



## Product Terms

### Wireless Broadband 3G

#### 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 Wireless Broadband 3G 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 Wireless Broadband 3G, (collectively “the Terms”).
- 1.4 Your use of the Wireless Broadband 3G indicates your acceptance without modification of the Terms, which will constitute a legal agreement between you and MWEB Business.
- 1.5 By using or subscribing to Wireless Broadband 3G you agree that you have read, understand and are bound by:
  - 1.5.1 the General Terms and Conditions and other notices under “General” on our Legal Notices Webpage; and
  - 1.5.2 these terms that apply specifically to Wireless Broadband 3G, (collectively “the Terms”).
- 1.6 Your use of Wireless Broadband 3G indicates your acceptance without modification of the Terms, which will constitute a legal agreement between you 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 Wireless 3G, as same may be amended from time to time in terms of the Agreement;
  - 1.7.2 “**Booster**” means the additional Data required by Customer to increase the Internet traffic capacity selected by Customer in the Application Form;
  - 1.7.3 “**Data**” means a protocol in which information is sent, received and/or transmitted via a designated network to a recipient base;
  - 1.7.4 “**Data Card**” means the Equipment as defined in clause 1.7.5 below;
  - 1.7.5 “**Equipment**” means depending on Customer's selection as indicated by Customer in the Application Form under the heading or description of Wireless 3G, the Data Card and/or Wireless Broadband 3G Router, which is either:
    - 1.7.5.1 rented by MWEB Business to Customer during the Initial Period of Wireless 3G, subject to the terms and conditions of the Equipment Rental Product Terms, including the Vodacom SP Terms; or
    - 1.7.5.2 purchased from MWEB Business by Customer, subject to the terms and conditions of the Equipment Purchase Product Terms, including the Vodacom SP Terms;
  - 1.7.6 “**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;
  - 1.7.7 “**Internet**” means the collection of local area networks and wide area networks that all use the same protocol, namely Transmission Control Protocol / Internet Protocol (“TCP/IP”) to form a seamless packet switched network;

- 1.7.8 **"Internet Connectivity"** means the Internet connectivity services to be provided to Customer by MWEB Business subject to the Vodacom Terms;
- 1.7.9 **"Network"** means the GSM network and the 3G Platform used by Customer to connect to the Internet, which network is owned and managed by Vodacom SP;
- 1.7.10 **"Network Coverage"** means transmission coverage available by the selected network operator;
- 1.7.11 **"PSTN"** means public switched telephone network;
- 1.7.12 **"Vodacom SP Terms"** means the terms and conditions set out in clause 8 below;
- 1.7.13 **"Vodacom SP"** means Vodacom Group (Proprietary) Limited;
- 1.7.14 **"Wireless Broadband 3G"** means the Services MWEB Business renders to Customer in accordance with: (i) Customer's selected as indicated by Customer in the Application Form under such heading or description and (ii) Vodacom Terms and which may depending on Customer's selection include Wireless 3G and/or Wireless 3G with HSDPA;
- 1.7.15 **"Wireless Broadband Account"** means the wireless broadband account that the Customer's Wireless Broadband 3G and MWEB Business' value added services are enabled on as a connection to the Network via the Equipment;
- 1.7.16 **"Wireless Broadband 3G Router"** means the Equipment as defined in clause 1.7.5 above; and
- 1.7.17 **"Wireless 3G Platform"** means the software and hardware forming part of the Network, which MWEB Business uses to grant Customer access to the Wireless Broadband 3G.

## 2. DURATION

- 2.1 Wireless Broadband 3G shall commence with effect from the date of activation of the Wireless Broadband 3G by MWEB Business and endure for an initial period of 2 (two) years (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 Wireless Broadband 3G at the end of the Initial Period in accordance with the provisions of the General Terms. Any notice of termination given by Customer during the Initial Period shall only become effective upon the expiry of the Initial Period.
- 2.3 In the event of termination by you prior to the expiry of the Initial Period, we will be entitled to claim payment from you for the balance of the Service Fees due in respect of the Initial Period. Early termination will be accepted on 60 (sixty) days prior written notice to us.
- 2.4 If neither Party has given notice as contemplated in clause 2.2 or 2.3 above, Wireless Broadband 3G shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate Wireless Broadband 3G in accordance with the provisions of the General Terms.
- 2.5 In the event of a termination, Customer's use of Wireless Broadband 3G shall be deemed terminated. However, in the event that Customer logs on to Wireless Broadband 3G 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 Wireless Broadband 3G without notice to Customer.
- 2.6 To the extent that Wireless Broadband 3G 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 Wireless Broadband 3G, 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.
- 3.2 Customer acknowledges and agrees that MWEB Business shall be entitled to levy usage charges for each megabyte of Internet traffic in excess of the limit selected by Customer in the Application Form. MWEB Business shall invoice Customer monthly in arrears for any excess usage charges.
- 3.3 Should Customer reach its traffic limit in a month and as a result therefore wish to purchase more Internet traffic capacity up until the expiry of the current month, Customer's credit limit may be amended by agreement between the Parties either in writing or electronically on the system MWEB Business

