



## Product Terms

## Professional Services

### 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 For the sake of compatibility with the Agreement and more specifically the General Terms and where applicable, any reference made to payment of any amount in terms of these Product Terms shall be deemed to be payment of Service Fees, as defined in the General Terms.

1.4 By using or subscribing to the Professional Service Customer agrees that he/she/it has read, understand and are bound by:

1.4.1 the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on MWEB Business’ Legal Website; and

1.4.2 the Product Terms set out herein;

(collectively the “**MWEB Business Terms**”).

1.5 Customer’s use of the Professional Service indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.

1.6 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-

1.6.1 “**Application Form**” means the application form/s completed and signed by Customer for the initiation of the Professional Services;

1.6.2 “**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;

1.6.3 **Computer System**” means the hardware items and the Operating Software combined with the hardware to form a data processing capability of the Customer to be worked on by MWEB Business in accordance with the provisions these Product Terms and the requirements specified by the Customer for the requested work;

1.6.4 “**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;



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- 1.6.5 **“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;
- 1.6.6 **“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;
- 1.6.7 **“Professional Services”** means the additional, out of hour, special and/or unusual support services to be provided by MWEB Business in terms of these Product Terms, which Professional Services are fully set out in the Application Form hereto and which Professional Services may be added to, cancelled and/or amended from time to time subject to these Product Terms and/or General Terms. A detailed list of Professional Services offered by MWEB Business is set out in clause 2 below;
- 1.6.8 **“Resource”** means the employee, contractor, consultants and/or agents of MWEB Business, as the case may be, assigned by MWEB Business to provide the Professional Services for the Customer in accordance with the provisions of these Product Terms.

## 2. MWEB BUSINESS' OBLIGATIONS

2.1 MWEB Business offers the Professional Services set out below. The hourly rates for all Professional Services can be found on our website

<http://www.mwebbusiness.co.za/products.aspx?ParentID=227&MenuID=228>

<b><u>Professional Services</u></b>
<b><u>Project services</u></b>
Consulting and Audits - LAN/ WAN – Review of networking/computer products and configurations
Desktop Audit – Review of software and hardware on desktop computers
Project Management Fee – Rate per hour billed for project management of installations
<b><u>Set-up services</u></b>
Server Set-up and Installation – Assembly, loading of operating systems and configuration of network and user access on server
Desktop Set-up and Installation – Assembly, loading of operating systems and configuration of network and



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user access on desktop computer or computer peripherals
Network equipment Set-up and Installation – Assembly and configuration of networking product
<b><u>Professional Services- Onsite and Remote</u></b>
Server Administration/ Support - Hourly support provided for server per customer request
Desktop Administration/ Support - Hourly support provided for server per customer request
Network equipment Administration/ Support - Hourly support provided for server per customer request
<b><u>Repair Centre Services</u></b>
Repair Centre Assessment fee – checking reported fault/s of equipment delivered to the repair centre
Repair Centre Rejection fee – Applicable where equipment has been checked for faults and customers have rejected the proposed fee to fix the equipment
Repair Centre Labor Rate – hourly rate for repairs done by repair centre
3rd Party Warranty Collection Admin Fee - Travel costs for services offered to clients to collect equipment that has a carry-in warranty.

#### 2.2 **Provision of the Professional Services:**

2.2.1 MWEB Business shall:

- 2.2.1.1 provide the Customer with the Professional Services in accordance with these Product Terms and the MWEB Business' Terms;
- 2.2.1.2 supply all expertise required for the effective performance of its obligations as set out in these Product Terms;
- 2.2.1.3 ensure that the Resource provides the Professional Services in accordance with the provisions of these Product Terms;
- 2.2.1.4 provide the Customer with a stand-by service, provided the Customer issues MWEB Business with an official Customer order for such stand-by-service.



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2.2.2 The Parties record and agree that any Professional Services to be rendered by MWEB Business as envisaged in these Product Terms shall be recorded and agreed upon by the Parties and the costs thereof shall be for the account of the Customer. 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 and as set out in the MWEB Business Terms. Wherever Customer has logged a call and the MWEB Business representative can find no fault on the specific piece of equipment, such calls shall be deemed billable at the hourly rate as set out on the Job Card.

2.2.4 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), shall be deemed billable at the hourly rate as set out in the Job Card. **Service**

### **Process:**

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.

