



Product Terms

Failover Management

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 Failover Management Customer agrees that he/she/it has read, understand and is bound by:
 - 1.3.1 the General Terms and Conditions 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 Failover Management 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 “**Application Form**” means the application form completed and signed by Customer for the initiation of the Failover Management, as same may be amended from time to time in terms of the Agreement;
 - 1.5.2 “**Customer Network**” means Customer’s LAN and/or WAN;
 - 1.5.3 “**Equipment**” means the router (including any software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation associated with it), which meet the requirements of Failover Management which Equipment is rented by MWEB Business to Customer in terms of the provisions of clause 6 below or supplied by Customer as envisaged in clause 7 below, to enable: (i) the switching of the Primary Line to the Secondary Line during Failover; and (ii) a failback of the Secondary Line to the Primary Line after restoration of the Primary Line;
 - 1.5.4 “**Failover**” means a period within which the Primary Line is not available for access and/or use by Customer;
 - 1.5.5 “**Failover Management**” means the services that MWEB Business will render to Customer which services include the: (i) switching of the Primary Line to the Secondary Line during a Failover in order to sustain availability of the Customer Network; and (ii) management of the Equipment and the Secondary Line in order to ensure automatic switching of the Primary Line to Secondary Line during a Failover and a failback of the Secondary Line to the Primary Line upon restoration of the Primary Line;
 - 1.5.6 “**Force Majeure**” means any of the following events to the extent such events are beyond the reasonable control of a party-

- 1.5.6.1 acts of God;
- 1.5.6.2 fires, floods or other catastrophes;
- 1.5.6.3 acts or failures to act of any governmental authority;
- 1.5.6.4 acts of war or civil disturbances;
- 1.5.6.5 terrorism;
- 1.5.6.6 severe weather;
- 1.5.6.7 strikes and other labour actions;
- 1.5.6.8 theft and vandalism;
- 1.5.6.9 other external aggression, including cable cuts; and
- 1.5.6.10 other similar events beyond MWEB Business reasonable control;
- 1.5.7 **“General Terms”** means the terms and conditions set out in the general terms and conditions for MWEB Business’ customers, which are available at <http://www.mwebbusiness.co.za/Legal.aspx> under the heading “General Terms” and incorporated herein by reference;
- 1.5.8 **“Initial Period”** means the initial period during which MWEB Business shall provide the Failover Management, as selected by Customer in the Application Form;
- 1.5.9 **“LAN”** means local area network;
- 1.5.10 **“Primary Line”** means any fixed line, broadband and/or wireless connectivity selected by Customer in the Application Form, which line, broadband and/or wireless connectivity is utilized by Customer to access the Customer Network;
- 1.5.11 **“Secondary Line”** means any fixed line, broadband and/or wireless connectivity selected by Customer in the Application Form, which line, broadband and/or wireless connectivity shall be utilized by Customer to access Customer Network during a Failover;
- 1.5.12 **“VPN”** means virtual private network; and
- 1.5.13 **“WAN”** means wide area network.

2 DURATION

- 2.1 This Agreement will commence on the Effective Date. Notwithstanding the commencement of the Agreement, the Initial Period shall be calculated from the Activation Date. 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 Failover Management at the end of the Initial Period in accordance with the provisions of the General Terms. 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, Failover Management shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate Failover Management in accordance with the provisions of the General Terms.

- 2.4 Notwithstanding the provisions of clauses 2.1 and 2.3 above, the Parties record and agree that MWEB Business shall be entitled to terminate Failover Management (without payment of any penalty of whatsoever nature), at any time on 30 (thirty) days written notice to Customer should Customer terminate the Secondary Line Services. For the avoidance of doubt, the Parties record and agree that termination of the Failover Management by either Party shall not in any manner whatsoever terminate the Secondary Line Services. Termination of the Secondary Line Services shall be in accordance with the Product Terms applicable to the Secondary Line Services.
- 2.5 To the extent that Failover Management provided to Customer is suspended by MWEB Business in terms 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 any of Failover Management, 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 shall remain liable for all Service Fees including the usage costs applicable to the Secondary Line or any other amount due to MWEB Business under the Agreement regardless of termination.