provides for that purpose, as the case may be, from time to time. Customer agrees that such amendment shall be seen as an amendment to the Agreement and the terms and conditions of the Agreement, including these Wireless Broadband 3G Product Terms which shall at all times apply to such amendments without specifically referring to the same at the time.

- 3.4 Should Customer downgrade to a lower Internet traffic package as envisaged in clause 5.6.5.2 below, Customer shall be liable to pay MWEB Business a penalty fee which shall be determined by MWEB Business from time to time.
- 3.5 Any Service Fees payable for a Booster shall be billed monthly in arrears. The Service Fees applicable to the Booster may vary from time to time and Customer is referred to <http://www.mwebbusiness.co.za/products.aspx?ParentID=208&MenuID=210> (the "Services Website") for the latest applicable Service Fees.
- 3.6 Any Wireless Broadband 3G usage in excess of the Booster and/or Internet traffic limit selected by Customer in the Application Form shall be billed monthly in arrears at the fee specified in the Application Form and/or Service Website whichever is applicable. Customer acknowledges that MWEB Business may vary the excess fees chargeable as envisaged herein from time to time. Customer is therefore referred to the Service Website for the latest applicable excess fees

#### **4. UNDERTAKINGS AND ACKNOWLEDGEMENTS**

- 4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with Wireless Broadband 3G on a 24 (twenty four) hour per day basis on each and every day for the continued duration of the Wireless Broadband 3G.
- 4.2 Although MWEB Business use reasonable care and diligence to ensure that Wireless Broadband 3G 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 Wireless Broadband 3G 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 Wireless Broadband 3G is rendered "as is" and "as available" and is used at the Customers' own discretion and risk.
- 4.3 Customer acknowledges that: (a) the following circumstances and events may impact upon its use of Wireless Broadband 3G and/or the quality and coverage availability of Wireless Broadband 3G; and (b) that these circumstances and/or events are beyond MWEB Business' control: (i) use of Wireless Broadband 3G by other customers; (ii) the Internet; (iii) limitations upon national and/or international bandwidth capacity; (iv) telecommunication service operator failures, which includes telecommunication links and line failures; (v) mobile telecommunication service operator failures; (vi) mobile network failures; (vii) wireless network failures; (viii) operating systems; (ix) access technology failures; (x) quality of service of telecommunication links or lines; (xi) quality and coverage availability of mobile and/or wireless telecommunication links; (xii) physical features such as buildings and underpasses; (xiii) atmospheric conditions including without limitation bad weather conditions and other causes of interference; and (xiv) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on Wireless Broadband 3G; and (xv) any other action, omission and/or failure not within MWEB Business' control which has an impact on Wireless Broadband 3G.
- 4.4 Customer further acknowledges that: (i) MWEB Business does not warrant, represent nor in any way guarantee the quality and coverage availability of the Wireless Broadband 3G; (ii) the quality and coverage availability of the Wireless Broadband 3G shall be limited to that provided by the Network.

#### **5. TERMS AND CONDITIONS SPECIFIC TO WIRELESS 3G**

- 5.1 MWEB Business shall as part of the Wireless Broadband 3G Services, provide Customer with Internet connectivity together with the value added services which are limited to the following: (i) Mwebbiz.co.za e-mail address; (ii); Internet traffic specified in the Application Form; (iii) mail box at the size specified by Customer in the Application Form; (iv) wifi minutes specified in the Application Form.
- 5.2 Customer acknowledges that:
  - 5.2.1 a Data Card is required to access and use the Wireless Broadband 3G;
  - 5.2.2 only a Wireless 3G Router can be configured and used to connect Customer's computer systems to enable dual access to the Wireless Broadband 3G;
  - 5.2.3 a Data Card is only enabled to receive and/or transmit Data;
  - 5.2.4 a Data Card cannot support dual SIM card functionality;

