



Product Terms

NMC

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 Service 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 Service indicates Customer’s acceptance without modification of the General 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 “**Application Form**” means the application form/s completed and signed by Customer for the initiation of the NMC;
 - 1.5.2 “**Appropriate Corrective Action**” means the activities to be undertaken by MWEB Business, which includes without limitation, a telephonic assistance service and other necessary actions required to correct faults which occur from time to time in the normal day-to-day use of the Computer System;
 - 1.5.3 “**Computer System**” means the hardware items stipulated in the Application Form and the Operating Software combined with the hardware to form a data processing capability of the Customer to be supported and maintained by MWEB Business in accordance with the provisions of this Agreement;
 - 1.5.4 “**Continues To Function Effectively**” means that the hardware element of the Computer System continues to function at the performance specification for such hardware as specified by the original equipment manufacturer of such hardware and in the case of the Operating Software, the Operating Software functions to the performance specifications of the original vendor of such software;
 - 1.5.5 “**Job Card**” means the document signed by Customer, reflecting the actual work done by MWEB Business and the actual hours spend by MWEB Business doing such work;
 - 1.5.6 “**NMC**” means Network Maintenance Contract;



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- 1.5.7 **“Operating Software”** means, without being limited thereto, the MS Windows, OS/2 and/or any other software of similar nature forming part of the Computer System and exclude all software applications specifically designed and developed for the Customer and/or any other site specific customizations or set-up software such as network gens;
- 1.5.8 **“Professional Services”** means additional, out of hour, special and/or unusual services not forming part of the Services set out in these Product Terms, and provided to Customer in terms of the Professional Services Product Terms which are available at <http://www.mwebbusiness.co.za/legal/ProductTerms.aspx> under the heading “Professional Services”;
- 1.5.9 **“Proposal”** means the proposal and/or Application Form prepared by MWEB Business, which records details of the Services and contains specific terms relating to the Services;
- 1.5.10 **“Resource”** means the employee, contractor, consultants and/or agents of MWEB Business, as the case may be, assigned by MWEB Business to provide the Services for the Customer in accordance with the provisions of this Agreement;
- 1.5.11 **“Services”** means the NMC support services selected by Customer in the Application Form which will be provided by MWEB Business in terms of these Product Terms;
- 1.5.12 **“Time and Material”** means the fees and/or charges to be payable by Customer to MWEB Business for the provision of the Professional Services as listed in the Professional Services Product Terms; and
- 1.5.13 **“User Support”** means the services provided by MWEB Business to administrate and support the Computer System for as long as the hardware and software Continues to function effectively.

2. DURATION

- 2.1 NMC shall commence with effect from the commencement date of the Services and endure for the 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 NMC 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, NMC shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate the NMC on 3 (three) calendar months written notice to the other to that effect.



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2.4 In the event of a termination, MWEB Business' obligation to provide the Services shall be deemed terminated. However, in the event that Customer request NMC following a termination, the terms and conditions of the Agreement will apply to Customer and Customer shall be liable to pay the Services Fees 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 NMC without notice to Customer.

2.5 To the extent that NMC provided to Customer is suspended by MWEB Business in terms of the provisions clauses 9 and 12 of the General Terms or for any other reason whatsoever Customer acknowledges that it will forfeit its right to be provided with the Services, but Customer shall still be liable to pay the Service Fees during such suspension.

3. SERVICE FEES

3.1 MWEB Business shall be entitled to charge the Customer the Service Fees specified in the Application Form and the Proposal and/or the Job Card, where applicable, for the Services rendered in accordance with the provisions of these Product Terms. The full and final amount due to MWEB Business for Services can only be determined once the work has been completed and the actual hours have been determined. Any out of hour work done will be reflected on the Job Card and billed on a Time and Material basis.

3.2 MWEB Business shall provide the Customer with an original invoice in respect all Services including Professional Services (if applicable) rendered, which invoice shall be due and payable within 30 (thirty) days after receipt of the invoice. If Customer has provided MWEB Business with a debit order, the invoice amount will be debited to Customer's account on MWEB Business' next billing run.

3.3 Without limiting the General Terms, under no circumstances shall the Customer be entitled to set-off and/or deduct any amount from the payment that is due to MWEB Business.

