



Product Terms

APN

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 APN 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 the Product Terms set out herein;(collectively the “**MWEB Business Terms**”)
- 1.4 Customer’s use of the APN 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 “**APN**” means the Services contemplated in these Product Terms which MWEB Business renders to Customer in accordance with Customer’s selection as indicated in the Application Form under such heading or description;
 - 1.5.2 “**APN Network**” means the network encompassing the GSM network and the MWEB Business’ network infrastructure to enable the routing of the APN traffic by MWEB Business to its Customers via the MPLS Network;
 - 1.5.3 “**Application Form**” means the application form completed and signed by Customer for the initiation of the APN, as same may be amended from time to time in terms of the Agreement;
 - 1.5.4 “**Data**” means the information which is sent, received and/or transmitted via the APN Network and shall for these purposes not include voice;
 - 1.5.5 “**Data Bundle**” means the total amount of Data selected by Customer in the Application Form for transmission by MWEB Business;
 - 1.5.6 “**Dignet Line Fees**” means the fees which are payable by Customer from time to time to MWEB Business in respect of all fees and charges levied by Telkom to MWEB Business attributable to the Dignet Line, including, but not limited to application, installation maintenance, support and repair fees;

1.5.7 **"Equipment"** means the 3G Modem, Data Card, router (including software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation associated with it) which meets the requirements of the APN Services selected by Customer in the Application Form, which equipment is either: (i) provided by Customer; or (ii) owned by MWEB Business and rented to Customer in terms of the Equipment Rental Product Terms or sold by MWEB Business to Customer in terms of the Equipment Purchase Product Terms and/or Equipment Rent To Own Product Terms; or (iii) owned by Vodacom and subleased to Customer by MWEB Business which will be installed at Customer's premises to provide connectivity to the PE Routers via the MPLS Network in order to enable connectivity to the APN Network;

1.5.8 **"Force Majeure"** means any of the following events to the extent such events are beyond the reasonable control of a party-

- i. acts of God;
- ii. fires, floods or other catastrophes;
- iii. acts or failures to act of any governmental authority;
- iv. acts of war or civil disturbances;
- v. terrorism;
- vi. severe weather;
- vii. strikes and other labour actions;
- viii. theft and vandalism;
- ix. other external aggression, including cable cuts; and
- x. other similar events beyond such party's reasonable control;

1.5.9 **"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/GeneralTerms.aspx> under the heading "General Terms";

1.5.10 **"GSM"** means the global system for mobile communications as defined in the European Telecommunications Standard Institute structure of technical guidelines;

1.5.11 **"MPLS"** means multiple protocol label switching;

1.5.12 **"MPLS Network"** means a network created over the MWEB Business network infrastructure to provide APN Service, which excludes public data networks and local area networks;

1.5.13 **"PE Router(s)"** also known as provider edge router(s) means the shared router(s) to which the Equipment connects via APN link and which are situated on the edge of the APN Network;

1.5.14 **"PE Router"** means the provider edge router connected on the edge of the MWEB Business' network;

1.5.15 **"SIM Card"** means the Vodacom subscriber identity module provided by MWEB Business to Customer;

1.5.16 **"Vodacom"** means Vodacom (Pty) Ltd and/or its successors.

2. DURATION

- 2.1 APN shall commence with effect from the date of activation of the APN by MWEB Business and endure for a period of 24 (twenty four) months (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 the APN 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, the APN shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate the APN on 3 (three) calendar months written notice to the other to that effect.
- 2.4 Notwithstanding the above, Customer acknowledges that MWEB Business shall be entitled to terminate the APN at any time during the Initial Period including any renewal thereof in the event MWEB Business' agreement with Vodacom for the provision of the APN Network terminates.
- 2.5 In the event of a termination, Customer's use of the APN shall be deemed terminated. However, in the event that Customer logs on to the APN 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 the APN without notice to Customer.
- 2.6 To the extent that the APN 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 will forfeit its access to and/or use of the APN 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 the APN traffic in excess of the Data Bundle selected by Customer in the Application Form. MWEB Business shall invoice Customer monthly in arrears for any excess usage at the Out Of Bundle Rates specified in the Application Form.