4 UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with Failover Management on a 24 (twenty four) hour per day basis on each and every day for the continued duration of Failover Management.
- 4.2 Although MWEB Business uses reasonable care and diligence to ensure that Failover Management 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 Failover Management including the Equipment will be available, accurate, complete, correct, error-free, secure 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 Failover Services are 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 the provision of Failover Management and further that these circumstances and/or events are beyond MWEB Business' control: (i) telecommunication service operator failures, which includes telecommunication links and line failures; (ii) Equipment and operating systems failures; (iii) access technology failures; (vi) quality of service of telecommunication links or lines; (vii) mobile telecommunication service operator failures; (viii) wireless network operator failures; (ix) Primary Line and Secondary Line failures; (x) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on Failover Management; and (xi) any other action, omission and/or failure not within MWEB Business' control which has an impact on the Failover Management and/or the provision of Failover Management.

5 TERMS AND CONDITIONS SPECIFIC TO FAILOVER MANAGEMENT

- 5.1 Customer acknowledges and agrees that:
- 5.1.1 in order for the Failover Management to be provided, a Secondary Line and the Equipment are required to enable a switch from the Primary Line to the Secondary Line during a Failover;
- 5.1.2 the Equipment will either be:

- 5.1.2.1 rented to Customer subject to the provisions of clause 6 below; or
- 5.1.2.2 supplied by Customer as envisaged in clause 7;
- 5.1.3 the Secondary Line shall be provided by MWEB Business in accordance with the Product Terms applicable to the Secondary Line selected by Customer in the Application Form;
- 5.1.4 MWEB Business shall utilize the Secondary Line in the event of a Failover and not for any other purpose;
- 5.1.5 although the Secondary Line is activated by MWEB Business, Customer shall only have access to and/or use of such Secondary Line during a Failover;
- 5.1.6 in the event of a Failover, MWEB Business shall enable Customer's access to Customer Network via the Secondary Line in order to maintain and/or sustain Customer Network availability;
- 5.1.7 he/she/it shall (where applicable), be responsible for any usage costs that may occur as a result of Customer's use of the Secondary Line during a Failover. Customer shall remain responsible for the payment of the usage costs, and/or any charges.
- 5.2 Customer acknowledges and agrees further that MWEB Business does not warrant, represent and/or guarantee in any manner whatsoever:
 - 5.2.1 the automatic switch from the Primary Line to the Secondary Line during a Failover;
 - 5.2.2 that the switching of the Primary Line to the Secondary Line during a Failover will be without interruption and/or successful;
 - 5.2.3 that the routing of Customer's access to Customer Network via the Secondary Line will be without interruptions and/or delays;
 - 5.2.4 that the switching of the Primary Line to the Secondary Line during a Failover will not: (i) interrupt and/or interfere with any transfer of data that may be occurring during the switching process and/or during Failover; (ii) corrupt any data that is being transferred during Failover; and/or (iii) result in the loss of data that is being transferred during Failover. Customer is therefore advised to ensure that his/her/its systems are backed-up to avoid any loss and/or corruption of data;
 - 5.2.5 that the restoration of the Primary Line will be without delays and/or interruption;
 - 5.2.6 that the restoration of the Primary Line will not: (i) interfere with the transfer of data that may be occurring during the restoration of the Primary Line; and/or (ii) corrupt and/or result in the loss of data that is being transferred during the restoration of the Primary Line. Customer is therefore advised to ensure that his/her/its systems are backed-up to avoid any loss and/or corruption of data;
 - 5.2.7 that there will be an automatic switch from the Secondary Line to the Primary Line upon the success of the failback.
- 5.3 Customer acknowledges and agrees that:
 - 5.3.1 MWEB Business shall be entitled to change the Failover Management (which may include without limitation, the amendment of the technical parameters and/or specification relating to the Failover Management), at any time during the Initial Period and/or any renewal thereof on 30 (thirty) business days written notice to Customer;

- 5.3.2 he/she/it will not be allowed to terminate Failover Management, other than as contemplated in clause 2 above, should the Secondary Line not be available to Customer at any stage during the term of Failover Management for any reason whatsoever;
- 5.3.3 the provision and/or availability of the Failover Management is *inter alia* subject to the operation of the Secondary Line and Equipment.
- 5.4 Customer shall, without limiting the generality of the General Terms, not be able to hold MWEB Business or its agents liable under any circumstances, for any loss, damage, costs, expense or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit, loss of anticipated savings, loss of goodwill, loss of revenue, loss of data, corruption of data or loss of customers or clients caused by or arising in any manner whatsoever from: (i) Failover of the Primary Line; (ii) the routing of Customer's access and/or use of Customer Network via Secondary Line during Failover including the routing of Customer's access and/or use of Customer Network via the Primary Line after failback; (iii) switching failures; and/or (v) Equipment failures.
- 5.5 Notwithstanding anything that might indicate the contrary, Customer shall at all times comply with all terms and conditions and/or limitations imposed by MWEB Business and/or operator on the Secondary Line for the duration of the Failover Management.