3.4 Service Fees and/or charges may be adjusted, provided MWEB Business requests such adjustment at least 30 (thirty) days prior to the proposed implementation date of the adjusted prices.

3.5 Price adjustments due to changes in the scope of the NMC and/or Agreement shall be negotiated between the Parties from time to time as the need arises.

4. TERMS AND CONDITIONS SPECIFIC TO NMC

Provision of the Services:

4.1 MWEB Business shall:

- 4.1.1 provide Customer with the Services in accordance with terms and conditions of these Product Terms;
- 4.1.2 supply all expertise required for the effective performance of its obligations as set out in these Product Terms;



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- 4.1.3 ensure that the Resource provides the Services in accordance with the provisions of these Product Terms;
- 4.1.4 provide Customer with a stand-by service provided Customer issues MWEB Business with an official Customer order for such Services.
- 4.2 Customer acknowledges and agrees that any Professional Services required by Customer shall be recorded in the Application Form and/or Job Card and MWEB Business shall render such Professional Services subject to the Professional Services Product Terms and at the Service Fees set out in the Application Form and/or Job Card. For the avoidance of doubt, the Parties record and agree that these Professional Services shall be rendered and charged by MWEB Business on a Time and Material basis. Service Process:
- 4.3.1 MWEB Business undertakes to use its reasonable commercial endeavours to take Appropriate Corrective Action as soon as Customer reports a fault in a Computer System which causes the Computer System to malfunction. The aforementioned Appropriate Corrective Action shall be processed in terms of the relevant category applicable to the particular service item concerned.
- 4.3.2 If the fault cannot be effectively corrected by means of the Appropriate Corrective Action taken by MWEB Business, MWEB Business shall send a representative to the relevant Customer, provided the Customer selected onsite support in the Application Form. Customer acknowledges that should there be insufficient support hours available for the month, onsite support will be regarded as Professional Services and will be billed on a Time and Material basis.
- 4.3.3 For the avoidance of doubt, the Parties record and agree that any Appropriate Corrective Action to be undertaken by MWEB Business as envisaged in clauses 4.3.1 and 4.3.2 above shall be subject to the service level agreements (“SLA”) applicable to such Appropriate Corrective Action.
- 4.4 Provision of a Resource:
- 4.4.1 In order to perform the Services set out in these Product Terms, MWEB Business shall allocate a Resource to be responsible for the Services to be provided by MWEB Business in terms of these Product Terms. For the avoidance of doubt, the Parties record and agree that the duly appointed Resource shall:
- 4.4.1.1 not be deployed to Customer’s premises for the performance of the Services;
- 4.4.1.2 render the Services during business hours, unless agreed otherwise by the Parties in writing.
- 4.4.2 MWEB Business shall:
- 4.4.2.1 be responsible for selecting a Resource to provide the Services;
- 4.4.2.2 in selecting a suitable candidate, select a candidate who: (i) has the necessary qualifications and experience required for the provision of the Services; and (ii) shall be able to perform and provide the Services to the standard required by the Customer;



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- 4.4.2.3 ensure that the Resource provides the Services with due and proper care, expected by the market to which it is delivered to, maintaining the highest professional standard and quality at all times; and
- 4.4.2.4 for the duration of these Product Terms and/or Agreement:
- 4.4.2.4.1 be the sole employer of the Resource assigned to provide the Services;
 - 4.4.2.4.2 remain fully responsible for the Resource assigned to provide the Services in terms of these Product Terms, including the payment of all remuneration and other benefits;
 - 4.4.2.4.3 use its reasonable endeavours to ensure that the Resource will not do anything or take any action that is likely to prejudice or adversely affect or reflect on the name, goodwill, business reputation and/or business interests of the Customer; and
 - 4.4.2.4.4 use its reasonable commercial endeavours to ensure that the Resource complies with the security procedures and privacy policies of the Customer.
- 4.4.3 For the avoidance of doubt, the Customer shall not have any responsibility or obligations in respect of the Resource arising from or by operation of statute, including specifically the: (i) Labour Relations Act; (ii) Basic Conditions of Employment Act; (iii) Employment Equity Act; (iv) Broad-based Black Economic Empowerment Act (v) the payment of amounts due in terms of the COIDA and/or the Skills Development Act; and/or (vi) deduction of PAYE and UIF contributions.
- 4.4.4 The Parties record and agree that the Resource shall not have the authority or power to contract in the name of, or to create any liability on behalf of MWEB Business.