4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with the APN on a 24 (twenty four) hour per day basis on each and every day for the continued duration of the APN.
- 4.2 Customer acknowledges that APN Services utilizes the GSM network and therefore APN is a best effort service and cannot be guaranteed in any manner whatsoever. MWEB Business uses APN Network and/or MWEB Business' upstream provider's network to provide APN. APN is therefore provided subject to the

limitations and terms imposed by Vodacom upon MWEB Business in this regard, which includes limitations on the GSM network.

- 4.3 Although MWEB Business uses reasonable care and diligence to ensure that the APN 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 the APN including the APN Network, GSM Network and/or MPLS Network 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 the APN is rendered "as is" and "as available" and is used at the Customers' own discretion and risk.
- 4.4 Customer acknowledges that: (a) the following circumstances and events may impact upon its use of APN and/or the quality and coverage availability of APN including the APN Network; and (b) these circumstances and/or events are beyond MWEB Business' control: (i) use of APN 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 which include GSM network; (vii) wireless network failures; (viii) operating systems; (ix) access technology failures; (x) quality of service of telecommunication links or lines; (xi) quality of the MPLS network and/or APN Network; (xii) quality and coverage availability of mobile and/or wireless telecommunication links; (xiii) physical features such as buildings and underpass; (xiv) atmospheric conditions including without limitation bad weather conditions and other causes of interference; and (xv) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on the APN; and (xvi) any other action, omission and/or failure not within MWEB Business' control which has an impact on the APN and/or the APN Network.
- 4.5 Customer further acknowledges that: (i) MWEB Business does not warrant, represent nor in any way guarantee the quality and coverage availability of the APN; (ii) the quality and coverage availability of the APN shall be limited to that provided by the APN Network.

5. TERMS AND CONDITIONS SPECIFIC TO APN

- 5.1 MWEB Business shall as part of the APN Services, provide Customer with: (i) access to the APN Network; (ii) Data Bundle specified in the Application Form; and (iii) access link specified by Customer in the Application Form.
- 5.2 Customer acknowledges that:
- 5.2.1 SIM Card is required to access and use the APN;
 - 5.2.2 Equipment is required to enable access to the APN Network
 - 5.2.3 only the Equipment can be configured and used to connect Customer's computer systems to enable dual access to the APN;
 - 5.2.4 SIM Card and and/or Equipment is required for each Customer branch that will be enabled to access APN
 - 5.2.5 SIM Card is only enabled to transverse Data;

- 5.2.6 SIM Card cannot support dual SIM Card functionality;
 - 5.2.7 SIM Card is not be allowed to be used to access the Internet;
 - 5.2.8 SIM Card is not allowed to be used to make voice calls;
 - 5.2.9 he/she/it is responsible for ensuring that his/her/its users, employees, agents and/or contractors having access to the SIM Card shall not use the SIM Card to make voice calls and/or to browse the Internet;
 - 5.2.10 he/she/it (including his/her/its users, employees, agents and/or contractors) is not allowed to contact Vodacom directly to enable the SIM Card to make voice calls and/or to browse the Internet and/or breakout;
 - 5.2.11 should he/she/it require Internet browsing and/or breakout, Customer will have to subscribe for such services directly with MWEB Business;
 - 5.2.12 the nature and specifications of APN is known to him/her/it and accepts that the APN is suitable for the purpose Customer intends to use it;
 - 5.2.13 the APN may be impaired whilst Customer is using his/her/its APN to upload or download Data;
 - 5.2.14 APN is intended to be used only to transverse Data.
- 5.3 MWEB Business does not warrant, represent and/or guarantee that the SIM Card: (i) does not have voice capability and/or will not transmit and/or receive voice; (ii) cannot browse the Internet and/or breakout. In the event that Customer: (i) makes, receives and/or transmits voice telecommunication calls via the SIM Card; and/or (ii) browses the Internet and/or breakout via the SIM Card, Customer shall be held liable for the costs of such calls and/or Internet browsing and breakout 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 APN including the SIM Card for any unlawful, abusive or any other purpose including, without limitation, using APN and/or SIM Card in any manner that (i) interferes with MWEB Business' ability to provide APN Services and/or any other service to its customers; (ii) interferers with the quality and/or availability of the APN Network; and/or (iii) infringes upon any applicable legislation and/or regulation including without limitation the ECT Act;
 - 5.4.2 agrees not use APN including the SIM Card 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 Customer acknowledges further that:
- 5.5.1 included in the APN Services is the monitoring software which Customer shall use to monitor usage;
 - 5.5.2 although MWEB Business provides Customer with access to the monitoring system, MWEB Business does not warrant, represent and/or guarantee in any manner whatsoever that the usage results produced by the monitoring system are correct, up-to-date, error-free and/or reliable and should there be any discrepancy between the result produced by the monitoring system and/or the usage amount reflected in the invoice, MWEB Business shall as soon as it becomes aware of such

