



# Product Terms

## VPN MPLS

### 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 VPN MPLS you agree that you have read, understand and are bound by:
  - 1.3.1 the General Terms and Conditions and other notices under “General” on our Legal Notices Webpage; and
  - 1.3.2 these terms that apply specifically to VPN MPLS, (collectively “the Terms”).
- 1.4 Your use of VPN MPLS indicates your acceptance without modification of the Terms, which will constitute a legal agreement between you and MWEB Business.
- 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 telecommunications circuit provided by Telkom to Customer in accordance with its 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, used to connect the CE Routers to the PE Routers to enable connectivity to the MPLS Network;
  - 1.5.2 **“Advanced Service Level Agreement”** will have the meaning and applicability ascribed to it in terms of clause 8 below;
  - 1.5.3 **“Application Form”** means the application form completed and signed by Customer for the initiation of VPN MPLS, as same may be amended from time to time in terms of the Agreement;
  - 1.5.4 **“Availability”** means
    - 1.5.4.1 for the purposes of the Service Level Agreement the average availability of the MPLS Network measured from 0:00:00 to 23:59:59 each day over a 3 (three) consecutive month period, but with the exclusion of any portion of the MPLS Network to which the Advanced Service Level Agreement applies, provided that no 3 (three) month period shall be used more than once for purposes of measuring such availability and for the calculation of penalties as envisaged in clause 7.3 below,
    - 1.5.4.2 for the purposes of the Advanced Service Level Agreement the average availability of the portion of the MPLS Network the Advanced Service Level Agreement applies to, measured from 0:00 to 0:00 each day over a 3 (three) consecutive month period, provided that no 3 (three) month period shall be used more than once for the purposes of measuring such availability and for the calculation of penalties as envisaged in clause 8.3 below;
  - 1.5.5 **“CE Router(s)”** means 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 MPLS Network;
  - 1.5.6 **“Critical Disruption”** means a total failure of a component or components of the MPLS Network resulting in a total loss of VPN MPLS and/or a total loss of VPN MPLS at the Premises;
  - 1.5.7 **“Emergency Changes”** means an urgent, mandatory, critical change that may occur outside the Scheduled Downtime which must be performed in order to: (i) restore accessibility and functionality of VPN MPLS and/or any component thereof; and/or (ii) sustain the Availability of VPN MPLS and/or any component thereof;
  - 1.5.8 **“Equipment”** means the CE Router(s), software, hardware, cables, connectors and any other equipment located at the Premises;
  - 1.5.9 **“Fault(s)”** means any outage on the MPLS Network, or errors causing degraded performance of any component of the MPLS Network used in the provision of VPN MPLS;

- 1.5.10 **"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;
- 1.5.11 **"MPLS"** means multiple protocol label switching;
- 1.5.12 **"MPLS Network"** means a network created over the MWEB Business network infrastructure to provide VPN MPLS, 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 CE Routers(s) connects via Access Link(s) and which are situated on the MPLS Network;
- 1.5.14 **"Premises"** means the Customer's premises specified in the Application Form;
- 1.5.15 **"Scheduled Downtime"** means a maintenance period scheduled by MWEB Business for general maintenance operations, enhancements, upgrades or modifications (or of an otherwise scheduled nature) to the MPLS Network which will occur on Sunday mornings between 00h00 and 06h00. MWEB Business shall use its reasonable endeavours to provide Customer with prior notice of such Scheduled Downtime, which MWEB Business will endeavour to supply at least 24 (twenty four) hours. Should Scheduled Downtime be needed at any other time MWEB Business shall give Customer at least 48 (forty eight) hours written notice of such Scheduled Downtime;
- 1.5.16 **"Service Disruption"** means a partial failure of each or all components of the MPLS Network with serious degradation of VPN MPLS;
- 1.5.17 **"Service Incident"** means a partial failure of each or all components of the MPLS Network with minor degradation of VPN MPLS;
- 1.5.18 **"Service Level Agreement"** will have the meaning and applicability ascribed to it in terms of clause 7 below;
- 1.5.19 **"Service Query"** means VPN MPLS is fully operational and accessible by Customer;
- 1.5.20 **"Technical Assistance Centre"** means MWEB Business' Technical Assistance Centre located at the Internet House, Block E, Greenacres Office Park, cnr of Barry Hertzog/Rustenburg & Victory Roads, Victory Park or at such location as determined by MWEB Business from time to time;
- 1.5.21 **"Telkom"** means Telkom SA Limited and/or its successors;
- 1.5.22 **"UPS"** means uninterruptible power supply;
- 1.5.23 **"VPN"** means a virtual private network and it includes virtual communication links over the MPLS Network, Access Link(s), CE Router(s), and PE Router(s); and
- 1.5.24 **"VPN MPLS"** means the Services contemplated in these Product Terms which MWEB Business renders to Customer in accordance with Customer's selection, as indicated on the Application Form under such heading or description.