5. CUSTOMER'S OBLIGATIONS

- 5.1 Customer shall for the duration of these Product Terms ensure that MWEB Business including its Resources have reasonable access to Customer's sites, equipment, information and Computer Systems as reasonably required by MWEB Business to effectively provide the Services.
- 5.2 Customer shall make an infrastructure (a workshop, work-bench, chair, lighting, a telephone and a storage space) available to MWEB Business and/or its Resources as reasonably required by MWEB Business to effectively perform the Services.
- 5.3 Customer shall ensure that MWEB Business and/or its Resources receive the necessary support and co-operation from Customer's employees and/or contractors as reasonably required by MWEB Business in the effective performance of the Services.
- 5.4 Customer is mutually responsible to ensure that the configurations of the servers, desktops and network are accurately maintained as described under the duties of MWEB Business.



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5.5 Customer acknowledges and agree that:

5.5.1 if the Computer System is hosted in MWEB Business's managed environment, no person or any party other than MWEB Business shall be allowed to: (i) gain access to the Computer System or the Operating Software; and/or (ii) perform any of the Services including without limitation any other related work on the Computer System, the Operating Software, server and/or the equipment, without the prior knowledge and written consent of MWEB Business.

5.5.2 if the Computer System is not hosted in MWEB Business' managed environment both Customer (including Customer's third party service providers) and MWEB Business will be allowed to gain access to the Computer System or Operating Software in order to perform any service (which may include without limitation any other work related to the Computer System, Operating Software, server and/or equipment), each party is obliged to perform on behalf of Customer.

5.5.3 MWEB Business shall (without limiting the provisions of the General Terms), not be held liable under any circumstances for any damage including direct, indirect, consequential damage, loss of profit, loss of data, loss of business, loss of income, suffered by Customer as a result of: (i) access to the Computer System or Operating Software by any of Customer's third party service providers; and/or (ii) performance of any work related to the Computer System, Operating Software, server and/or equipment).

5.6 The Parties record and agree that Customer's management must authorize the removal of any equipment, information and/or item of the Computer System from Customer's site in writing.

5.7 Customer will use its best endeavours to provide MWEB Business in electronic format with any change of Customer's details, including without limitation, registered physical address of Customer's site, telephone and fax numbers in order to keep the central database up-to-date.

5.8 Customer shall ensure that the:

5.8.1 Computer System is available 24 (twenty four) hours a day;

5.8.2 the Operating Software, site configuration software and backup data or any other software relevant to the problem at hand is at all times current, up-to-date, error free; and

5.8.3 licenses for the Operating Software, site configuration software, backup data and/or any other relevant software are fully paid for.

5.9 Customer will meet with MWEB Business on request to provide information with regard to the performance measured by Customer and to address any other issue the Parties might have in order to enable MWEB Business to effectively provide the Services as envisaged in these Product Terms.

6. EXCLUSIONS



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6.1 The Services described in the Application Form and/or these Product Terms shall only remain available to Customer whilst the Computer System is utilized by Customer under normal conditions of use. For the avoidance of doubt, the Parties record and agree that “**normal conditions of use**” shall, for the purposes of providing the Services in terms of these Product Terms, mean that the Computer System is used in accordance with the user documentation, functional specification document and other manuals and prescriptions for use of such Computer System.

