



## Product Terms

### Data Centre Access

#### 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 Data Centre Access Customer agrees that he/she/it has read, understand and are bound by:
  - 1.3.1. the General Terms and Use Policies under “**General Terms**” and other notices under “**Notices**” on MWEB Business’ Legal Website; and
  - 1.3.2. these terms that apply specifically to Data Centre Access;(collectively “the **MWEB Business Terms**”).
- 1.4. Customer’s use of Data Centre Access indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB.
- 1.5. Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-
  - 1.5.1. **Access Link(s)** means a fully functional, available and operational dedicated connectivity medium provided by the Operator, used to connect the CE Routers to the PE Routers to enable connectivity to the Data Centre;
  - 1.5.2. **ADSL Line** means an Asymmetric Digital Subscriber Line;
  - 1.5.3. **CE Router(s)** means the enabled customer edge router(s) situated at the Customer’s Premises, which provides connectivity to the PE Routers via the Access Link(s) to enable connectivity to the Data Centre;
  - 1.5.4. **Data Centre** means MWEB’s Data Centre situated at Technology House, Greenacres Office Park, Cnr Barry Hertzog/Rustenburg & Victory Roads, Victory Park, Johannesburg, 2195;
  - 1.5.5. **Equipment** means the CE Router(s), software, hardware, cables, connectors and any other equipment located at the Premises which Equipment is either (i) provided by Customer; or (ii) owned by MWEB and rented to Customer in terms of the Equipment Rental Product Terms, which Equipment shall enable connectivity to the Data Centre Access;



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1.5.6. **Data Centre Access** means the Services contemplated in these Product Terms which MWEB renders to Customer in accordance with Customer's selection, as indicated on the Application Form under such heading or description to enable access to the Data Centre via the Access Link;

1.5.7. **Operator** means the operator of the Operator Line whose full details are specified by Customer in the Application Form, which shall be used for the design and configuration of the Access Link;

1.5.8. **Operator Line** means fixed line or wireless line provided and managed by the Operator used to enable the Access Link;

1.5.9. **Premises** means the Customer's premises specified in the Application Form.

## 2. DURATION

2.1. Data Centre Access shall commence on the date of activation of Data Centre Access by MWEB 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 the General Terms applicable to Customer.

2.2. Either Party may terminate Data Centre Access at the end of the Initial Period by giving the other Party at least 3 (three) calendar months written notice 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, Data Centre Access shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate Data Centre Access on 3 (three) calendar months written notice to the other to that effect.

2.4. On termination, Customer's use of Data Centre Access shall cease. However, in the event that Customer logs on to Data Centre Access 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 however, this shall in no way constitute a revival of the Agreement between the Parties and MWEB shall furthermore be entitled to terminate Data Centre Access without notice to Customer.

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



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#### 3. SERVICE FEES

- 3.1. Customer shall pay MWEB the Services Fees specified in the Application Form in accordance with the provisions set out in the General Terms.
- 3.2. For the avoidance of doubt, Customer acknowledges that the Service Fees shall not include the Operator Line fees which shall be paid by Customer directly to the Operator.

#### 4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1. MWEB undertakes to use its reasonable endeavours to provide Customer with Data Centre Access on a 24 (twenty four) hour per day basis on each and every day for the continued duration of Data Centre Access .
- 4.2. Although MWEB uses reasonable care and diligence to ensure that Data Centre Access is available, accurate, complete, correct, error-free, secure, up-to-date and/or reliable MWEB does not warrant, represent or in any way guarantee, either expressly or by implication that Data Centre Access is available, accurate, complete, correct, error-free, secure, up-to-date and/or reliable. MWEB 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 Data Centre Access 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 Data Centre Access and further that these circumstances and/or events are beyond MWEB's control: (i) use of Data Centre Access 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 Data Centre Access; and (x) any other action, omission and/or failure not within MWEB's control which has an impact on Data Centre Access .