## 2. DURATION

- 2.1 VPN MPLS shall commence on the date of activation of the VPN MPLS 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 VPN MPLS 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, VPN MPLS shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate VPN MPLS 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 VPN MPLS shall be deemed terminated. However, in the event that Customer logs on to VPN MPLS 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 VPN MPLS without notice to Customer.
- 2.5 To the extent that VPN MPLS provided to Customer is suspended by MWEB Business in terms of clause 9.12 of the General Terms or for any other reason whatsoever, Customer acknowledges that it will forfeit its access to and/or use of VPN MPLS, 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.

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

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

4.2 Although MWEB Business uses reasonable care and diligence to ensure that VPN MPLS 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 VPN MPLS 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 VPN MPLS 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 VPN MPLS and further that these circumstances and/or events are beyond MWEB Business' control: (i) use of VPN MPLS 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 VPN MPLS; and (x) any other action, omission and/or failure not within MWEB Business' control which has an impact on VPN MPLS.

#### **5. TERMS AND CONDITIONS SPECIFIC TO VPN MPLS**

5.1 MWEB Business shall:

5.1.1 build a VPN over the MPLS Network with data integrity and security for the Customer's exclusive use; and

5.1.2 provide Customer with a connection from the CE Router(s) located at the respective Premises to the MPLS Network via the Access Link(s) to enable an end to end bandwidth connectivity between the CE Router(s) and the PE Router(s). Connection between the CE Router(s) shall be a terrestrial link unless otherwise agreed by the Parties.

5.2 Customer agrees to use VPN MPLS only for data and voice purposes.

5.3 If required, the Parties shall sign an agency agreement in terms of which MWEB Business will be appointed as an agent to perform and take all necessary actions, on behalf of Customer, with regard to the provision of Access Link(s). MWEB Business as the duly appointed agent of Customer will complete all the necessary applications and do all things necessary to lease the Access Link(s) from Telkom on behalf of Customer to enable MWEB Business to provide VPN MPLS to the Customer.

5.4 Customer shall prior to the delivery date supply MWEB Business with the configuration specification in respect of Customer's VPN MPLS. MWEB Business will confirm if Customer's configuration specification is acceptable or not and the reasons for the non acceptance of such configuration specification.

5.5 Should MWEB Business accept Customer's configuration specification, MWEB Business shall prior to the delivery date supply Customer with the specifications that will enable MWEB Business to configure the Equipment. MWEB Business will configure the Equipment, and further use all reasonable endeavours to ensure privacy, availability, reliability and security of Customer's VPN.

5.6 Customer shall accept the configuration of the Equipment by allowing MWEB Business or its agents, reasonable access to its Premises and by activating VPN MPLS whenever tendered by MWEB Business.

5.7 Under no circumstances will Customer or anyone else be allowed to access, open and/or tamper with the Equipment. Access shall only be restricted to MWEB Business staff or its duly authorized agents or with MWEB Business's permission and the relevant conditions determined by MWEB Business. Where appropriate, third party vendor equipment supplied by MWEB Business may be covered by the vendor's standard warranties and guarantees. Customer shall not engage in any action which contravenes or voids the vendor's terms of warranty or guarantee. In the event that Customer engages in any action which contravenes or voids the vendor's warranty, Customer shall bear the costs of any repairs, replacements or extended warranties or guarantees.