discrepancy compile a report for the correct usage for such period and send Customer the duly updated usage invoice which Customer agrees to pay in accordance with the provisions of the General Terms;

5.5.3 MWEB Business does not in any manner whatsoever guarantee that the Data will be limited according to the Data Bundle and should Customer including any of its User exceed the Data Bundle, Customer will be charged the Out Bundle Rates for the usage in excess of the Data Bundle;

5.5.4 he/she/it is not allowed to upgrade and/or downgrade the Data Bundle during the Initial Period;

5.5.5 should he/she/it reach his/her/its Data Bundle in a month, Customer shall not be allowed to upgrade to another Data Bundle until the expiry of the Initial Period;

5.5.6 he/she/it shall not be allowed to downgrade to a lower Data Bundle until the expiry of the Initial Period.

6. ACTIVATION OF THE APN

6.1 Customer acknowledges and agrees that: (i) the implementation, activation and provision of the SIM Card is *inter alia* subject to the activation of the Data Card by Vodacom; (ii) MWEB Business does not have any control over such activation and therefore cannot:

6.1.1 be held responsible for any failure and/or delay caused in the activation of the SIM Card by Vodacom to enable access and use of the APN; and

6.1.2 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 of goodwill, directly and/or indirectly suffered or incurred by Customer as a result of any failure and/or delay caused in the activation of the SIM Card by Vodacom and/or delivery of the Equipment.

6.2 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 APN Product Terms.

6.3 Customer acknowledges that the implementation and activation of the APN might not be effected on the dates provided to it by MWEB Business and shall therefore not terminate the Agreement and/or the MWEB Business Terms as a result of any failure and/or delay caused by either MWEB Business and/or Vodacom 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.

6.4 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 all of 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.

6.5 Customer acknowledges and agrees that:

6.5.1 SIM Card provided to Customer are never owned by Customer but rented to Customer in terms of the provision of these Product Terms and the Vodacom terms applicable to such SIM Card;

- 6.5.2 the risk of loss, theft and use of the SIM Card by any person other than Customer and/or his/her/its duly authorised users shall pass to Customer upon delivery of the SIM Card;
- 6.5.3 MWEB Business shall not in any manner whatsoever be held responsible for any usage of the SIM Card by any person other than person(s) authorised by Customer to access and use the SIM Card;
- 6.5.4 he/she/it shall remain responsible for the payment of any usage charges chargeable for the transmission of any APN traffic including any APN traffic in excess of the Data Bundle selected by Customer in the Application by any unauthorised person;
- 6.5.5 MWEB Business shall not be responsible for:
- 6.5.5.1 any data that is used, deleted, stolen, removed and/or lost from Customer's network whilst the card is stolen, misplaced and/or being accessed and/or used by any unauthorised person(s);
 - 6.5.5.2 access to Customer's network by any unauthorised person(s);
 - 6.5.5.3 any changes, amendments and/or modifications made to Customer's network by any unauthorised person;
- 6.5.6 it is Customer's responsibility to immediately report any SIM Card that is lost, misplaced and/or stolen to MWEB Business and such report shall be made either in writing and/or telephonically via MWEB Business's client services department;
- 6.5.7 the theft, loss and/or misplacing of any SIM Card provided to Customer shall not interrupt Customer's obligation to pay the monthly Services Fees including any fee chargeable for APN traffic transmitted in excess of the Data Bundle selected by Customer in the Application Form to MWEB Business.
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