



# Product Terms

## MTALK Webcall

### 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 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-
- 1.3.1 **“Application Form”** means the application form completed and signed by Customer for the initiation of MTALK Webcall, as same may be amended from time to time in terms of the Agreement;
- 1.3.2 **“Call Charges”** mean the charges for voice telecommunication calls when using MTALK Webcall, which charges depend on various circumstances, including the type, duration, manner and destination of voice telecommunication calls. Such charges are available at <http://www.mwebbusiness.co.za/products.aspx?ParentID=32&MenuID=196> and shall be deemed to form part of the Service Fees. Such Call Charges may vary from time to time and Customer is referred to <http://www.mwebbusiness.co.za/products.aspx?ParentID=32&MenuID=196> for the latest applicable Call Charges;
- 1.3.3 **“Equipment”** means, depending on the Customer’s choices as set out in the Application Form under the heading or description of MTALK Webcall, which is subject to the Product Terms for PBX Equipment Purchase and relevant terms and conditions of the Agreement;
- 1.3.4 **“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.aspx> under the heading General Terms;
- 1.3.5 **“Network”** means the MWEB Business’ network used to provide MTALK Webcall which includes without limitation the VoIP Platform, computer systems and/or all related networking components attached to the system;
- 1.3.6 **“MTALK PBX”** means a PBX, provided by MWEB Business, that converts analogue/Digital voice into digital data packets and routes these voice packets over the Transmission Path or it could also route voice telecommunication calls to the traditional PSTN if the Transmission Path is not available or at maximum capacity;
- 1.3.7 **“MTALK Webcall”** means the Services MWEB Business renders to Customer in accordance with Customer’s choices, as set out in the Application Form under such heading or description in terms of which Customer will be able to make and receive voice telecommunication calls from its MTALK

Webcall or other MTALK hardware following the Transmission Path; and (ii) if selected the rental of Equipment;

1.3.8 “**PBX**” means Customer’s private branch exchange;

1.3.9 “**Product Terms for PBX Equipment Purchase**” means the terms and conditions applicable to the purchase of the Equipment, if selected, which can be found under the name “PBX Equipment Purchase” at <http://www.mwebbusiness.co.za/Legal.aspx> under the heading Product Terms. **The Product Terms for PBX Equipment Purchase will be deemed to form part of the Agreement for this purpose.**

1.3.10 “**Telkom**” means Telkom SA Limited and/or any appropriate replacement or successors;

1.3.11 “**Transmission Path**” means the data path a voice telecommunication call follows between the, Equipment, the Internet, voice communication lines/network and carriers, the Network and VoIP Platform via Internet Connectivity; and

1.3.12 “**VoIP Platform**” means the software and hardware forming part of the Network, which MWEB Business uses to grant Customer access to MTALK Webcall and/or to do provisioning for same.

## 2. DURATION

2.1 MTALK Webcall shall commence with effect from the date of activation of the MTALK Webcall by MWEB Business and endure for an initial period selected by Customer in the Application Form (hereinafter referred to as the “**Initial Period**”).

2.2 Either Party may terminate MTALK Webcall 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, MTALK Webcall shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate MTALK Webcall 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 MTALK Webcall shall be deemed terminated. However, in the event that Customer logon to MTALK Webcall 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 MTALK Webcall without notice to Customer.

2.5 To the extent that MTALK Webcall provided to Customer is suspended by MWEB Business for any reason whatsoever, Customer acknowledges that it will forfeit its access to and/or use of MTALK Webcall, but Customer shall still be liable to pay the Service Fees during such suspension.

## 3. SERVICES FEES

3.1 Customer shall pay MWEB Business the Services Fees specified in the Application Form, as defined in accordance with the provisions set out in the General Terms, provided that Call Charges shall be charged

in arrears. Service Fees for MTALK Webcall shall only be payable by way of debit order.

3.2 MWEB Business shall, at the location as directed from time to time, provide Customer with an online facility to view itemised Call Charges, specifying the: (i) number called by Customer using MTALK Webcall; (ii) the duration of such voice telecommunication call; and (iii) the Call Charges applicable to such voice telecommunication call.