- 5.2.5 the nature and specifications of Wireless Broadband 3G is known to him/her/it and accepts that the Wireless Broadband 3G is suitable for the purpose Customer intends to use it;
- 5.2.6 the Wireless Broadband 3G may be impaired whilst Customer is using the Wireless Broadband 3G to upload or download Data;
- 5.2.7 Wireless Broadband 3G is intended to be used only for Internet related services including without limitation to carry and/or transmit Data and not voice.
- 5.3 MWEB Business does not warrant, represent and/or guarantee that Wireless Broadband 3G has voice capability and/or will transmit and/or receive voice. In the event that Customer makes, receives and/or transmits voice telecommunication calls via Wireless Broadband 3G, Customer shall be held liable for the costs of such calls at the price chargeable by mobile service operators.
- 5.4 Without limiting the applicability of the General Terms and/or Use Policies, Customer:
- 5.4.1 agrees not to use Wireless Broadband 3G for any unlawful, abusive or any other purpose including, without limitation, using Wireless Broadband 3G in any manner that (i) interferes with MWEB Business' ability to provide Wireless Broadband 3G or any other service to its customers; (ii) interferes with the quality and/or availability of the Network and/or (iii) infringes upon any applicable legislation and/or regulation including without limitation the Electronic Communications Act;
- 5.4.2 agrees not to use Wireless Broadband 3G to infringe the intellectual property rights or other proprietary rights of MWEB Business and/or any other person or to post or transmit anything which contains viruses or any other destructive features, regardless of whether or not damage is intended;
- 5.5 Mailbox and Mwebbiz.co.za e-mail address
- 5.5.1 MWEB Business shall as part of the Wireless Broadband 3G Service provide Customer with a mailbox at the size specified in the Application Form and a Mwebbiz.co.za email address. MWEB Business shall configure Customer's mail box and Mwebbiz.co.za e-mail address into Customer's Wireless Broadband Account.
- 5.5.2 Customer acknowledges and agrees that:
- 5.5.2.1 the mailbox service shall be provided to Customer subject to the terms and conditions applicable to mailbox which can be found under the name Mailbox at <http://www.mwebbusiness.co.za/Legal.aspx> under the heading Product Terms but with the exclusion of the duration clause; and
- 5.5.2.2 although Mwebbiz.co.za e-mail address forms part of the Wireless Broadband 3G, Customer will not be required to subscribe to any of the MWEB Business Internet Access Services and such Internet Access Services shall not form and/or be deemed to form part of the Wireless Broadband 3G Services.
- 5.5.3 Customer accepts full responsibility for the content of any e-mail sent and/or received via Wireless Broadband 3G Services. Customer furthermore agrees that MWEB Business has no interest in the contents of any such e-mail and agrees that nothing that MWEB Business, its licensors or its suppliers do in the performance of its/their obligations in terms of the Wireless Broadband 3G shall be construed as an assumption of responsibility or liability by MWEB Business, its licensors or suppliers with regard to the content of such e-mails whether or not MWEB Business its licensors or suppliers had knowledge of such content. Without limiting the generality of the General Terms, Customer indemnifies MWEB Business, its licensors or suppliers and agrees to hold MWEB Business, its licensors or suppliers harmless from and against any costs, losses, harm, liabilities, expenses, damages, fines or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit loss of anticipated savings, loss of goodwill or legal fees on an attorney and own client scale, directly and/or indirectly suffered or incurred by MWEB Business or for any such claims instituted against MWEB Business by a third party, arising out of or relating to the content of Customer's e-mail.
- 5.5.4 Included in the Mwebbiz.co.za –e-mail address is the anti spam protection service which enables MWEB Business to monitor the e-mails sent to Customer via Wireless Broadband 3G Service.
- 5.5.5 Customer acknowledges that MWEB Business:
- 5.5.5.1 does not warrant, represent and/or guarantee that the spamming of e-mails sent via Wireless Broadband 3G Service shall be successful; and

5.5.5.2 shall use its reasonable commercial endeavours to prevent spamming of e-mails.

## 5.6 Internet traffic

5.6.1 MWEB Business shall as part of the Wireless Broadband 3G Service and at the beginning of each month, provide Customer with the Internet traffic selected by Customer in the Application Form. MWEB Business shall configure Customer's Internet traffic into Customer's Wireless Broadband Account.