#### 5. TERMS AND CONDITIONS SPECIFIC TO DATA CENTRE ACCESS

- 5.1. Customer acknowledges and agrees that in order for MWEB to supply Data Centre Access, the following are required:
  - 5.1.1. A fully operational, functional, accessible and available Access Link which for these purposes can only be an ADSL Line supplied by the Operator; and
  - 5.1.2. Equipment hosted by MWEB within the Data Centre;



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which MWEB shall use to establish access to the Data Centre via the Access Link.

- 5.2. Customer shall prior to the implementation date, supply MWEB with the information regarding the Access Link (if the Operator Line is not supplied through MWEB and/or if MWEB is not the Operator of such line), which MWEB shall use to set up and configure the Access Link to enable direct access to the Data Centre.
- 5.3. MWEB shall further provide Customer with Customer Identifiers to enable a connection to the Data Centre via the Access Link.
- 5.4. Customer acknowledges and agrees that:
  - 5.4.1. the Access Link will be provided in accordance with the Operator terms and conditions;
  - 5.4.2. Access Link will not be Internet enabled;
  - 5.4.3. in the event that the Access Link is not supplied through MWEB, MWEB will not be responsible for the management, operation and availability of the Access Link;
  - 5.4.4. Access Link is only dedicated to the Data Centre and shall not be utilised for any other purpose;
  - 5.4.5. Data Centre Access is a *best effort* service and not guaranteed in any manner whatsoever by MWEB;
  - 5.4.6. Data Centre Access is an unshaped offering;
  - 5.4.7. Data Centre Access is not enabled to browse the internet therefore Customer will not have any access to the internet;
  - 5.4.8. MWEB will not be:
    - 5.4.8.1. linking and/or providing any value-added services to Data Centre Access;
    - 5.4.8.2. supplying static IP Address(es).
  - 5.4.9. if MWEB is not the Operator of the Access Link and/or if the Operator Line is not supplied through MWEB, MWEB will not be responsible for the support, maintenance including availability of the Access Link unless if Customer has entered into a network support agreement with MWEB;
  - 5.4.10. MWEB will not be responsible for Customer's local area network unless if Customer has entered into a network maintenance agreement with MWEB. Customer will be solely responsible for its local area network infrastructure. Customer is advised to maintain a secure environment to its local area network. Customer shall use reasonable endeavours to ensure security on in its local area network so as not to compromise the access to the Data Centre.



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5.5. Customer acknowledges and agrees that it will (except where the Equipment is rented from MWEB) remain responsible for the hardware support and maintenance required for the Equipment. Any fault to the Equipment may have a detrimental effect on the Access Link including Data Centre Access and therefore he/she/it is responsible for replacing and/or repairing any fault on the Equipment.

## 6. ACCEPTABLE DATA CENTRE ACCESS USE POLICY

6.1. In addition to the Use Policies, Customer agrees not to (nor to authorise or permit any other person to) use Data Centre Access:

6.1.1. in a manner which is offensive, unlawful, in breach of codes of conduct binding on MWEB, in violation of legislation (including regulations) or the common law generally, in violation of the requirements and rules of any regulatory authority or in a manner which may cause harm to the name, goodwill and reputation of MWEB, its affiliates, and its business partners;

6.1.2. to engage in any abuse of e-mail or spamming, which shall include, but is not limited to the posting or cross posting of unsolicited articles with the same message (or substantially the same message) to an unacceptably high number of e-mail and newsgroup recipients that did not request to receive such messages;

6.1.3. to post or transmit any message, data, image or programme which is defamatory, or violates any other personality rights;

6.1.4. to post or transmit any message, data, image or programme which is illegal, offensive, threatening, abusive, harassing, harmful or hateful;

6.1.5. to post or transmit any message, data, image or programme which violates the intellectual property rights of others;

6.1.6. to post or transmit any file which contains viruses or any other destructive features, regardless of whether or not damage is intended by the Customer;

6.1.7. to compromise the security or tamper with system resources or account(s) on computer(s) at MWEB, or at any other site; and/or

6.1.8. to violate the privacy of any person, which shall include but shall not be limited to, hacking.