3.3 Customer shall (subject to Customer's credit vetting approval), have an automatic credit limit of R 5000.00 for Call Charges, which credit limit may be amended by agreement between the Parties, either in writing or electronically on the systems MWEB Business may provide for that purpose, as the case may be, from time to time. In the event that Customer's credit vetting is not approved, MWEB Business shall at its own discretion allocate a lower credit limit for Call Charges which credit limit shall not be less than R 1000.00. Customer agrees that such amendment shall be seen as an amendment to the Agreement and the terms and conditions of the Agreement including these MTALK Webcall Product Terms shall at all times apply to such amendments without specifically referring to it at the time.

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

4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with MTALK Webcall on a 24 (twenty four) hour per day basis on each and every day for the continued duration of MTALK Webcall.

4.2 Although MWEB Business use reasonable care and diligence to ensure that MTALK Webcall 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 MTALK Webcall 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 also acknowledges that various components of the Transmission Path is not within MWEB Business' control. Customer therefore agrees that MTALK Webcall is rendered "as is" and "as available" and is used at the Customers' own discretion and risk.

4.3 Customer acknowledges that the following circumstances and events may impact upon its use and or quality of MTALK Webcall and further that these circumstances and/or events are beyond MWEB Business control: (i) use of MTALK Webcall 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) mobile telecommunication service operator failures; (v) mobile network failures; (vi) operating systems; (vii) access technology failures; (viii) quality of service of telecommunication links or lines; (ix) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on MTALK Webcall; and (x) any other action, omission and/or failure not within MWEB Business' control which has an impact on MTALK Webcall.

#### **5. TERMS AND CONDITIONS SPECIFIC TO MTALK WEBCALL**

5.1 Customer acknowledges and agrees that the nature and specifications of MTALK Webcall including the Equipment, if applicable, is known to Customer and accepts that it is suitable for the purpose it is intended

and will be used.

- 5.2 Customer shall only use MTALK Webcall to make and/or receive voice telecommunication calls, but acknowledges and agrees that that outgoing voice communication calls made with MTALK Webcall are limited to calls where Call Charges are applicable, which shall include such voice communication calls to which a zero rate applies in terms of the Call Charges.
- 5.3 Customer acknowledges and agrees that:
- 5.4 MTALK Webcall is intended for normal residential and/or business usage. Normal usage specifically excludes calling behaviour that may be considered as Least Cost Routing Behaviour. MWEB reserves the right, in its sole discretion, to downgrade your Service to MTALK Webcall Easy (pay-per-call product), or alternatively suspend and/or cancel your Service if your calling patterns, and specifically usage of your free minutes, illustrate Least Cost Routing Behaviour. As a guideline, MWEB will consider your calling patterns to be Least Cost Routing Behaviour in any of the following situations:
- 5.4.1 Consistent, excessive calling to the same destination(s);
- 5.4.2 Consistent, excessive usage of available free minutes to the most expensive bundled destinations (for example: to international destinations on a Global package, or to cellular destinations on a Total package);
- 5.4.3 Excessive, repetitive and systematic calling (for example: at regular intervals and for regular call lengths);
- 5.4.4 As a guide, anything exceeding 50% (fifty percent) of your free minutes will be considered as excessive.
- 5.5 MWEB Business only allows 1 (one) MTALK Webcall bundled minutes package per customer or per branch.
- 5.6 Customer acknowledges that an ADSL line and ADSL access or a leased line facility is a prerequisite for the use of MTALK Webcall and is not included in MTALK Webcall. It is Customer's responsibility to acquire an ADSL line and ADSL access or a leased line facility and Customer may not terminate MTALK Webcall, other than is contemplated in clause 2, should such services not be available to Customer at any stage during the term of MTALK Webcall for any reason whatsoever.
- 5.7 Except if otherwise provided in the Product Terms for PBX Equipment Purchase Customer is responsible for the termination and connection of MTALK Webcall to the Network.
- 5.8 MWEB Business shall provide Customer with the Customer Identifiers, which Customer shall use to complete the set-up process of MTALK Webcall to enable the registration and authentication of Customer by MWEB Business on the VoIP Platform to enable Customer to use MTALK Webcall.