5.6.2 Customer acknowledges and agrees that:

5.6.2.1 Internet traffic shall be provided subject to the Vodacom SP Terms as set out in clause 8 below;

5.6.2.2 he/she/ it connects to the Internet via the Network and subject to the Vodacom SP Terms as set out in clause 8 below;

5.6.2.3 MWEB Business shall not be responsible for the maintenance and/or management of the Internet connectivity and/or Network;

5.6.2.4 Wireless Broadband 3G shall be limited to the Internet traffic limit selected by Customer in the Application Form;

5.6.2.5 it must use the monthly maximum Internet traffic allocated to it by MWEB Business in a month;

5.6.2.6 all unused Internet traffic will not be carried over to the following month;

5.6.2.7 he/she/it is responsible for ensuring that it (including any third party who has access to the Wireless Broadband 3G Service) does not exceed the allocated Internet traffic limit. Customer is obliged to monitor and measure the amount of Data and/or e-mail Customer sends or receives including the sending of Data which is associated with the access of the Internet by using the tool provided to it as envisaged in clause 5.8 below. Should Customer exceed its Internet traffic limit as envisaged herein through human usage, virus, spam or otherwise, MWEB Business shall charge Customer the excess usage charges as envisaged in clause 3.2 above;

5.6.3 Customer further acknowledges that:

5.6.3.1 MWEB Business reserves the right to impose a credit limit on Customer's Internet traffic limit;

5.6.3.2 MWEB Business may suspend Customer's access and/or use of the Wireless Broadband 3G Service should Customer reach the credit limit imposed;

5.6.3.3 MWEB Business does not guarantee the efficiency of the credit limit or that it will be imposed at all, and makes no representation in this regard.

5.6.3.4 it is his/her/its duty to ensure that he/she/it (including any third party who has access to Customer's Wireless Broadband 3G) does not exceed the Internet traffic limit selected in the Application Form. It is therefore important that Customer monitors and measures the amount of Data and/or e-mail Customer sends or receives, including the sending of Data which is associated with the accessing of the Internet (hereinafter collectively referred to as "usage") by using the Dashboard. MWEB Business cannot be held responsible in any manner whatsoever should Customer exceed his/her/its Internet traffic limit or Booster and MWEB Business shall charge Customer such additional usage costs at a fee specified in clause 3 above.

5.6.4 MWEB Business may from time to time allow Customer to exceed the selected Internet traffic limit without informing Customer of this. However, if MWEB Business allows Customer to exceed the selected Internet traffic in this manner, it will merely constitute a temporary indulgence on MWEB Business' part and will not constitute a waiver of any of its rights, including its right to:

5.6.4.1 stop Customer's access to Wireless Broadband 3G at any time in the future;

5.6.4.2 recover the cost of the amount of Data by which Customer exceeded the Internet traffic limit and charge Customer such excess at the price specified in the Application Form.

5.6.5 The Parties record and agree that Customer is entitled to:

5.6.5.1 upgrade to a higher Wireless Broadband 3G Service offered as part of the Wireless Broadband 3G at any time during the Initial Period, provided however that, such upgrade shall be seen as an amendment to the Agreement and the terms and conditions of the Agreement including these Wireless Broadband 3G Product Terms shall at all times apply to such amendment without specifically referring to it at that time; and

5.6.5.2 downgrade to a the lowest Internet traffic package offered as part of the Wireless Broadband 3G, provided that such downgrade is not done within 3 (three) months from the date of activation of the Wireless Broadband 3G. Customer further acknowledges that MWEB Business shall subject to the provisions of clause 3.4 above authorize such downgrade which, will be seen as an amendment to the Agreement and the terms and conditions of the Agreement including these Wireless Broadband 3G Product Terms shall at all times apply to such amendment without specifically referring to it at that time.

5.6.6 In the event that Customer reaches its Internet traffic limit in a month and wishes to apply for further connectivity until the following month, Customer will purchase further Internet traffic capacity from MWEB Business as envisaged in clause 3.3 and shall be charged per megabyte for the remainder of the month.

## 5.7 Wifi Minutes

5.7.1 MWEB Business shall as part of the Wireless Broadband 3G Service and at the beginning of each month provide Customer with free monthly wifi minutes to enable Customer to connect to the Internet.

5.7.2 Customer acknowledges and agrees that:

5.7.2.1 wifi minutes are only provided to it/him/her as a value add to the Services;

5.7.2.2 in the event that Customer has used all the free monthly wifi minutes provided to it/him/her as envisaged in clause 5.7.1 above, Customer will use the Network in order to connect to, access and/or use the Internet;

5.7.2.3 he/she/ it will have to use all wifi minutes provided to it in a month;

5.7.2.4 all unused wifi minutes cannot be carried over to the following month.

