5.1 and 8.7.5.2 above. A signed confirmation by Customer (including his/her/its employee, representative, carrier, agent or nominee), that delivery, 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.

8.9 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.



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8.10 Customer acknowledges that:

8.10.1 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;

8.10.2 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;

8.10.3 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 including their 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 and/or its contractor's;

8.10.4 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.

8.11 Customer shall when required, allow MWEB Business including 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.

8.12 Customer acknowledges and agrees that it shall only use the Equipment in conjunction with the ADSL Uncapped 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.

8.13 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.

8.14 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.



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#### 9. NEW PREMISES AND/OR LOCATION

9.1 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:

9.1.1 shall subject to the provisions of clause 3 above, move and/or relocate Customer's Equipment to the new Premises and/or location;

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

#### 10. UPGRADES AND DOWNGRADES

10.1 Customer further acknowledges and agrees that:

10.1.1 he/she/it is allowed to upgrade the ADSL Uncapped 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**.

10.1.2 upgrade of ADSL Uncapped shall not in any manner whatsoever be deemed to include the ADSL Line. Customer shall notify MWEB Business in writing should he/she/it require the ADSL Line to be upgraded, whether such ADSL Line is in Customer's name and/or MWEB Business' name;

10.1.3 any notice received by MWEB Business during the course of the month for the upgrade of the ADSL Line as envisaged in clause 10.1.1. above, shall only be effective from the 1<sup>st</sup> of the following month;

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