



Product Terms

Server Hosting

PLEASE NOTE: These product or service specific terms and conditions must always be read together with our General Terms and Conditions, which will always apply to your use of this product or service.

SERVER HOSTING

1. DEFINITIONS

- 1.1 Unless the context clearly indicates the contrary, any term defined in the General Terms and Conditions when used herein, shall bear the same meaning as defined in the General Terms and Conditions.
- 1.2 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-
 - 1.2.1 “**24 Hour Reboot Service**” means the additional Server Hosting service, Customer can subscribe to at additional Service Fees, as contemplated in clause 8.10;
 - 1.2.2 “**Customer Server**” means the file server comprising of computer hardware/machinery/equipment which is either supplied by Customer or rented to Customer by MWEB in accordance with the Equipment Rental Product Terms;
 - 1.2.3 “**Data Traffic**” means any data traffic originating from the Server to the Internet and packets originating from the Internet to the Server;
 - 1.2.4 “**Location**” means MWEB Business’ data centre situated at The Internet House, Greenacres Office Park, cnr Barry Hertzog/Rustenburg Roads, Victory Park, Johannesburg, Gauteng and/or any other address indicated by MWEB Business from time to time;
 - 1.2.5 “**MWEB Server**” means the file server comprising of computer hardware/machinery/equipment which is rented to Customer by MWEB in accordance with the provisions of clause 5 below;
 - 1.2.6 “**Professional Management and Back-Up**” means the additional Server Hosting service to which Customer can subscribe at additional Service Fees, more fully set out in clause 9;
 - 1.2.7 “**Server**” means either the MWEB Server or Customer Server;
 - 1.2.8 “**Server Hosting**” means the Services contemplated in these Product Terms which MWEB renders to Customer in accordance with Customer’s selection as indicated on the Application Form under such heading or description whereby: (i) MWEB hosts the Server at the Location; and (ii) supplies such ancillary/additional Server Hosting services, as selected by Customer in the Application Form;
 - 1.2.9 “**Operating Software**” means: software that controls basic, low-level Server hardware operations, and file management, without the user thereof having to operate it or application software, purchased from MWEB or rented to Customer by MWEB, as selected by the Customer and



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indicated on the Application Form. Such purchase or rental is additional to the Server Hosting Service to which additional Service Fees apply;

- 1.2.10 **"SPLA Software"** means software owned by Microsoft Corporation and supplied to MWEB by Microsoft Corporation in accordance with the provisions of the Service Provider Licence Agreement ("SPLA"), which SPLA Software is rented to Customer by MWEB in accordance with the provisions of these Product Terms. Such rental is an additional Server Hosting service to which additional Service Fees apply.

2. PAYMENT

Customer shall pay MWEB the services fees specified in the Application Form in accordance with the provisions set out in the General Terms and Conditions.

3. TERMS AND CONDITIONS SPECIFIC TO SERVER HOSTING

3.1 In order for MWEB to provide Server Hosting, the following are required:

- 3.1.1 Server;
- 3.1.2 Operating Software; and
- 3.1.3 SPLA Software;

3.2 The Server will be housed at the Location. Customer shall under no circumstances be entitled to remove the Server from the Location irrespective of whether such Server is: (i) a Customer Server; or (ii) MWEB Server; without MWEB's authority.

3.3 MWEB will provide Server Hosting Services to Customer in accordance with the Server Hosting product selected by Customer in the Application Form which products are dealt with in clauses 4 and 5 below.



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3.4 MWEB is not responsible for the backing-up of any of the data on the Virtual Servers. All back-ups are the responsibility of the Customer.

3.5 The following conditions apply on a per hosted server basis (whether physical or virtual) for Server Hosting products provided with an uncapped traffic allowance, the Uncapped Traffic only forms part of the following products:

- Server Hosting Lite
- Server Hosting Basic
- Server Hosting Standard
- Server Hosting Advanced

All other server hosting offerings will have traffic usage charges as part of the service.