## 5.8 Dashboard

5.8.1 Included as part of the Wireless Broadband 3G is the dashboard which is an online tool providing customer with the ability to: (i) connect to the Internet; (ii) monitor its Internet traffic usage; and (iii) access support services (hereinafter referred to as "Dashboard").

5.8.2 Customer acknowledges and agrees that MWEB Business does not maintain and/or manage the: (i) Dashboard; (ii) Dashboard to ensure that the usage report produced by the Dashboard is up-to-date, current, and/or correct; (iii) connectivity to the Internet; and (iv) support services to be provided to Customer with regard to Internet connectivity.

5.8.3 MWEB Business' monitoring equipment shall be used to do the monitoring and measuring contemplated in 5.6 above and shall be the sole source to determine usage or if Customer has exceeded its Internet traffic limit.

## 5.9 Equipment Rental or Purchase

5.9.1 Included in Wireless 3G Service is the rental or purchase of the Equipment. Customer acknowledges and agrees that the rental and/or purchase of the Equipment shall be subject to the Vodacom SP Terms set out below.

## 6. **ACTIVATION OF THE WIRELESS BROADBAND 3G**

6.1.1 Customer acknowledges and agrees that: (i) the implementation, activation and provision of the Wireless Broadband 3G is *inter alia* subject to the activation of the Network by Vodacom SP; (ii) MWEB Business does not have any control over such activation and therefore cannot:

6.1.1.1 be held responsible for any failure and/or delay caused in the activation of the Network by Vodacom SP to enable access and use of the Wireless Broadband 3G; and

6.1.1.2 without limiting the generality of the General Terms, be responsible for any damages, loss including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit loss of anticipated savings or loss or goodwill, directly and/or indirectly suffered or incurred by Customer as a result of any failure caused in the activation of the Network by Vodacom SP.

MWEB Business shall however, if applicable, use its reasonable commercial endeavours to attend to such failures and/or delays in terms of any obligations placed on it in terms of these Wireless Broadband 3G Product Terms.

- 6.2 Customer acknowledges that the implementation and activation of the Wireless Broadband 3G might not be effected on the dates provided to it by MWEB Business and shall not terminate the Agreement and the MWEB Business Terms as a result of any delay caused by either MWEB Business and/or Vodacom SP with regard to the implementation and activation of the Services, provided MWEB Business uses its reasonable commercial endeavours to implement and activate the Service within a reasonable time. Notwithstanding the aforesaid, the provisions of this clause 6.2 are subject to Customer's termination rights detailed in clause 7.11 of the General Terms where clause 7.11 of the General Terms is applicable to Customer.
- 6.3 The Parties undertake to do all such things, perform all such acts and take all such steps and procure the doing of all such things, performance of all such acts and the taking of all such steps as may be necessary, incidental or conducive to the implementation of the terms and conditions of this Agreement. In particular, Customer shall accept installation of and provision of the required Service(s) whenever tendered by MWEB Business.

## **7. TERMS AND CONDITIONS SPECIFIC TO WIRELESS BROADBAND 3G BOOSTER (IF SELECTED)**

### **7.1 Booster**

- 7.1.1 Should Customer reach or exceed his/her/its Internet traffic limit specified in the Application Form, Customer may subscribe to a Booster to temporarily increase its Internet traffic limit for that calendar month.
- 7.1.2 Customer may apply for the Booster online or via MWEB Business' sales call centre, at any stage during the course of a calendar month. Customer acknowledges and agrees that the terms and conditions contained in the MWEB Business Terms including these Product Terms shall apply to each such transaction.
- 7.1.3 In the event that Customer chooses not to apply for the Booster but to purchase additional Data, MWEB Business shall charge Customer such additional Data at the fee specified in clause 3 above.
- 7.1.4 The Booster shall commence on the date of activation of it by MWEB Business and shall continue until such Booster is utilized in full and/or reached, which Booster will automatically terminate. Customer acknowledges that any Booster which is not utilized and/or any remaining portion of such Booster shall not be carried over for any further period irrespective of whether Customer has utilised it fully or not. It is specifically agreed that should Customer not have used the Booster fully, it shall not be entitled to any credit and/or refund for the unutilised portion in any manner whatsoever. MWEB Business may in its own discretion limit the amount of Boosters, Customer may be able to subscribe to during a calendar month, provided that it shall act reasonably.

