



## Product Terms

### MTALK MOBILE

#### 1. INTRODUCTION

- 1.1. By using or subscribing to the MTALK Mobile Service you agree that you have read, understand and are bound by:
  - 1.1.1. the General Terms and Conditions and other notices under "General" on our Legal Notices Webpage; and
  - 1.1.2. the terms that apply specifically to the MTALK Mobile Service, as set out herein ("MTALK Mobile Service Terms").(collectively "**the Terms**")
- 1.2 Your use of the MTALK Service indicates your acceptance without modification of the Terms, which will constitute a legal agreement between you and MWEB Business. If you do not want to be bound by the Terms, you must not use or subscribe to the MTALK Service.
- 1.3 Unless the context clearly indicates the contrary, any term defined in the General Terms and Conditions when used herein, shall bear the same meaning as defined in the General Terms and Conditions.

#### 2. INTERPRETATION

- 2.1 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto below:
  - 2.1.1 "**Agreement**" means the Application Form and the terms and conditions referred to in clause 1.1 above;
  - 2.1.2 "**Application Form**" means the document in terms of which you apply for the Service and provide personal and other information to us;
  - 2.1.3 "**Blacklist**" means the disablement, by electronic or other means, of your SIM and/or Mobile Device, thereby preventing the unauthorized use thereof;
  - 2.1.4 "**Call Centre**" means our dedicated customer service centre which is available on 08600 32000, Monday to Friday 08h00 to 19h00, Saturday 8h00 to 17h00 and Sunday 10h00 to 15h00;
  - 2.1.5 "**Equipment**" means the hardware which is required to access the System and includes (without limitation) a Mobile Device;
  - 2.1.6 "**Greylist**" means the flagging on the System of a SIM and/or Mobile Device, for purposes of the identification of your Subscriber Number in order to facilitate the possible tracing and recovery of your SIM and/or Mobile Device under circumstances where your SIM and/or Mobile Device have been stolen;
  - 2.1.7 "**Initial Period**" means the period selected by you on the Application Form, which will commence on the Activation Date;
  - 2.1.8 "**Mobile Device**" means the cellular phone (and/or such other device as the Network Operator may prescribe from time to time) which is required to access the System and use the Service;
  - 2.1.9 "**Monthly Access Fee**" means the monthly subscription fee paid by you to us in consideration for the Service as recorded in the Application Form;
  - 2.1.10 "**Network**" means the mobile cellular electronic communications network operated by the Network Operator;

- 2.1.11 "**Network Operator**" means Vodacom (Pty) Ltd;
- 2.1.12 "**Service**" means a cellular mobile voice electronic communications service which will enable you (without limitation) to make and receive voice calls, send and receive SMSs and do such other things as set out on our Website;
- 2.1.13 "**Services Charges**" means the different fees for the Service, including the Monthly Access Fee, as recorded in 9.1 below;
- 2.1.14 "**SIM Card**" means your identity module card, which bears your Subscriber Number and enables you to access the System;
- 2.1.15 "**System**" means the digital cellular mobile telecommunications system of the Network Operator;
- 2.1.16 "**Subscriber Number**" means the mobile station integrated services digital network number allocated to you for the purpose of obtaining the Service; and
- 2.1.17 "**VSP**" means Vodacom Service Provider Company (Pty) Ltd, which enables access to the Network.

### 3. DURATION AND TERMINATION

- 3.1 This Agreement will commence on the Effective Date and will remain in force for the duration of the Initial Period, whereafter it shall continue indefinitely subject to termination by either party on 60 (sixty) days written notice to the other. The Initial Period will commence on the Activation Date. Notwithstanding the aforesaid, the provisions of this clause 3.1 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.
- 3.2 You are entitled to renew the Agreement for another fixed term period of at least 24 (twenty four) months ("Renewal Period"), to follow immediately upon the expiry of the Initial Period, against payment of such charges as we may prescribe at the time. We will supply a new Mobile Device to you upon the expiry of the Initial Period ("Hardware Upgrade"), should you renew the Agreement as contemplated in this clause 3.2.
- 3.3 The Agreement will endure for the duration of the Renewal Period, whereafter it shall continue indefinitely subject to termination by either party on 60 (sixty) days written notice to the other.
- 3.4 Should you in breach of clauses 3.1 and 3.3 terminate this Agreement at any time prior to the expiry of the Initial Period or at any time prior to the expiry of the Renewal Period, as the case may be, we will be entitled to claim payment from you of the balance of the Monthly Access Fee due in respect of the unexpired portion of the Initial Period or Renewal Period, as the case may be. Early termination will be accepted on 60 (sixty) days prior written notice to us.
- 3.5 Upon the termination of the Agreement, your use of the Service shall terminate. However, in the event that you continue to use the Service following a termination, these terms and conditions will apply and you shall be liable to make payment to MWEB Business of the applicable Service Charges. This shall in no way constitute a revival of the Agreement, and MWEB Business shall be entitled to terminate the Service without notice to you.
- 3.6 Where the Service is suspended by MWEB Business in terms of clause 9.12 of the General Terms and Conditions or as a result of a breach by you of the Agreement you acknowledge that you will forfeit your right to access and/or use the Service, but that you shall still be liable to pay the Monthly Access Fee due to us during such suspension.