Number:

- 5.9 Customer acknowledges and agrees that the allocation of a number is done subject to the relevant terms and conditions of use applicable from the relevant regulatory authority.
- 5.10 MWEB Business cannot guarantee the provision of any specific number/s to Customer and although it shall use its reasonable endeavours to provide sequential numbers, if requested to, MWEB Business cannot

guarantee that it shall be able to do so;

- 5.11 Subject to the provisions of 5.10 any number/s supplied to Customer is/are supplied to Customer for the purposes of use in terms of MTALK Webcall and whilst such number is personal to the Customer for the duration of this Service to Customer, Customer acknowledges that it shall never become owner of such number accordingly Customer may not sell, lease transfer, assign or otherwise alienate its rights in respect of such number/s, contrary the provisions of MTALK Webcall and the use thereof shall only be for the duration of MTALK Webcall to Customer;
- 5.12 Although MWEB Business will use its reasonable endeavours not to change any number/s provided to Customer it reserves the right to change any such number from time to time as it deem fit, which includes the change of the numbering plan. . Without limiting the generality of the General Terms, MWEB Business shall not be liable for any direct or indirect loss, damage, costs, expense or injury of whatever nature, including consequential loss, suffered or incurred from such change of a number/numbers;
- 5.13 Should the MTALK Webcall Service be suspended and/or terminated for any reason whatsoever MWEB Business cannot guarantee that the same number/s allocated previously would be allocated to Customer again. Without limiting the generality of the General Terms, MWEB Business shall not be liable for any direct or indirect loss, damage, costs, expense or injury of whatever nature, including consequential loss, suffered or incurred by Customer as a result of the aforesaid;
- 5.14 MWEB Business does not make any representation of whatever nature that the number allocated to Customer will be reachable from Telkom's PSTN, as defined in the Telecommunication Act, or from any other telecommunication platforms. MWEB shall however use its reasonable endeavours to ensure that the number allocated to Customer will be reachable by other users of MWEB Business' MTALK Webcall or related Services, including Customer's participating branches, but cannot supply any guarantees in this regard. . Without limiting the generality of the General Terms, MWEB Business shall not be liable for any loss, damage, costs, expense or injury of whatever nature, including consequential loss, arising from such unavailability or as a result of the aforesaid.
- 5.15 Without limiting the generality of the General Terms MWEB Business shall not be liable for any claims whatsoever because of the incorrect termination, connection and/or set-up, as contemplated in clauses 5.7 and 5.8.
- 5.15.1 Although MWEB Business will use its reasonable endeavours to transmit voice telecommunication calls, contemplated herein, through the use of MTALK Webcall, MWEB Business shall, without limiting the generality of the General Terms, not assume any responsibility for the unavailability, failure, delay, quality or interruption of the transmission of any voice telecommunication call made by Customer using MTALK Webcall and shall not refund or in any way credit Customer for any failed, delayed, interrupted voice telecommunication call or any call with sub-standard quality.
- 5.15.2 Customer acknowledges that in the event of any unavailability, failure, delay, interruption of MTALK Webcall of whatever nature, whether within the MWEB Business' control or not Customer's voice telecommunication calls may be routed to Customer's other telecommunication service provider including Telkom or any other fixed line operator, and Customer shall be liable for the payment of the

charges of such voice telecommunication calls to the relevant provider, without MWEB Business incurring any liability of whatever nature for it.

5.16 Customer furthermore acknowledges and agrees that MTALK Webcall is not intended to be used to call any emergency numbers of whatever nature, as such numbers might not be reachable when using the MTALK Webcall Service. Customer therefore does so at its own risk. Without limiting the generality of the General Terms, MWEB Business shall not be liable for any loss, damage, costs, expense or injury of whatever nature, including consequential loss, arising from the eventualities contemplated in this clause 5.15.1.

5.16.1 Should Customer require MWEB Business to attend to reset or re-configure the Equipment after the resolution of any interruptions to enable access to the MTALK Webcall MWEB Business will charge Customer for all call out charges incurred by MWEB Business to reset and/or re-configure the Equipment. Customer shall (subject to the provisions of the General Terms), pay MWEB Business the invoiced amount within 30 (thirty) days from the date of invoice.