## **8. TERMS AND CONDITIONS SPECIFIC TO VODACOM SP NETWORK SERVICES**

- 8.1 Customer acknowledges that: (i) MWEB Business is duly appointed to sell Wireless Broadband 3G Services to Customers in terms of a Reseller Agreement entered into with Vodacom SP; (ii) the connectivity services are provided to Customer subject to the terms and conditions set out below which will only apply to the services set out in clauses 5.6 and 5.9 above; and (iii) Vodacom SP has ceded its right to collect any payment due in terms of this Agreement to MWEB Business with effect from the date of signature of the Application Form by Customer. These are the Vodacom SP Terms and Conditions.

### **8.2 VODACOM SP TERMS**

This document concerns your use of the Services, Systems, Network and the Equipment provided to you by MWEB Business as envisaged in these Wireless Broadband 3G Product Terms. MWEB Business does not own the Network and/or the Equipment and the use thereof is subject to certain rights and limitations of which MWEB Business needs to inform you. Your right to use the Network and/or the Equipment is subject to your Agreement with MWEB Business, and to your understanding of, compliance with and consent to the following terms and conditions, which MWEB Business does not have authority to vary, alter or amend.

### **8.3 DEFINITIONS**

- 8.3.1 "**Call charge**" means the charge for a specified unit of time as set out in the tariff;
- 8.3.2 "**Connection Charge**" means the initial charge for connection to the system as set out in the tariff;

- 8.3.3 **“Delivery”** means delivery of the Equipment to the Customer;
- 8.3.4 **“Equipment”** means the Data Card and/or Wireless 3G Router;
- 8.3.5 **“Regulatory Authority”** means the Independent Communications Authority of South Africa;
- 8.3.6 **“Services”** means a basic telecommunications service providing two-way communication of speech by wireless telegraphy via the system and such other additional telecommunication services as Vodacom SP may at its option choose to make available from time to time by means of the system;
- 8.3.7 **“Subscriber Apparatus”** means any mobile, transportable or portable digital cellular mobile apparatus, Equipment or terminal which is capable of connection by radio interface to the system which is approved by the regulatory authority and under any legislation concerning such equipment, used by the customer and acceptable to Vodacom SP;
- 8.3.8 **“System”** means the digital cellular mobile telecommunication system using the GSM standard as defined by the European Technical Standards Institute operated by Vodacom SP SA;
- 8.3.9 **“Tariff”** means the tariff charges as published and amended from time to time;
- 8.3.10 **“Unit Price”** means the unit price for the cellular phone and / or subscriber apparatus as set out in the order form by Vodacom SP on its sole discretion;
- 8.3.11 **“Vodacom SP”** means Vodacom SP Service Provider Company of South Africa with registration number 1991/001471/07;
- 8.3.12 **“Vodacom”** means Vodacom group (Proprietary) Limited, a private company duly incorporated in the Republic of South Africa with registration number 1993/00367/07.

#### 8.4 CONNECTION TO THE SYSTEM AND PROVISIONS OF THE SERVICES

Subject to the terms and conditions of this agreement, Vodacom SP shall connect and maintain the connection of the Subscriber Apparatus to the System and Vodacom SP shall use its reasonable endeavours to make the Services available to the Customer throughout the duration of this Agreement, save and except, for circumstances beyond the control of Vodacom SP.

#### 8.5 RISK AND OWNERSHIP

- 8.5.1 All risk of profit and loss in and to the Subscriber Apparatus shall pass to the Customer upon delivery of the Subscriber Apparatus to Customer.
- 8.5.2 Ownership of the Subscriber Apparatus shall vest in Vodacom SP during the Initial Period.
- 8.5.3 Upon expiry of the Initial Period, ownership of the Subscriber Apparatus shall pass to the Customer provided the Subscriber Apparatus has not been upgraded during the Initial Period and provided full payment is received as envisaged in the Wireless Broadband 3G Product Terms.

#### 8.6 AFTER SALE CARE AND GUARANTEE

- 8.6.1 Vodacom SP shall provide such after sale and other related service to the Customer as Vodacom SA may from time to time determine and upon such terms and conditions, if any, as Vodacom SP may from time to time prescribe in its sole discretion.
- 8.6.2 MWEB Business will endeavor to put alternative measures in place where Subscriber Apparatus received by you in terms of these Product Terms is defective and taken in for repairs, subject to the availability of substitute Subscriber Apparatus and/or the terms and conditions of the commercial arrangement between MWEB and Vodacom.