5.8 Customer acknowledges that MWEB Business will not be responsible for Customer's local area network and 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 its local area network so as not to compromise the MPLS Network.

5.9 Customer shall allow MWEB Business' support staff or its agent's reasonable access to its Premises and

Equipment for the purposes of performing support services specified herein.

- 5.10 Without limiting the generality of the General Terms and Use Policies, Customer undertakes to use VPN MPLS 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 VPN MPLS in whole or in part in any way whatsoever to any third party without MWEB Business' prior written consent.

## **6. IMPROPER USE OF VPN MPLS AND TERMINATION RIGHTS**

- 6.1 In addition to the Use Policies, Customer agrees not to (nor to authorise or permit any other person to) use VPN MPLS or the MPLS Network:
- 6.1.1 in a manner which is offensive, unlawful, in breach of codes of conduct binding on MWEB Business, 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 Business, 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 Business, 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.

## **7. SERVICE LEVEL AGREEMENT**

- 7.1 Except to the extent that clause 8 is of application, MWEB Business will provide Customer with VPN MPLS set out herein in accordance with the terms and conditions set out in this service level agreement ("Service Level Agreement").
- 7.2 MWEB Business will maintain an average of 99% Availability per month.
- 7.3 Should the Availability fall below the prescribed level of 99% Customer shall be entitled to the following reduction of the Service Charges for VPN MPLS, in respect of the relevant 3 (three) months period. Any reduction of the Service Charges may only be claimed as a credit against future Service Charges.
- |       |               |                |
|-------|---------------|----------------|
| 7.3.1 | 99 - 100%     | No Reduction   |
| 7.3.2 | 95 - 98.999%  | 10 % Reduction |
| 7.3.3 | 90 - 94.999%  | 25 % Reduction |
| 7.3.4 | Less than 90% | 35% Reduction  |
- 7.4 The liability of MWEB Business for failing to achieve the minimum Availability in terms of this Service Level Agreement will be limited to the reduction contemplated in clause 7.3 above.
- 7.5 Customer acknowledges that the Availability will be measured with MWEB Business's monitoring software and only with reference to uptime of the MPLS Network.
- 7.6 Customer further acknowledges that the calculation of Availability and/or the calculation of any reduction of the Service Charges will exclude any downtime, outage or interruption or unavailability of VPN MPLS, as a result of, or caused by:
- 7.6.1 any downtime, outage, interruption or unavailability of VPN MPLS or facilities of an external or third party telecommunications provider, including Access Link(s) or network provider to which the MPLS Network is connected;
  - 7.6.2 any downtime, outage, interruption or unavailability caused by the Customer's equipment, software, applications and/or electricity supply of whatever nature or of the Customer's local area network;