### 4. MWEB BUSINESS' OBLIGATIONS

MWEB Business will:

- 4.1 procure the delivery of the Mobile Device and SIM Card to you;

- 4.2 provide you with the mobile voice telecommunications service, and such other service or product, as you may select in the Application Form;
- 4.3 make Call Centre support available to you;
- 4.4 bill you for the Service;
- 4.5 collect the Service Charges from you; and
- 4.6 promptly upon notification from you lock or temporarily disconnect a lost, stolen, damaged, or destroyed SIM Card from the System.

## 5. VALUE ADDED SERVICES

MWEB Business will provide you with the value added services listed below free of charge:

### 5.1. Mailbox and MWEB Business e-mail address

5.1.1. The mailbox service is provided to you subject to the terms and conditions applicable to mailboxes which are available at <http://www.mwebbusiness.co.za/pdfs/MWEB%20Business%20Mailbox%20Terms%20and%20Conditions.pdf>

5.1.2. You accept full responsibility for the content of any e-mail sent and/or received through the Service.

5.1.3. In order to keep our mail servers efficient, the following restrictions will apply to your mailbox:

- 5.1.3.1. any mail that has not been retrieved (downloaded) from our mail server after 90 (ninety) days, will be purged unless you have stored the mail on a folder you have created on the MWEB Business message centre;
- 5.1.3.2. if your mailbox size is 1 Gig or larger, MWEB Business will not purge your mail;
- 5.1.3.3. if you exceed your mailbox size, no new mail or attachments will be delivered to your mailbox;
- 5.1.3.4. you will, however, be able to receive mail again if you either delete mail and/or attachments from your mailbox or by purchasing additional mailbox space;
- 5.1.3.5. subject to any other technical limitations, MWEB Business restricts the size of an individual mail, sent or received, to 10Mb per mail; and
- 5.1.3.6. the number of recipients on your mailing list may not exceed 20 (twenty).

### 5.2. Wi-Fi Minutes

5.2.1 MWEB Business will provide you with 300 (three hundred) free minutes at the beginning of each month to enable you to connect to the Internet at MWEB Business wi-fi enabled hotspots.

5.2.2 You acknowledge and agree that:

- 5.2.2.1 in the event that you have used all your free monthly wi-fi minutes, you may contact our Call Centre to purchase additional wi-fi minutes; and
- 5.2.2.2 no unused wi-fi minutes will be carried over to the following month.

### 5.3. Virus scan and Anti spam protection

5.3.1 The Service provides you with a virus scan for incoming and outgoing emails, as well as an anti spam protection service.

5.3.2 You acknowledge that MWEB Business does not warrant, represent and/or guarantee the efficiency of the virus scan or that the spamming of e-mails, content and/or data sent through the Service will be successful.

5.4. It lies within the discretion of MWEB Business to terminate the provisioning of one or more of the value added services during the term of the Agreement, or not to provide the value added service at all. You will be notified in the event of a termination of a value added service.

## 6. YOUR PACKAGE

- 6.1 You made a selection under “Product Information” on the Application Form, (e.g. Talk120). This is referred to as your “Package”.
- 6.2. The specifications of your Package will determine the number of hours of call time during which the Service will be available to you, the allocation of data to you, and the specific services and functions which you will be able to access.
- 6.3 You acknowledge and agree that MWEB Business shall be entitled to levy call and data charges for usage in excess of the number of hours of call time or the allocation of data under your Package as detailed in clause 6.2 above (“Excess Call Charges”).

## 7. YOUR OBLIGATIONS

- 7.1 You require a Mobile Device and a SIM Card to use the Service.
- 7.2 You are required to ensure that the Equipment that you intend to use in order to receive the Service is compatible with our technical specifications, which are available on our Website.
- 7.3 You must contact our Call Centre within 48 (forty) eight hours of delivery of the Mobile Device to you in order to activate the provisioning of the Service, failing which your Subscriber Number will be withdrawn and this Agreement will terminate with immediate effect. You will however remain liable for payment of all amounts due by you under the Agreement.
- 7.4 In the event of the theft of your Mobile Device, you must request us to Blacklist or Greylist your Mobile Device.
- 7.5 You must us of the theft, loss, damage to or destruction of your SIM Card. Upon notification your liability hereunder will be limited to payment of the Monthly Access Fees relative to the SIM Card for the remainder of the Initial or Renewal Period, as the case may be.
- 7.6. Without limiting the General Terms and Conditions, you:
  - 7.6.1 agree not to use the Service for any improper, immoral, unlawful or any other purpose including, without limitation, the use of the Service in any manner that:
    - 7.6.1.1 interferes with MWEB Business’ and/or the Network Operator’s ability to provide the Service or any other service to its customers;
    - 7.6.1.2 interferes with the quality and/or availability of the Network; or
    - 7.6.1.3 infringes upon any applicable legislation and/or regulation including without limitation the Electronic Communications Act;
  - 7.6.2 agree not to use the Service 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; and
  - 7.6.3 agree not to act or omit to act in any way which may damage any property or the System or cause the quality of the Service to be impaired in any manner whatsoever.
- 7.7 You shall notify us forthwith in writing of any change to your information or details.
- 7.8 You agree that we may use and make your information available to VSP to maintain a comprehensive and accurate database of our Subscribers, and for such other purposes as we may require in order to give effect to our obligations under the Agreement