## **8.7 CUSTOMER ACKNOWLEDGEMENT**

8.7.1 The Customer acknowledges and agrees that:

8.7.1.1 Service quality and coverage available to the Customer shall be limited to that provided by the System and the Service may from time to time be adversely affected by physical features such as buildings and underpasses as well as atmospheric conditions and other caused of interference; and

8.7.1.2 It shall not hold Vodacom SP, and any of its employees, directors or agents liable for any non-availability if the Service is for any other reason whatsoever including damages, save as is specifically set out in clause 8.8 below.

## **8.8 LIABILITY**

8.8.1 This clause 8.8 details the entire liability of Vodacom SP including liability for negligence and in particular, but without limitation, all other statutory, express, implied or collateral terms, conditions or warranties are excluded.

8.8.2 Vodacom SP shall not be under any liability (including liability for negligence for any loss or damage or injury to the Customer whatsoever no matter when or how, arising out of the provision of the Services or otherwise, whether direct or indirect, consequential or contingent and whether foreseeable or not and in particular not be liable for financial loss or loss of profits, contract business anticipated, savings use or goodwill).

8.8.3 The Customer indemnifies Vodacom SP against any damage, cost or liability (including liability for Vodacom SP's negligence) arising from the provisions of clause 5 of the agreement or the Services to the Customer, its employees, directs and/or agents together with all legal costs relating to any claim arising therefrom.

8.8.4 Under no circumstances will Vodacom SP's liability whether in contract or otherwise, exceed a sum equal to the monthly access charge payable at the date of the claim multiplied by a factor of 20.

8.8.5 The Customer indemnifies Vodacom SP against any damage, cost or liability (including for Vodacom SP's negligence) arising from any illness or personal injury suffered by the Customer as a result of the use of the Subscriber Apparatus, irrespective of when or how, and whether foreseeable or not, together with all legal costs relating to any claim arising there from.

8.8.6 The Customer acknowledges Vodacom SP's right to inform third parties of any breach by the Customer of it's obligations in terms of these Vodacom SP Terms and the Customer indemnifies Vodacom SP in respect of any claim whatsoever arising from Vodacom SP's exercising of this right.

## **8.9 USE OF THE SERVICES VIA THE SUBSCRIBER APPARATUS**

8.9.1 The Customer acknowledges and agrees that it is aware and will stay aware of and shall at all times comply with all statutory or other regulatory provisions relating to wireless telegraphy and telecommunications services applying to the provision and use of the Services via the Subscriber Apparatus from time to time. In addition, the Customer shall:

8.9.1.1 comply with any instructions issued by Vodacom SP which concern the Customer's use of the Services, Subscriber Apparatus or connected matters, and

8.9.1.2 provide Vodacom SP with all such necessary information that Vodacom SP may reasonably require; and

8.9.1.3 only use Subscriber Apparatus which is approved for use with the System by Vodacom SP in writing.

## **8.10 SUSPENSION/DISCONNECTION**

8.10.1 Vodacom SP may from time to time without notice suspend the Services (and at Vodacom SP's discretion disconnect Subscriber Apparatus from the System) in any of the following circumstances:

8.10.1.1 during any technical failure, modification or maintenance of the System provided that Vodacom SP will use its reasonable endeavours to procure the resumption of the Services as soon as reasonable practicable; or

8.10.1.2 if the Customer fails to comply with any of the terms and conditions of the Agreement or if the Customer is in breach of clause 9.12 of the General Terms or if the Customer does, or allows to be done, anything which in Vodacom SP's opinion may have negatively affected the operation of the Services;

8.10.1.3 Notwithstanding any suspension of the Services under this clause 8.10, the Customer shall remain liable for all charges due hereunder throughout the period of suspension unless Vodacom SP at its sole discretion determines otherwise in writing.

## 8.11 TERMINATION

8.11.1 In the event that the Customer breaches an term of this agreement or any warranty given by it hereunder or fails to fulfill any obligation resting upon it then without prejudice to Vodacom SP's other rights in terms of this agreement or the common law, Vodacom SP may forthwith instruct MWEB Business to either terminate the Wireless Broadband 3G Services or call for specific performance of all the Customer's obligations and immediate payment of all sums owing by the Customer, whether or not then due, in either event without prejudice to Vodacom SP's right to recover such damages as it may have suffered by reason of such breach or failure.

8.11.2 Notwithstanding the foregoing and pending Vodacom SP's election in terms of this clause, Vodacom SP shall not be obliged to perform any of its obligations under these Vodacom SP Terms and the Customer shall remain liable for the payment of all amounts owing by the Customer in terms of the Wireless Broadband 3G Product Terms whether or not such amounts are then due.