- 7.6.3 Scheduled Downtime;
  - 7.6.4 Emergency Changes;
  - 7.6.5 force majeure as defined in the General Terms;
  - 7.6.6 any action or omission of the Customer, including without limitation, accidental damage, operator errors, abnormal operating conditions, the connection of unauthorised peripheral equipment, improper use, misuse, neglect or abuse of VPN MPLS;
  - 7.6.7 any factor beyond the reasonable control of MWEB Business; and
  - 7.6.8 any interruption or unavailability which falls outside of normal business hours.
- 7.7 MWEB Business will provide the monitoring service, and on a monthly basis provide Availability reports on request by Customer should VPN MPLS statistics be required.
- 7.8 Should Customer wish to claim any reduction of the Service Fees, Customer will, within 30 (thirty) days from the end of any 3 (three) months measurement period, notify MWEB Business in writing of the reduction claimed, the dates of the measurement period and the dates, times and duration of non-availability of VPN MPLS. MWEB Business may request further documentation and supporting data from Customer to compare against its own monitoring data.
- 7.9 Provisions relating to Problem Resolution and Escalation
- 7.9.1 MWEB Business has a Technical Assistance Centre that is manned 24 hours a day, 365 days per year. If Customer detects a Fault with VPN MPLS, Customer shall log all Faults and support calls with the Technical Assistance Centre. Customer acknowledges that no work will be done unless a Fault has been logged. The Technical Assistance Centre can be reached in the following ways:
    - 7.9.1.1 E-mail: [sos@mweb.com](mailto:sos@mweb.com)
    - 7.9.1.2 Telephone: 0860 000 158
  - 7.9.2 Customer will be required to provide the Technical Assistance Centre with the following information:
    - 7.9.2.1 Customer name;
    - 7.9.2.2 Customer number;
    - 7.9.2.3 Contact Person;
    - 7.9.2.4 Contact details; and
    - 7.9.2.5 a complete description of the Fault.
  - 7.9.3 MWEB Business will endeavour to resolve the Fault immediately. Should MWEB Business's Technical Assistance Centre not be able to resolve the Fault immediately, the Fault will be escalated as follows:
    - 7.9.3.1 Supervisor – Technical Assistance Centre
    - 7.9.3.2 Manager – Technical Assistance Centre
    - 7.9.3.3 Second Level Support Manager
    - 7.9.3.4 Technical Operations Manager
- 7.10 MWEB Business will keep Customer informed of the progress of the Fault resolution. MWEB Business will endeavour to adhere to the following times (in working hours) with regard to feedback:

SEVERITY LEVEL	IMPACT ON CUSTOMER	AVERAGE RESPONSE TIME
Priority One	Critical Disruptions	1 hour
Priority Two	Service Disruption	2 hours
Priority Three	Service Incidents	4 hours
Priority Four	Service Query	24 hours

## 8. ADVANCED SERVICE LEVEL AGREEMENT

- 8.1 Insofar as Customer has made his/her/its selection in terms of the Application Form for this Advanced Service Level Agreement to apply MWEB Business will provide Customer with VPN MPLS set out herein in accordance with the terms and conditions set out in this Advanced Service Level Agreement.

- 8.2 MWEB Business will maintain an average of 99.5% Availability per month.
- 8.3 Should the Availability fall below the prescribed level of 99.5%, Customer shall be entitled to the following reduction of the Service Charges for VPN MPLS, in respect of the relevant 3 (three) months period. Any reduction of the Service Charges may only be claimed as a credit against future Service Charges.
- |                     |               |
|---------------------|---------------|
| 8.3.1 99.5 - 100%   | No Reduction  |
| 8.3.2 95 - 99.499%  | 25% Reduction |
| 8.3.3 90 - 94.99    | 50% Reduction |
| 8.3.4 Less than 90% | 75% Reduction |
- 8.4 The liability of MWEB Business for failing to achieve the minimum Availability in terms of this Advanced Service Level Agreement will be limited to the reduction contemplated in clause 8.3 above.
- 8.5 Customer acknowledges that the Availability will be measured by MWEB Business' monitoring software and only with reference to uptime of the MPLS Network.
- 8.6 Customer further acknowledges that the calculation of the Availability and/or the calculation of any reduction of the Services Charges will exclude any downtime, outage or interruption to VPN MPLS as a result of or caused by:
- 8.6.1 any downtime, outage, interruption unavailability of VPN MPLS or facilities of an external or third party telecommunications provider, including Access Link(s) or network provider to which the MPLS Network is connected;
  - 8.6.2 any downtime, outage, interruption or unavailability caused by the Customer's equipment, software, applications and/or electricity supply of whatever nature or of the Customer's local area network;
  - 8.6.3 Scheduled Downtime;
  - 8.6.4 Emergency Changes;
  - 8.6.5 force majeure as defined in the General Terms;
  - 8.6.6 any act or omission on the part of Customer including without limitation: accidental damages, operator errors, abnormal operating conditions, the connection of unauthorized peripheral equipment, improper use, misuse, or abusive of VPN MPLS;
  - 8.6.7 any factor beyond the reasonable control of MWEB Business.
- 8.7 MWEB Business will provide the monitoring service and on a monthly basis provide Availability reports on request by Customer should VPN MPLS statistics be required.
- 8.8 Should Customer wish to claim any reduction of the Service Charges, Customer will, within 30 (thirty) days from the end of any 3 (three) month measurement period, notify MWEB Business in writing of the reduction claimed, the dates of the measurement period and the dates, times and duration of non-availability of VPN MPLS. MWEB Business may request further documentation and supporting data from Customer to compare against its own monitoring data.
- 8.9 Provisions relating to Problem Resolution and Escalation:
- 8.9.1 MWEB Business has a Technical Assistance Centre that is manned 24 hours a day, 365 days per year. If Customer detects a Fault with VPN MPLS, Customer shall log all Faults and support calls with the Technical Assistance Centre. Customer acknowledges that no work will be done unless a Fault request has been logged. The Technical Assistance Centre can be reached in the following ways:
    - 8.9.1.1 E-mail [sos@mweb.com](mailto:sos@mweb.com)
    - 8.9.1.2 Telephone 0860 000 158
  - 8.9.2 Customer will be required to provide the Technical Assistance Centre with the following information:
    - 8.9.2.1 Company name;
    - 8.9.2.2 Customer number;
    - 8.9.2.3 Contact person;
    - 8.9.2.4 contact details; and
    - 8.9.2.5 a complete description of the Fault.