## 8. EQUIPMENT

- 8.1 We reserve the right, without cost or penalty to ourselves, to vary any name, code or number relating to or used in connection with the Service offered to you, and you indemnify us against any liability of any nature whatsoever arising in connection with such action.
- 8.2 All rights of ownership attaching to your Subscriber Number and SIM Card shall at all times remain vested in VSP.
- 8.3 Risk in and the responsibility for the Mobile Device and SIM Card will pass to you on delivery thereof. You are required to put insurance in place for the Mobile Device.
- 8.4 All rights of ownership attaching to the Mobile Device will vest with the VSP during the Initial Period, or the Renewal Period, as the case may be. Upon the expiry of the Initial Period, or the Renewal Period, as the case may be, ownership of the Mobile Device, but excluding the software contained in the Card (the use of which is licensed to you by VSP), will pass to you provided that you have made payment in full of all amounts of whatsoever nature due by you to us during the Initial Period, or the Renewal Period.

## 9. PAYMENT

- 9.1. You will be liable for payment of the following Service Charges:
- 9.1.1 The charge for the SIM Card and connection to the System– this is a once-off charge;
- 9.1.2 Monthly Access Fee (under which your Mobile Device is pro rated) – you will be billed for this monthly in advance; and
- 9.1.3 Excess Call Charges- you will be billed for this monthly in arrears based on your usage.
- 9.2 The Service Charges exclude VAT which shall be borne and paid for by you.
- 9.3 You will make payment of the Services Charges to MWEB Business in accordance with the procedure set out at <http://www.mweb.co.za/services/myaccount>
- 9.4 The Monthly Access Fee under your Package will be pro- rated in the first month of subscription, i.e. if the Service is not activated at the beginning of the calendar month.
- 9.5 We reserve the right to amend the charges and fees payable by you from time to time on 1 (one) month's notice to you as provided for in clause 8.6 of the General Terms and Conditions, subject to the condition that any variation in the charges and fees will correspond where applicable with those charges and fees approved by the Authority.
- 9.6 Subject to the provisions of the General Terms and Conditions, failure to effect payment as provided for hereunder may result in the suspension or termination of our provisioning of the Service to you. Under such circumstances you will forfeit your right to access and use the Service, but you shall remain liable to pay the balance of the Monthly Access Fees due to us under the Agreement.
- 9.7 Subject to the provisions of the General Terms and Conditions, VSP and/or MWEB Business may, in the event that you fail to make payment of any amount due to us by you (and irrespective of whether ownership in the Mobile Device has passed to you), Blacklist your Mobile Device and/or your SIM Card, as a result of which you will not be able to access the System.
- 9.8 We furthermore reserve the right to levy a reasonable charge for the blacklisting or removal from the blacklist on your request of your Mobile Device and/or SIM Card. Such charge will be due and payable by you within 30 (thirty) days of invoice.
- 9.9 You indemnify us against any claim or liability of whatsoever nature arising from the blacklisting of your Mobile Device and/or SIM Card as provided for in this clause 9.

## 10. DISCLAIMER

10.1 MWEB Business undertakes to use its reasonable endeavors to facilitate the provisioning of the Service to you on a 24 (twenty four) hours per day basis on each and every day for the duration of the Agreement.

10.2 You nevertheless acknowledge and agree that:

10.2.1 service quality, coverage and availability of the Service is 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 underpass as well as atmospheric conditions and other causes of interference; and

10.2.2 you shall not hold us liable for the non-availability of the Service or an alleged inadequacy of the quality thereof.

10.3 Without derogating from the generality of the foregoing, you hereby indemnify us and hold us harmless against any loss, liability, cost or damage suffered by you or any third party, as the case may be, arising from the negligent provisioning of the Service or the negligent operation of the System, including but not limited to any indirect, contingent or consequential loss, including loss of revenue, loss of data, loss of business and loss of profit, howsoever arising.

10.4 You further acknowledge that:

10.4.1 MWEB Business does not warrant, represent nor in any way guarantee the quality and availability of the Network Coverage for the Service;

10.4.2 the quality and availability of the Network Coverage for the Service shall be limited to that provided by the Network Operator.

## 11. TERMINATION OF NETWORK OPERATOR AGREEMENT

You agree that if the agreement between MWEB Business and VSP terminates then MWEB Business may, at its discretion:

11.1 terminate the provisioning of the Service without liability to you on notice in writing;

11.2 transfer the provisioning of the Service to a third party service provider and assign this Agreement to such third party; or

11.3 assign this Agreement to the Network Operator.

## 12. WARRANTY

The Mobile Device is subject to a 24 (twenty four) month manufacturer's warranty.

MWEB © 080627 (reviewed by jm)