### 2.4 **Provision of a Resource:**

2.4.1 In order to perform the Professional Services set out in the Application Form, MWEB Business shall, select a Resource to be responsible for the provision of the Professional Services to be provided by MWEB Business in terms of these Product Terms and/or Agreement. For the avoidance of doubt, the Parties record and agree that the duly appointed Resource shall:

2.4.1.1 not be deployed to Customer's premises for the performance of the Professional Services;

2.4.1.2 render the Professional Services during business hours, unless agreed otherwise by the Parties in writing.

2.4.2 MWEB Business shall:

2.4.2.1 be responsible for selecting a Resource to provide the Professional Services;

2.4.2.2 in selecting a suitable candidate, select a candidate who: (i) has the necessary qualifications and experience required for the provision of the Professional Services; and (ii) shall be able to perform and provide the Professional Services to the standard required by the Customer;

2.4.2.3 ensure that the Resource provides the Professional 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

2.4.2.4 for the duration of these Product Terms:



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- 2.4.2.4.1 be the sole employer of the Resource assigned to provide the Professional Services;
  - 2.4.2.4.2 remain fully responsible for the Resource assigned to provide the Professional Services in terms of these Product Terms and/or Agreement, including the payment of all remuneration and other benefits;
  - 2.4.2.4.3 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 Customer; and
  - 2.4.2.4.4 use its reasonable commercial endeavours to ensure that the Resource complies with the security procedures and privacy policies of Customer.
- 2.4.3 For the avoidance of doubt, 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.
- 2.4.4 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.
- 2.4.5 Customer shall not, during the currency of these Product Terms and/or Agreement and for a period of 12 months after the termination hereof, whether directly or indirectly and either solely or jointly, encourage, entice, persuade, induce or in any way offer employment to or employ or cause to be employed, any person who is or was employed by MWEB Business as at the date of termination or at any time within a period 12 months prior the termination of these Product Terms and/or Agreement, without the prior written consent of MWEB Business.

### 3. CUSTOMER'S OBLIGATIONS

- 3.1 Customer shall ensure that MWEB Business, including its Resources, has reasonable access to the Customer's sites, equipment, information and Computer Systems as reasonably required by MWEB Business to effectively perform the Professional Services.
- 3.2 Customer shall make an infrastructure, where applicable, (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 Professional Services.
- 3.3 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 Professional Services.



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- 3.4 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.
- 3.5 In the event that any item of the Computer System cannot be repaired (“**Damaged Item**”), at Customer’s site, Customer shall allow MWEB Business to remove such Damaged Item for repair at MWEB Business’ workshops.
- 3.6 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.
- 3.7 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.
- 3.8 Customer shall ensure that the:
- 3.8.1 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
  - 3.8.2 licenses for the Operating Software, site configuration software, backup data and/or any other relevant software are fully paid for.
- 3.9 Customer agrees that any software and/or applications contemplated in clause 3.5 needed and loaded, if allowed, by Customer will be its own responsibility and is loaded at its sole risk and responsibility. The licensing of all such installed software and/or applications shall be the sole responsibility of Customer. All software shall be licensed in accordance with the vendor’s software license agreements. Without limiting the generality of the General Terms or any of the rights of the relevant software and/or application vendors against Customer any failure to license such software and/or applications correctly may result in the termination and/or suspension of these Product Terms and/or Agreement and/or any Professional Services and Customer furthermore indemnifies MWEB Business from any losses, damages, costs, claims, penalties, fines of whatever nature, because of Customer’s failure to license the software and/or applications correctly and/or at all. MWEB Business retains the right to carry out routine checks to validate such software license agreements.
- 3.10 Customer will be solely responsible for all the maintenance and/or upgrades of the software and/or applications, which will include any patches, updates and security updates/patches of whatever nature installed in terms of clause 3.9.

## 4. SERVICES FEES



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- 4.1 MWEB Business shall be entitled to charge the Customer the hourly rates and fees and/or charges specified in the Application Form and/or the Job Card for the Professional Services rendered. For the avoidance of doubt, the amount quoted on the Application Form is an estimated amount as the full and final amount can only be determined once the work has been completed and the actual hours have been determined. The full and final amount due will be reflected on the Job Card and may differ from the amount set out in the Application Form, however the hourly rate quoted on the Application Form will remain the same.
- 4.2 MWEB Business shall provide the Customer with an original invoice in respect all Professional Services 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.
- 4.3 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.
- 4.4 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.
- 4.5 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.

## 5. SOFTWARE SUPPORT

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.

### 5.1 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.

### 5.2 Operating Systems Supported (Only available if equipment was purchased through MWEB Business)

5.2.1 Operating systems supported will be for the original software as supplied with equipment at date of purchase or as agreed with MWEB Business at the time of such purchase.



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- 5.2.2 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.

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