6 EQUIPMENT RENTAL (IF SELECTED)

- 6.1 MWEB Business hereby leases the Equipment to Customer who accepts such rental. Customer acknowledges and agrees that:
- 6.1.1 the Equipment will at all times remain the property of MWEB Business and Customer agrees that he/she/ it will never become owner the Equipment;
- 6.1.2 the Equipment shall at all times be regarded as a movable property and shall not become part of the property;
- 6.1.3 MWEB Business shall have the right to enter Customer's premises in order to remove the Equipment upon termination of the Failover Management.
- 6.2 MWEB Business shall at its own costs and expense deliver the Equipment at Customer's premises. A signed delivery note by Customer (including his/her/its employee, representative or nominee), shall constitute *prima facie* proof that the Equipment was delivered to and received by Customer in good condition.
- 6.3 Upon delivery of the Equipment as envisaged in clause 6.2 above, Customer shall bear all risk of loss, theft, damage and/or destruction of the Equipment whilst housed at Customer's premises for an amount equal to the full replacement value thereof. Customer shall make its own arrangements regarding the insurance of the Equipment.
- 6.4 Customer shall not allow any third party to take possession of the Equipment unless duly authorised thereto by MWEB Business. Should any third party take possession of the Equipment without the said authorisation, the replacement value thereof shall immediately be due and payable by Customer.
- 6.5 If the premises at which the Equipment will be installed are rented:
- 6.5.1 Customer shall:
- 6.5.1.1 advise MWEB Business in writing of the name and address of the landlord as well as any changes thereto;
- 6.5.1.2 not move the Equipment without MWEB Business' prior written consent;

- 6.5.2 Customer warrants that the landlord and/or governing body(ies) have been informed that the Equipment belongs to MWEB Business and can therefore not be subject to a *lien* or landlord *hypothec*. Customer hereby indemnifies MWEB Business against all losses or damages it sustains or incurs as a result of breach by the Customer of the warranty contained in this clause.
- 6.6 Customer acknowledges and agrees that it shall only use the Equipment in conjunction with Failover Management. Under no circumstances will Customer or anyone else be allowed to: (i) access and/or tamper with the Equipment; (ii) move the Equipment to any other location without the express written permission of MWEB Business; and (iii) use the Equipment for any other purpose. Access to the Equipment shall be restricted to MWEB Business' staff or its duly authorized agents only.
- 6.7 Without limiting the generality of the General Terms and Use Policy, Customer undertakes to use the Equipment solely for Failover Management purposes and shall not be entitled to directly or indirectly transfer, distribute, re-distribute, sell, re-sell, lease, sub-lease and/or lend the Equipment in any manner whatsoever to any third party without MWEB Business' prior written consent.
- 6.8 Customer shall ensure that MWEB Business may at any time enter the premises where the Equipment is installed in order to inspect such Equipment, provided that MWEB Business supplies Customer with reasonable prior notification.
- 6.9 Upon acceptance of Customer's Application Form for Failover Management, MWEB Business shall notify Customer with regard to the installation date and time. MWEB Business cannot guarantee the installation date and time but will use reasonable efforts to ensure that the anticipated installation date and times are met. MWEB Business will inform Customer as soon as possible if it is unable to attend a set appointment. Customer shall not be allowed to move the installation date and time without MWEB Business' consent. Customer shall also not be entitled to cancel Failover Management or refuse to accept installation, set-up and/or configuration as a result of MWEB Business' failure to meet the anticipated installation date and times.
- 6.10 Customer shall prior to the installation date: (i) appoint a designated person to manage the installation project on Customer's behalf; (ii) prepare the premises and/or the area where the installation will be done for installation purposes; and (iii) notify its staff, other tenants/owners on the premises, the landlord and/or governing body(ies) (where relevant) about the installation date and time.
- 6.11 Customer warrants that:
- 6.11.1 the premises and/or area where installation will be done, meet the requirements of the Occupational Health and Safety Standards;
- 6.11.2 in the case of rented premises, the landlord and/or governing body(ies) are aware of: (i) the installation work to be done; (ii) what such installation entails; and (iii) the installation date and times; and
- 6.11.3 in the case of rented premises, the landlord and/or governing body(ies) have given Customer the necessary written approvals to allow MWEB Business to commence the installation work.
- 6.12 Customer hereby indemnifies MWEB Business against all losses or damages it sustains or incurs as a result of breach by the Customer of the warranties contained in this clause.
- 6.13 MWEB Business including any of its agents or contractors shall on the installation date and during business hours, attend to:
- 6.13.1 the installation of the Equipment; and

6.13.2 set-up and/or configuration of the Equipment.