6.2 Any of the following Professional Services requested or required in terms of these Product Terms shall only be rendered by MWEB Business on a Time and Material, quotation and order basis:

- 6.2.1 damage to the Computer System caused by lightning strike, or any other form of *force majeure*;
- 6.2.2 damage caused to the Computer System due to fire, water or accident;
- 6.2.3 damage caused to the Computer System due to violence, civil unrest, terrorism, sabotage and war;
- 6.2.4 damage caused to the Computer System by access to and/or use of such Computer System by Customer and/or any third party other than MWEB Business;
- 6.2.5 damage caused to the Computer System by: (i) the installation of any software; (ii) affixing, attaching and/or placing a magnetic media; and/or stationery not recommended and/or approved by the original equipment manufacturer or MWEB Business;
- 6.2.6 abnormal conditions of use including without limitation abnormally high and fluctuating temperatures, high humidity levels, dust, or other systems environmental factors such as air conditioning and power supply;
- 6.2.7 the connecting of attachments and accessories without MWEB Business approval or connecting of attachments and accessories which are not approved by the original equipment manufacturer of the system;
- 6.2.8 damage to the Computer System due to negligent, misuse or abuse of the Computer System by the Customer and/or any third party authorized by the Customer;
- 6.2.9 damage to the Computer System due to the removal, disconnection, moving or transporting of any item by Customer or any third party other than MWEB Business;
- 6.2.10 damage caused by the electrical work external to the Computer System;
- 6.2.11 damage caused to the Computer System due to factors external to the Computer System such as power failures or power fluctuations and spikes;
- 6.2.12 damage to the Computer System due to operator error, such as incorrect power input;



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6.2.13 adaptations to and upgrades of the Operating Software which are undertaken without the cognizance and approval of MWEB Business;

6.2.14 latent and patent defects in the Computer Systems;

6.2.15 the conversion of any item of these Product Terms which is not undertaken by MWEB Business or which is done without MWEB Business knowledge and approval.

6.3 The following items are not supplied by MWEB Business in terms of the Agreement:

6.3.1 any item which is classified as a consumable by the original equipment manufacturer of the equipment concerned;

6.3.2 Software licenses;

6.3.3 Hardware Maintenance.

6.4 The following Professional Services shall only be rendered by MWEB Business if specifically and separately requested by Customer in writing:

6.4.1 installation, disconnecting and removal of equipment;

6.4.2 Site Audits;

6.4.3 Cabling;

6.4.4 Faulty software or faults produced due to faulty software;

6.4.5 Faulty hardware or faults produced due to faulty hardware.

In the event of such a request, MWEB Business shall submit a quotation for the Professional Services to Customer and once approved, MWEB Business shall provide such Professional Services on Time and Material basis and subject to the Professional Service Product Terms.

7. CATEGORIES

7.1 Scheduled Visits

Scheduled Visits are pre-arranged onsite user support service. MWEB Business will arrange the appointment in accordance with the Application Form. Even though best effort is made to ensure a consistency in the engineer used and the time slot for the scheduled visits, it remains a right on MWEB Business to change the details of such visits.

7.2 Flexi-hours

Flexi-hours are the onsite support service in term of which MWEB Business provides an engineer for user support as and when required by the Customer to the site address on the Application Form. Flexi-hours entitle the Customer to those hours onsite on a monthly basis. The response of flexi-hours is per the priority of the call logged with MWEB Business.



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7.3 TAC (Technical Assistance Centre) Services

TAC services provide the telephonic and remote support element of user support for the sites as set out in the Application Form. Remote and telephonic assistance is only provided within the definition of user support and subject to the exclusions set out in these Product Terms.

8. SERVICE LEVELS

MWEB Business shall use its best endeavours to comply with the following service levels.

8.1 Priority Assignment

Priority Assignments	
<p>Total Service Loss</p> <p>An entire branch experiencing downtime through a loss of communications or total server outage.</p>	Critical (Priority 1)
<p>Partial Critical Service Loss</p> <p>Business critical fault or outage causing serious degradation of performance such that normal business processes are retarded or hampered or resulting in loss of service to a significant number of users.</p>	Urgent (Priority 2)
<p>Partial Non-Critical Service Loss</p> <p>Fault or causing degradation of performance such that normal business processes are retarded or hampered or resulting in loss of service to a very small number of users</p>	High (Priority 3)
<p>Request for Service</p> <p>Change request, query or request for information. Minimal or no impact on business processes.</p>	Medium (Priority 4)
<p>Request for new service</p> <p>Request for service requiring extensive time on task, an extended process of delivery or coordination of tasks, resources and delivery</p>	Low (Priority 5)