8.10 MWEB Business will use its reasonable endeavours to resolve the Fault immediately. Should MWEB Business' Technical Assistance Centre not be able to resolve the Fault immediately, the Fault will be escalated as follows:

8.10.1 Supervisor – Technical Assistance Centre

8.10.2 Manager – Technical Assistance Centre

8.10.3 Second Level Support Manager

8.10.4 Technical Operations Manager

8.11 MWEB Business will keep Customer informed on the progress of the Fault resolution. MWEB Business will use its reasonable endeavours to adhere to the following times (in working hours) with regard to the feedback and resolution but excluding factors mentioned in clause 8.6 above:

<b>SERVERTY LEVEL</b>	<b>IMPACT ON CUSTOMER</b>	<b>AVERAGE RESPONSE TIME</b>	<b>MEAN TIME TO REPAIR</b>
Priority One	Critical Disruption	30 minutes	8 hours
Priority Two	A Service Disruption	1 hour	16 hours
Priority Three	A Service Incident	2 hours	24 hours
Priority Four	A Service Query	4 hours	48 hours

8.12 Provisions relating to Equipment Rental Support Services

8.12.1 Customer acknowledges that MWEB Business will only provide the Equipment rental support services if the Equipment is rented from MWEB Business.

8.12.2 Customer shall allow MWEB Business' support staff or its agents reasonable access to its premises and Equipment for the purposes of performing support services specified in clause 5.1 above.

8.12.3 MWEB Business will use reasonable endeavours to provide the best possible practices with regard to the management services, however will accept no liability for the loss of data as a result of faulty hardware or software relating to the back up procedure.

8.13 MWEB Business will keep Customer informed on the progress of the Fault. MWEB Business will use its reasonable endeavours to adhere to the following times (in working hours) with regard to the feedback and resolution but excluding factors mentioned in clause 8.6 above:

<b>SERVERTY LEVEL</b>	<b>IMPACT ON CUSTOMER</b>	<b>AVERAGE RESPONSE TIME</b>	<b>MEAN TIME TO REPAIR: WITHIN 100KM RADIUS from MWEB BUSINESS' OFFICES &amp; WITHIN THE BORDERS OF SOUTH AFRICA</b>	<b>MEAN TIME TO REPAIR: BEYOND 100KM RADIUS FROM MWEB BUSINESS' OFFICES &amp; WITHIN THE BORDERS OF SOUTH AFRICA</b>
Priority one	Critical Disruption	30 minutes	8 hours	24 hours
Priority Two	Service Disruption	1 hour	16 hours	30 hours
Priority Three	Service Incident	2 hours	24 hours	36 hours
Priority Four	Service Query	4 hours	48 hours	48hours