6.14 Customer shall allow MWEB Business including its agents or contractors, all reasonable access to Customer's premises and/or property for the purposes set out in clause 6.13.1 and 6.13.2 above. A signed confirmation by Customer (including his/her/its employee, representative, carrier, agent or nominee), that installation and set-up and/or configuration of the Equipment was done shall constitute *prima facie* proof that it was done according to specification and Agreement.

6.15 Customer acknowledges and agrees that MWEB Business may be required to: dig, drill, remove pavement, carpets, tiles, ceilings, apply glue or perform any other act in order to install the Equipment ("Installation Work"). Customer hereby gives MWEB Business the permission to perform such Installation Work and Customer further warrants that he/she/it has received written permission from the landlord and/or governing body(ies) (where required) to perform such Installation Work.

6.16 Customer acknowledges that:

6.16.1 MWEB Business will use reasonable commercial endeavours to ensure that the Installation Work is performed in a professional manner without causing any damage to Customer or any other third party's premises or property;

6.16.2 MWEB Business cannot guarantee that work will be performed without error, faults and/or causing damages of whatsoever nature to Customer or any other third party's premises or property;

6.16.3 in the event of any such damage to Customer's or any other third party's premises, installation area or property, Customer shall indemnify MWEB Business from any claim arising as a result of such damage and Customer shall not hold MWEB Business, its contractors and/or agents liable under any circumstances, for any loss, damage, costs or expense whatsoever caused by or arising in any manner whatsoever from any action or omission of MWEB Business or its contractors.

6.17 Customer shall when required, allow MWEB Business and its agents all reasonable access to its premises for the purposes of the re-installation, re-set-up, re-configuration and maintenance and repair of the Equipment.

7 CUSTOMER EQUIPMENT (IF SELECTED)

7.1 Where Customer has selected to supply the Equipment, Customer acknowledges and agrees that:

7.1.1 such Equipment must meet the requirement of Failover Management;

7.1.2 such Equipment shall be installed in a lockable area;

7.1.3 he/she/it shall not have access to the Equipment, such access shall only be restricted to MWEB Business including its agents and/or contractors;

7.1.4 all risk of loss, damage, destruction and/or theft shall remain Customer's responsibility.

7.2 Customer acknowledges that Failover Management depends on the operation and functionality of the Equipment and shall use its best endeavours to ensure the health of the Equipment and to protect the Equipment from loss, theft, destruction and/or damage.

- 7.3 Upon acceptance of Customer's Application Form for Failover Management, MWEB Business shall notify Customer with regard to the set up and/or configuration date and time. MWEB Business cannot guarantee the set up and/or configuration date and time, but will use reasonable efforts to ensure anticipated set up and/or configuration date are met. MWEB Business will inform Customer as soon as possible if it is unable to attend a set appointment. Customer shall not be allowed to move the set up and/or configuration date and time, without MWEB Business' consent. Customer shall also not be entitled to cancel Failover Management or refuse to accept set-up and/or configuration as a result of MWEB Business' failure to meet anticipated installation date and times.
- 7.4 Customer shall provide MWEB Business including its agents and/or contractors with full access to his/her/its premises and/or property where the Equipment is installed in order to:
- 7.4.1 set up and/or configure the Equipment to enable access to the Failover Management. A signed confirmation by Customer (including his/her/its employees, representative, agent or nominee), that set-up and/or configuration of the Equipment was done shall constitute *prima facie* proof that such set-up and/or configuration was done according to specifications and Agreement;
- 7.4.2 to re-set up and/or re-configure the Equipment. A signed confirmation by Customer (including his/her/its employee, representative, agent or nominee), that re-set-up and/or re-configuration was done shall constitute *prima facie* proof that it was done according to specification and Agreement.
- 7.5 Customer acknowledges and agrees that:
- 7.5.1 access to the Equipment either remotely and/or on-site shall (subject to the provisions of clause 7.5.5 below), be limited only to MWEB Business including its agents and/or contractors;
- 7.5.2 MWEB Business' responsibility is only limited to the software maintenance of the Equipment in order to ensure an automatic switch from Primary Line to Secondary Line during a Failover and a switch back to the Primary Line upon success of a fallback;
- 7.5.3 he/she/it is responsible for hardware including the maintenance, support and/or repairs required for the Equipment;
- 7.5.4 he/she/it and/or its suppliers, agents and/or contractors shall not have any remote access to the Equipment;
- 7.5.5 on-site access to the Equipment shall only be allowed in order to perform maintenance and/or repairs which shall be carried in accordance with the provisions of the Agreement;
- 7.5.6 availability of the Equipment is critical for the operation of the Failover Management and shall therefore use its best endeavours to provide MWEB Business with a written notification regarding scheduled hardware maintenance and/or repairs required for the Equipment ("Scheduled Maintenance");
- 7.5.7 Scheduled Maintenance shall automatically suspend Failover Management up until completion of such maintenance and/or repairs;
- 7.5.8 all risk of loss pertaining to data, connectivity and/or any damage of whatsoever nature shall remain with Customer during the Scheduled Maintenance up until the maintenance and/or repairs are completed and functionality of the switching software is tested by MWEB Business and accepted as functioning without any failures, errors and interruptions. Customer is therefore advised to ensure a backup of all its data prior to the Scheduled Maintenance;

