



## Product Terms

### ADSL Multi-Site Local

#### 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 Multi-Site Local Customer agrees that he/she/it has read, understand and are bound by:

1.3.1 the General Terms and Conditions and Use Policies under "**General Terms**" and other notices under "**Notices**" on the MWEB Business' Legal Website; and

1.3.2 the Product Terms set out herein  
(collectively the "**MWEB Business Terms**").

1.4 Customer's use of the ADSL Multi-Site Local 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**" means an Asymmetric Digital Subscriber Line provided to Customer and/or User by Telkom in accordance with it's PSTN license (including any conversion of that licence in terms of section 93 of the Electronic Communications Act) and the provisions of the Electronic Communications Act at Customer's and/or User's cost (whichever the case may be);

1.5.2 "**ADSL Multi-Site Local**" means the Services MWEB Business renders to Customer in accordance with Customer's selections as indicated by Customer in the Application Form, under such heading or description in



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terms of which: (i) MWEB Business provides Customer with limited Local ADSL Traffic at multiple sites via ADSL Line/s; (ii) MWEB Business allows Customer to provide such Internet access to a User, which includes allowing Customer to resell such access to a User; and (iii) MWEB Business provides the Customer with online tools, at the location as determined by MWEB Business from time to time, to manage the use of Customer or any User, including to authorise, terminate and/or to limit such User's access to ADSL Multi-Site Local or any part of it, or to monitor its use;

1.5.3 “**ADSL Traffic**” means any Local ADSL Traffic comprising of all Internet data of whatever nature-

1.5.3.1 downloaded, uploaded and/or transmitted (including e-mail) by Customer or any User; or

1.5.3.2 for which Customer is responsible;

over an ADSL Line, using ADSL Multi-Site Local (or any portion of it). For the purposes of the calculation of Service Fees for the ADSL Multi-Site Local the amount of such ADSL Traffic used by Customer and/or its Users, is measured in GB;

1.5.4 “**Application Form**” means the application form completed and signed by Customer for the initiation of ADSL Multi-Site Local, as same may be amended from time to time in terms of the Agreement;

1.5.5 “**General Terms**” means the terms and conditions set out in the general terms and conditions for MWEB Business' customers, which are available at <http://www.mwebbusiness.co.za/legal/GeneralTerms.aspx> under the heading “General Terms”;

1.5.6 “**GB**” means gigabytes;

1.5.7 “**Local ADSL Traffic**” means the local Internet traffic, allowing Customer and/or Users to have the ability to browse and access websites and/or services that are hosted only within South Africa;



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1.5.8 “**Telkom**” means Telkom SA Limited and/or its successors; and

1.5.9 “**User**” means any branch, franchisee or affiliate of Customer, which Customer permits to access and/or use ADSL Multi-Site Local or part thereof, as contemplated in clause 1.5.2 (ii).

## 2. DURATION

2.1 ADSL Multi-Site Local shall commence with effect from the date of activation of the ADSL Multi-Site Local 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 Multi-Site Local 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 Multi-Site Local shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate ADSL Multi-Site Local on 3 (three) calendar months' written notice to the other to that effect.

2.4 In the event of termination by Customer prior to the expiry of the Initial Period, MWEB Business will be entitled (without limiting the General Terms), to claim payment from Customer for the balance of the Service Fees due in respect of the Initial Period.

2.5 In the event of a termination as contemplated in this clause 2, Customer's use of ADSL Multi-Site Local shall be deemed terminated. However, in the event that Customer logs on to ADSL Multi-Site Local following a termination, the terms and conditions of the Agreement will apply to Customer and Customer shall be liable to pay the full Service Fees to MWEB Business provided, however, that (i) this shall in



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no way constitute a revival of the Agreement between the Parties; and (ii) MWEB Business shall furthermore be entitled to terminate ADSL Multi-Site Local without notice to Customer.

- 2.6 For the avoidance of doubt, any termination of ADSL Multi-Site Local shall also terminate the access and/or use of ADSL Multi-Site Local by any User.
- 2.7 To the extent that ADSL Multi-Site Local 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 and/or any or all of its Users (depending on the circumstances) will forfeit their access to and/or use of ADSL Multi-Site Local, but Customer shall still be liable to pay the Service Fees during such suspension.