8.11.3 Vodacom SP may, without notice, terminate this agreement immediately in any of the following circumstances:

8.11.3.1 if the Customer does or allows to be done anything which in Vodacom SP's opinion will or may have the effect of negatively affecting the operation of the Service; or

8.11.3.2 if any licence to operate or use the system is revoked, terminated or modified for any reason either in whole or in part; or

8.11.4 if, for any reason, Vodacom SP ceases to make the System available to Vodacom SP or the Services are substantially reduced for a continuous period exceeding sixty (60) days.

8.11.5 Upon termination of the Vodacom SP Terms Vodacom SP shall disconnect the Subscriber Apparatus from the System.

8.11.6 After disconnection of the Subscriber Apparatus from the System consequent upon termination of this agreement, the Customer shall pay on demand all charges outstanding at the time of disconnection, including the balance of the monthly access charges as described in clause 8.10.

8.11.7 Notwithstanding any termination of this Agreement and notwithstanding the provisions of 8.11.6, Vodacom SP may refuse to re-register its registration of the Mobile Subscriber Integrated Services Digital Network Number allocated to the Customer.

## 8.12 ASSIGNMENT

8.12.1 The Customer shall not cede, assign, transfer, encumber or delegate any of its rights or obligations in terms of this Agreement to any third party without Vodacom SP's prior written consent.

8.12.2 Vodacom SP shall be entitled, at any time, to cede, assign, transfer, encumber or delegate any of its rights, title, interest or obligations in terms of this Agreement to any third party without the Customer's consent and if, for any reason whatsoever, the consent of the Customer may be required, the Customer shall be deemed to have consented thereto in terms of this agreement.

## 8.13 EXCUSABLE EVENTS

Vodacom SP shall not be liable to the Customer for any breach of these terms and conditions or failure on Vodacom SP's part to perform any obligation as a result of the technical problems relating to the system, termination of any licence to operate or use the system, act of God, Government control, restrictions or prohibitions or any other Government act or mission, whether local or national, act of default of any supplier, agent or sub-contractor, industrial disputes of any kind or any other similar or dissimilar cause beyond Vodacom SP's control.

## 8.14 VARIATION OF CHARGES AND TERMS

8.14.1 Vodacom SP may vary all or any of its charges (including but not limited to the charges described in clause 3 of above, any charges in respect of benefits provided to customers and in respect of value added services), and/or the terms and conditions of this agreement as its sole discretion, whether as a result of new legislation, statutory instruments, governmental regulations or licenses, amendments to the standard terms and conditions of Vodacom SP, or any similar event. An updated version of the amended charges and/or Product Terms will under these circumstances be posted on the Legal Notices Page and become effective on the date as provided for in 4.3 of the General Terms.

8.14.2 Vodacom SP reserves the right, without cost or penalty to itself, to alter any name, code or number allocated by Vodacom SP from time to time for use in connection with the service and the customer indemnifies Vodacom SP and/or Vodacom against any liability arising from such alteration.

#### **8.15 DISCONNECTION AND RECONNECTION FEES**

Vodacom SP, having regard to the circumstances at the time of disconnection or reconnection, may elect to charge a reasonable fee for disconnection or reconnection of the Subscriber Apparatus to the System.

#### **8.16 RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by either party to the other party in respect of the performance of any obligations hereunder, and no delay or forbearance in the enforcement of any right of either party arising from this Agreement, and no single or partial exercise of any right by either party under these Vodacom SP Terms, shall in any circumstance be construed to be an implied consent or election by such party or operate as a waiver or a novation or otherwise affect any of the party's rights in terms of or arising from this agreement or stop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term of this agreement.

#### **8.17 NOTICE AND DOMICILIA**

8.17.1 The Customer chooses, as its domicilium citandi et executandi, the address set out in the order form, or such other address of which the Customer may notify Vodacom SP in writing not being a post office box or poste restante.

8.17.2 All notices given in terms of these Vodacom SP Terms shall be in writing.

#### **8.18 CONSENT TO JURISDICTION**

The Customer hereby consents to the jurisdiction of the Magistrate's court having jurisdiction over its person in respect of any action by Vodacom SP arising from this agreement or the cancellation thereof. This consent does not oust the jurisdiction of any other competent Court that Vodacom SP shall be entitled, in its discretion, to institute action against the Customer in any Court of competent jurisdiction. The parties agree that this consent is severable and shall apply even in the cancellation of this agreement.

#### **8.19 SEVERABILITY**

In the event of any once or more of these terms and conditions being unenforceable, same will be deemed to be severable from the remainder of this agreement, which will nevertheless be binding and enforceable.

---