- 7.5.9 he/she/it including its employees, agents and/or contractors shall only use the Equipment in conjunction with Failover Management. Under no circumstances will Customer or anyone else be allowed to: (i) access and/or tamper with the Equipment; (ii) move the Equipment to any other location without MWEB Business's knowledge; and (iii) use the Equipment for any other purpose.
- 7.6 Without limiting the generality of the General Terms and Use Policy, Customer undertakes to ensure that the Equipment is solely used for Failover Management and shall not be entitled to directly or indirectly transfer, distribute, re-distribute, sell, re-sell, lease, sub-lease and/or lend the Equipment in any manner whatsoever to any third party during Failover Management without MWEB Business' knowledge.
- 7.7 Customer acknowledges that MWEB Business shall (without limiting the generality of the General Terms), not be able to hold MWEB Business or its agents liable under any circumstances, for any loss, damage, costs, expense or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit loss of anticipated savings, loss of goodwill, loss of revenue, loss of data, corruption of data or loss of customers or clients caused by or arising in any manner whatsoever from: (i) Scheduled Maintenance; (ii) downtime of the Secondary Line during Failover due to faulty Equipment; (iii) Equipment failures; (iv) and/or Scheduled Maintenance;

8 EQUIPMENT SUPPORT

- 8.1 Customer acknowledges and agrees that Equipment support (hereinafter referred to as "Equipment Support") shall only be provided if:
- 8.1.1 the Equipment is rented from MWEB Business as envisaged in clause 6 above; or
- 8.1.2 Customer has selected Equipment Support in the Application Form.
- 8.2 MWEB Business will provide Customer with equipment support in accordance with the provisions set out in this clause 8.
- 8.3 All Equipment support calls can be logged 24 hours per day, 365 days per year with MWEB Business' Customer Contact Centre by:
- 8.3.1 E-mail premier@mweb.com
- 8.3.2 Telephone 0860 000 158
- 8.4 Customer will be required to provide the Customer Contact Centre with its company name, customer number, contact person, contact details and a complete description of the problem.
- 8.5 MWEB Business will endeavour to resolve the problem immediately. Should MWEB Business' Customer Contact Centre not be able to resolve the problem immediately, the problem will be escalated as follows:
- 8.5.1 Supervisor – Customer Contact Centre
- 8.5.2 Manager – Customer Contact Centre
- 8.5.3 Second Level Support Manager
- 8.5.4 Technical Operations Manager
- 8.6 MWEB Business will keep Customer informed of the progress of the problem resolution. MWEB Business will endeavour to adhere to the following times (in business hours) with regard to feedback:
- 8.6.1 Critical Disruptions: Total loss of all services 1 hour

- 8.6.2 Service Disruptions: Serious degradation of services 2 hours
 - 8.6.3 Service Incidents: Minor loss/degradation of services 4 hours
 - 8.6.4 Service Queries: No loss/degradation of services 4 hours
 - 8.6.5 MWEB Business will use reasonable commercial endeavours to replace the Equipment within the following timeframes should there be a proven hardware failure:
 - 8.7 (twenty four) hours from fault logging time if Customer's premises are situated within Gauteng Province should there be a proven hardware failure;
 - 8.8 48 (forty eight) hours from fault logging time if Customer's premises are situated outside Gauteng Province. Customer acknowledges that MWEB Business will be using its carrier agents for shipping purposes and should there be delays arising from force majeure, MWEB Business shall not be held liable for any damages.
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