### 3. SERVICES FEES

3.1 Customer will be liable to pay the Service Fees for the minimum amount of ADSL Traffic stipulated in the Application Form, in advance and in accordance with the provisions set out in the General Terms per month, which might not be a calendar month; and

3.2 Customer acknowledges and agrees that:

3.2.1 if he/she/it has signed up for or switched over to ADSL Multi-Site Local on or before the 15<sup>th</sup> of the month, Customer's first bill will include the: (i) full Services Fees for that month; plus (ii) full Services Fees applicable in the following month;

3.2.2 if he/she/it has signed for or switched over to ADSL Multi-Site Local after the 15<sup>th</sup> of the month, Customer's first bill will include: (i) half of the Service Fees for the first month; plus (ii) the full Services Fees applicable in the following month. Customer will still be provided with a full data cap in the first month.

3.3 Customer will be liable to pay the Service Fees stipulated in the Application Form for ADSL Traffic exceeding the ADSL Traffic limit contemplated in clause 3.1 in arrears and in accordance with the provisions set out in the General Terms. Such



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Service Fees are charged per GB of ADSL Traffic exceeding the ADSL Traffic contemplated in clause 3.1. Should only a portion of such GB be used, Customer shall be charged for a complete GB.

#### 4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with ADSL Multi-Site Local on a 24 (twenty four) hour per day basis on each and every day for the continued duration of ADSL Multi-Site Local.
- 4.2 Although MWEB Business uses reasonable care and diligence to ensure that ADSL Multi-Site Local 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 Multi-Site Local 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 Multi-Site Local 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 of ADSL Multi-Site Local and further that these circumstances and/or events are beyond MWEB Business' control: (i) use of ADSL Multi-Site Local by other customers; (ii) limitations upon national bandwidth capacity; (iii) telecommunication service operator failures, which includes (without any limitation) telecommunication links and line failures; (iv) access technology failures; (v) 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 Multi-Site Local; (vi) any action, omission and/or failure by a User and/or his/her/its systems, software, network and/or equipment which has an impact on ADSL Multi-Site Local; and (vii) any other action, omission and/or failure not within MWEB Business' control which has an impact on ADSL Multi-Site Local.

#### 5. TERMS AND CONDITIONS SPECIFIC TO ADSL MULTI-SITE LOCAL

##### 5.1 Customer acknowledges and agrees that:

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Version 02/091106



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- 5.1.1 ADSL Multi-Site Local provides Customer and any User with Internet access from multiple sites via ADSL Line/s and the Service Fees payable in terms of clause 3 are determined with reference to the total amount of ADSL Traffic usage during a month, which may in MWEB Business' discretion not be a calendar month;
- 5.1.2 ADSL Multi-Site Local is only limited to local traffic and Customer including any of its Users shall not be able to access and/or transmit international traffic;
- 5.1.3 although MWEB Business has used its reasonable commercial endeavours to ensure that the ADSL Multi-Site Local is limited only to local traffic, MWEB Business does not guarantee the success of this limitation and should Customer and/or any of its User for any reason whatsoever manage to gain access to and/or transmit international traffic, Customer shall be liable for all usage costs applicable to access to and/or transmission of international traffic;
- 5.1.4 once he/she/it has reached the ADSL Traffic selected by Customer in the Application Form, Customer shall be charged for any usage in excess of the ADSL Traffic, in accordance with the provisions of clause 3 above;
- 5.1.5 Local ADSL Traffic allocated by Customer to any User shall be limited in accordance with the limitations set by Customer per User;
- 5.1.6 once the User has reached the Local ADSL Traffic cap, such User will be capped and Customer will be required to allocate additional Local ADSL Traffic in order to continue accessing Local ADSL Traffic;
- 5.1.7 the nature and specifications of ADSL Multi-Site Local is known to Customer and Customer accepts that it is suitable for the purpose it is intended and will be used;
- 5.1.8 although MWEB Business shall use its reasonable endeavours to ensure that any ADSL Traffic transmitted via ADSL Multi-Site Local is capped, MWEB Business does not guarantee that the system will automatically cap



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Customer ADSL Traffic to the size selected by Customer in the Application Form. It is therefore Customer's responsibility to manage his/her/its use of the ADSL Multi-Site Local including his/her/its User's use of the ADSL Multi-Site Local;

5.1.9 although MWEB Business shall use its reasonable endeavours to provide Customer with regular reports relating to the management of the use of the ADSL Multi-Site Local it is the sole responsibility of Customer to access such report via the Customer Interface; and

5.1.10 (without limiting any of its obligations in terms of the Agreement in any way whatsoever), any User shall be subjected to the terms and conditions of the Agreement (which are reasonably and/or practically applicable to such User), which shall include these Product Terms, General Terms and Use Policies. MWEB Business shall therefore in its sole discretion be able to enforce any rights it has or take any action it is authorised to take in terms of the Agreement against Customer and/or any User. It is Customer's sole responsibility to ensure that a User agrees to be bound by such terms and conditions.