8.2 Response Times

OFFICE HOURS: 08h00 – 17h00



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Condition	Priority	Response time
Total/Partial Critical Service Loss	Critical (Priority 1)	0 – 4 hours
Partial Non-Critical Service Loss	High (Priority 3)	0 – 8 hours
Request for Service / Request for new service	Medium (Priority 4)	0 – 8 hours

AFTER HOURS (Including Weekends and Public Holidays): 17h00 – 08h00

Condition	Priority	Response time
Total/Partial Critical Service Loss	Critical (Priority 1)	0 – 4 hours
Partial Non-Critical Service Loss	High (Priority 3)	0 – 8 hours
Request for Service / Request for new service	Medium (Priority 4)	Next Working Day

9.2.1 When outages are vague or undefined, and require considerable investigation to precisely capture the nature of the problem before a possible resolution can be sought, an outage can be re-graded in consultation with the Customer.

8.3 Escalation

Customer's queries will be escalated as follows:

Query type	1st Call	1st Level Escalation	2nd Level Escalation	3rd Level Escalation
Sales	Account Manager 0860000158	Sales Manager 0860000158	National Sales Manager 011 340 7295	General Manager 011 340 8150
Technical support	Premier TAC Agent	TAC Team Leader	Service Level Manager	Customer Contact Centre Manager



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	0860000158	0860000158	011 340 8023	011 340 7455
Billing / Client services	Client Services Representative 0860000158	Client Services Team Leader 0860000158	Service Level Manager 011 340 8023	Customer Contact Centre Manager 011 340 7455
Service Level Agreements	Premier TAC Agent 0860000158	Field Engineer Team Leader 0860000158	Advanced Support Centre Manager 011 340 7325	Operations Manager 011 340 7260

9. TIME AND MATERIAL

9.1 Where services are requested by Customer that do not form part of the Computer System and the conditions surrounding the equipment therein, (like upgrades, installations, services, new connections, equipment relocation and all exclusions stipulated in clause 6 of these Product Terms) MWEB Business shall provide these services on a Time and Material basis. This service shall be delivered on a best effort basis. Services rendered on a Time and Material basis in terms of these Product Terms shall be rendered, subject to and at the rates set out in the Professional Services Product Terms.

9.2 No Fault Found

Wherever Customer has logged a user support call and the MWEB Business representative can find no fault on the specific piece of equipment, such calls shall be deemed billable and shall form part of the Time and Material clause.

9.3 Consumables

Any fault reported by Customer where the MWEB Business representative finds the faulty part on the equipment to be a consumable (electronic media or peripheral components such as tapes and printer cartridges), this call shall be deemed to be a No Fault Found call and shall form part of the No Fault Found clause above.

10. SOFTWARE SUPPORT



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Where any equipment's hard drive has been replaced or formatted by a MWEB Business representative, the MWEB Business representative shall be responsible to reload the software to the original supplier software level only. This includes operational software such as Microsoft office, provided Customer issues MWEB Business with the correct media and license details.

10.1 Additional Software Support

MWEB Business shall upon request from Customer load, re-load or customize any operating system or software application including data transfer. MWEB Business can only provide such requests where the necessary skills are available. Customer shall provide all software needed by the MWEB Business representative to fulfill such requests and MWEB Business shall in no manner be liable for any breach of software licenses. Software support services shall form part of Time and Material as listed in Professional Services Product Terms.

10.2 Operating Systems Supported

10.2.1 Operating systems supported will be for the original software as supplied with equipment at date of purchase or as agreed with MWEB Business in terms of these Product Terms.

10.2.2 MWEB Business must supply any newer versions or additions to the above mentioned software. MWEB Business requires 60 (sixty) days notice in writing of such changes or additions for training purposes.

11. SERVICE DESK

11.1 Call Logging

11.1.1 When Customer logs a call with MWEB Business, MWEB Business call desk representative shall log the call and return a call reference number to Customer for tracking purposes.

11.1.2 As stated in the Agreement (referring to equipment not loaded on the MWEB Business database), where the Customer logs a call and the equipment does not exist on the database, the MWEB Business call desk representative must be supplied with an official order number before such a call shall be logged and services rendered. All parties agree where such an order number has not been supplied, MWEB Business shall use Customer's call reference number as an official order number. Such services shall be rendered on a Time and Material basis as stipulated in as listed in Professional Services Product Terms.