5.17 Customer acknowledges that: (i) sufficient credit is required to make voice telecommunication calls through use of MTALK Webcall; (ii) it is his/her/its responsibility to ensure that he/she/it has sufficient credit prior to making any voice telecommunication calls; and (iii) all voice telecommunication calls made through use of MTALK Webcall shall be automatically terminated once Customer reaches its credit limit. MWEB Business shall not be responsible for any loss, damage suffered by Customer as a result of the termination of such voice telecommunication call because of a lack of credit available.

5.18 If Customer in good faith disputes the amount of credit available to him/her/it and/or Call Charges, Customer shall notify MWEB Business of the disputed amount in writing and provide the documentation reasonably requested by MWEB Business to resolve the dispute. Any dispute regarding Call Charges must be lodged within 14 days from the date the Call Charges become due and/or from the date of invoice, whichever one comes first, failing such the Call Charges shall be deemed to be correct. Such dispute shall not relieve Customer from any obligation to make all payments for MTALK Webcall. Any resolved dispute in favour of Customer will be credited to Customer's account.

5.19 Customer agrees that MWEB Business' monitoring equipment shall be the sole source to determine usage of MTALK Webcall and the Call Charges.

5.19.1 Customer shall at all times ensure that it uses the correct and complete telecommunication number when making a voice telecommunication call through the use of MTALK Webcall. MWEB Business shall, without limiting the generality of the Agreement, not be held responsible for any voice telecommunication call delivered/ transmitted/ sent to a wrong recipient or wrong and/or incomplete number and shall not refund or in any way credit Customer for any voice telecommunication call sent to such wrong recipients or wrong and/or incomplete numbers.

5.19.2 For the purposes of MTALK Webcall a voice telecommunication call shall be deemed to have been delivered/ transmitted/ sent by Customer the moment Customer activated such voice telecommunication call on MTALK Webcall.

5.20 Customer further acknowledges that MWEB Business is under no obligation to validate or investigate the

authenticity of any voice telecommunication calls made through use of MTALK Webcall and shall not be held responsible for any fraudulent and/or unauthorised voice telecommunication call made through the use of Customer's MTALK Webcall and Customer hereby unconditionally and irrevocably indemnifies MWEB Business and agrees to hold MWEB Business free from all loss, damages, claims, liabilities and/or costs suffered or incurred as a result of the aforesaid. Customer is responsible for notifying MWEB Business if Customer suspects or has any information regarding any kind of fraud, unauthorised use or abuse involving the use of Customer's MTALK Webcall and MWEB Business may in its own discretion and without incurring any liability of whatsoever nature temporarily suspend Customer's access and use of MTALK Webcall until this problem is resolved. Customer acknowledges and agrees that the suspension of his/her/its access and usage of MTALK Webcall as envisaged herein shall in no way relieve Customer from his/her/its obligations to pay for MTALK Webcall.

5.21 MWEB Business shall only be responsible for the Network and the terminating of the voice telecommunication call at the Network.

5.22 Customer acknowledges that all title and intellectual property rights in MTALK Webcall, including training and/or user manuals, provided to Customer is owned by and shall remain vested in MWEB Business, its licensors or suppliers, as the case may be. Except if otherwise agreed the Customer accordingly agrees not to copy, duplicate, reproduce, transmit, modify, reverse engineer, decompile, or disassemble the MTALK Webcall or any portion thereof in any way whatsoever and shall only use it for the purpose it is supplied.

5.23 Without limiting the generality of the General Terms and Use Policy, Customer:

5.24 agrees not to use MTALK Webcall for any unlawful, abusive or any other purpose including, without limitation, using MTALK Webcall in any manner that (i) interferes with MWEB Business' ability to provide MTALK Webcall or any other service to its customers; (ii) voids Customer's obligation to pay for telecommunication services provided by Customer's third party provider(s); (iii) results in excessive usage inconsistent with the normal business usage patterns; and/or (iv) infringes upon any applicable legislation and/or regulation including without limitation the Telecommunications Act;

5.25 agrees not use MTALK Webcall 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

5.26 undertakes to use MTALK Webcall 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 MTALK Webcall in whole or in part in any way whatsoever to any third party without MWEB Business' prior written consent.

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