5.2 Customer may levy any charges it deems fit on any User should Customer resell the portion of the ADSL Multi-Site Local Services, contemplated in clause 1.5.2 (ii) to any such User.

5.3 Without limiting the generality of the General Terms, Customer hereby indemnifies MWEB Business and agrees to hold MWEB Business harmless from and against any costs, losses, harm, liabilities, expenses, damages, fines or injury of whatsoever nature directly and/or indirectly suffered or incurred by MWEB Business or for any such claims instituted against MWEB Business arising out of or relating to:

5.3.1 the use of ADSL Multi-Site Local by any User;

5.3.2 the failure of Customer or any User to comply with any of the terms and conditions of the Agreement (to the extent that such terms and conditions can reasonably and/or practically be made applicable to such User);



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5.3.3 the failure of Customer to reach an agreement with a User, as contemplated in clause 5.1.10; and/or

5.3.4 any unauthorized and/or fraudulent use of Customer's ADSL Multi-Site Local Service.

5.4 Customer acknowledges and agrees without limiting the generality of the General Terms and the Use Policies that he/she/it shall:

5.4.1 use ADSL Multi-Site Local only for the purposes it was designed; and

5.4.2 not use ADSL Multi-Site Local directly or indirectly in any manner that it interferes with any third party's use of ADSL Multi-Site Local.

5.5 Customer acknowledges further that:

5.5.1 MWEB Business is not a party to any agreement between Customer and a User;

5.5.2 any upgrade of the ADSL Multi-Site Local required by Customer in any month shall only be effective from the 1<sup>st</sup> day of the following month;

5.5.3 downgrade of the ADSL Multi-Site Local during the Initial Period is not allowed;

5.5.4 should he/she/it require upgrading from ADSL Multi-Site Local to ADSL Multi-Site-Blended, such upgrade shall only be effective from the 1<sup>st</sup> day of the following month and Customer shall remain liable for the payment of all usage in excess of the ADSL Traffic under the ADSL Multi-Site Local.

## 6. ADSL LINE AND TELKOM

6.1 Customer acknowledges and agrees that:

6.1.1 an ADSL Line and an ADSL terminal adapter/router/modem (hereinafter referred to as "**Terminal Equipment**") is required at each location of the multiple sites Customer wants to use or authorise the use of ADSL Multi-Site Local and that is not included in this ADSL Multi-Site Local. It is Customer's responsibility to acquire any such ADSL Line/s;



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- 6.1.2 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 Multi-Site Local;
- 6.1.3 he/she/it or any User shall be solely responsible: (i) to apply, install and maintain the ADSL Lines and ADSL Terminal Equipment: (ii) for all costs and charges relating thereto. Customer acknowledges further that his/her/its or his/her/its User's failure to do so will have a material impact on MWEB Business' ability to provide ADSL Multi-Site Local;
- 6.1.4 he/she/it and his/her/its Users shall be solely responsible for complying with all terms and conditions and/or limitations imposed by Telkom on the ADSL Line/s; and
- 6.1.5 he/she/it may not terminate ADSL Multi-Site Local, other than as contemplated in clause 2 above 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 required location at any stage during the term of ADSL Multi-Site Local for any reason whatsoever.
- 6.2 Customer acknowledges that MWEB Business uses Telkom's network to provide ADSL Multi-Site Local. ADSL Multi-Site Local is therefore provided subject to the limitations and terms imposed by Telkom upon MWEB Business in this regard, which includes (without any limitation), limitations on bandwidth and/or the amount of data/e-mail that may be sent during a given period of time. Should Telkom amend any of the said terms and/or conditions, which may have an impact on ADSL Multi-Site Local then MWEB Business may amend ADSL Multi-Site Local accordingly or terminate ADSL Multi-Site Local without liability, provided that it uses its reasonable endeavours to provide Customer with reasonable notice of such amendments or termination.



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6.3 Customer acknowledges and agrees that MWEB Business may be required by Telkom to limit the amount of data and/or email Customer sends during intervals and that MWEB Business shall have the right to limit the amount of data and/or email Customer sends during intervals.

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