3.5.1 The peak outbound traffic rate to the internet will be limited to 100Mbps, and the peak inbound traffic rate from the internet will be limited to 10 Mbps;

3.5.2 The peak outbound and inbound rates specified in 3.5.1 do not constitute a sustained throughput guarantee, only an upper limit. Actual throughput will be determined by prevailing network conditions influenced by such factors as time of day and the external networks being communicated with.

3.5.3 The outbound traffic usage for any particular calendar month must exceed that of the inbound traffic usage of the same month.

3.5.4 The service shall not be used for the purposes of bulk downloading from the Internet by using the hosted server as a traffic proxy or tunnel relay

3.5.5 Failure to comply with 3.5.3 or 3.5.4 shall constitute a breach of the server hosting services with an uncapped traffic allowance.

3.5.6 Should the conditions specified in 3.5.3 or 3.5.4 not be rectified in the month subsequent to notification by MWEB, MWEB reserves the right to terminate the service unconditionally.

4. CO-LOCATED SERVER HOSTING (IF SELECTED IN THE APPLICATION FORM)

4.1 If the Server is provided by Customer:

4.1.1 he/she/it will deliver the Server to the Location at its own cost;

4.1.2 he/she/it will be responsible for the set-up and configuration of the Server;

4.1.3 MWEB will not be responsible for the Server including maintenance, repair, virus protection, upgrades, updates, security updates/patches or the like;

4.1.4 ***all risk of loss, damage and/or destruction of or to the Server whilst housed at the Location shall remain vested in Customer, and Customer shall make its own arrangement***



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regarding the insurance thereof;

- 4.2 ***Customer warrants and represents that it is the owner of the Server and/or that it has the right to be in possession of the Server. MWEB shall not be liable for and Customer indemnifies MWEB against any claim or losses incurred by MWEB as a result of Customer's breach of the aforementioned warranty.***
- 4.3 The Server or any other equipment in MWEB's possession, which relates to Server Hosting, shall be held by MWEB as security for the Customer's fulfillment of all its obligations with regard to Server Hosting Services.
- 4.4 MWEB shall be responsible for the installation of the Server at the Location, which installation shall include the following:
- 4.4.1 allocation of dedicated rack space for the Server in accordance with the Customer's selection in the Application Form;
 - 4.4.2 allocation of an IP Address and/or additional IP Addresses (if selected on the Application Form) for the Server to: (i) enable a connection from the Server to MWEB's network; and (ii) enable and facilitate the transmission of Data Traffic as well as the provision of the relevant IP Address information (including IP gateway's, DNS servers and subnet information) and Customer Identifiers to Customer;
 - 4.4.3 provisioning the amount of Internet bandwidth for the purposes of clause 4.4.2, in accordance with Customer's choices in the Application Form; and
 - 4.4.4 configuration of a unique VLAN (Virtual Local Area Network).
- 4.5 Except if otherwise stated, MWEB shall grant Customer access to the Server either remotely or at the Location and Customer agrees to (without limiting the applicability of the provisions of the Agreement), subject himself/herself/itself to MWEB's security policies and/or its occupational health and safety rules.
- 4.6 MWEB will use reasonable endeavours to provide a smooth, uninterrupted electrical power supply to the Server. Other than as specifically provided in these Product Terms, MWEB will not be liable for any loss or damage as a result of any interruption in the electrical power supply.

5. SERVER HOSTING PACKAGES (IF SELECTED IN THE APPLICATION FORM)

- 5.1 MWEB will in accordance with the Server Hosting Package selected by Customer lease the MWEB Server to Customer who accepts such rental. The MWEB Server will at all times remain the property of MWEB.
- 5.2 MWEB shall be responsible for the sourcing, delivery and installation of the MWEB Server at the Location on Customer's behalf. Installation shall include the following:



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- 5.2.1 configuration of the MWEB Server in accordance with the specifications agreed upon by the Parties. For that purpose, Customer agrees to supply MWEB with all the relevant information and co-operation required to configure the MWEB Server. For the avoidance of doubt, Customer acknowledges and agrees that “configuration” as used herein shall not include software installation and/or configuration;
- 5.2.2 allocation of dedicated rack space for the MWEB Server;
- 5.2.3 allocation of an IP Address and/or additional IP Addresses (if selected on the Application Form), for the MWEB Server in order to: (i) enable a connection from the MWEB Server to MWEB’s network, and (ii) to enable and facilitate the transmission of Data Traffic as well as the provision of the relevant IP Address information (including IP gateway’s, DNS servers and subnet information), and Customer Identifiers to Customer;
- 5.2.4 provisioning the amount of Internet bandwidth for the purposes of 4.4.2, as specified in the Application Form. It is specifically acknowledged and agreed that the bandwidth supplied is not dedicated to the MWEB Server and/or Customer, but may be shared with other customers of MWEB; and
- 5.2.5 configuration of a unique VLAN (Virtual Local Area Network).

5.3 Where appropriate, the MWEB Server 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, replacement of or extended warranties or guarantees regarding the MWEB Server.

5.4 Except if otherwise stated, MWEB shall grant Customer access to the MWEB Server either remotely or at the Location and Customer agrees to (without limiting the applicability of the provisions of the Agreement), subject himself/herself/itself to MWEB’s security policies and/or its occupational health and safety rules.

5.5 ***MWEB will use reasonable endeavours to provide a smooth, uninterrupted electrical power supply (UPS) to the MWEB Server. Other than as specifically provided in these Product Terms, MWEB will not be liable for any loss or damage as a result of any interruption in the power supply.***

6. OPERATING SOFTWARE (IF SELECTED IN THE APPLICATION FORM)

6.1 MWEB shall (except where Customer supplied and installed the Operating Software), supply and install the Operating Software in accordance with the specifications agreed upon by the Parties. For that purpose Customer agrees to supply MWEB with all the relevant information and co-operation required to enable MWEB to perform the installation.



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- 6.2 The Operating Software is provided by MWEB in accordance with the inherent software license agreement attached to the applicable Operating Software and subject to the provisions of this clause 6. Customer will acquire such rights to the Operating Software, as allowed by such licensors/licenses.
- 6.3 MWEB will in its sole discretion, and without being under any obligation to do so, maintain and/or upgrade the Operating Software supplied and installed in terms of clause 6.1, which will include any patches, updates, security updates/patches of whatever nature. Customer herewith authorises MWEB to implement any of the above, as and when it deems fit. **Although MWEB will use its reasonable endeavours not to affect server hosting or the hosting of any content, application, and/or data of whatever nature MWEB, without limiting the generality of the general terms, expressly disclaims any direct, indirect, incidental, special, punitive or consequential losses or damages which arise or may arise out of such maintenance and/or upgrades.**
- 6.4 MWEB will not be responsible for any software and/or applications not supplied and installed by it, including the licensing thereof (hereinafter referred to as “**Unsupported Software**”).
- 6.5 Customer agrees that any Unsupported Software contemplated in clause 6.4 required and loaded, if allowed, by Customer on the Customer Server or MWEB Server will be its own responsibility and is loaded at its sole risk and responsibility. The licensing of all such installed Unsupported Software shall be the sole responsibility of Customer. All Unsupported Software shall be licensed in accordance with the vendor’s software and/or application license agreements. MWEB retains the right to carry out routine checks to validate such software license agreements.
- 6.6 **Customer will be solely responsible for all the maintenance and/or upgrades of the Unsupported Software, which will include any patches, updates and security updates/patches of whatever nature installed in terms of clause 6.5.**

7. SPLA SOFTWARE (IF SELECTED IN THE APPLICATION FORM)

- 7.1 MWEB shall:
- 7.1.1 rent the SPLA Software to Customer in accordance with the provisions of the Microsoft End User Licence terms as set out in clause 10 below and the Server Hosting Product Terms;
 - 7.1.2 only install the SPLA Software on the Computer System if Customer has selected this option in the Application Form;
 - 7.1.3 manage the maintenance and upgrade of the SPLA Software on Customer’s behalf.
- 7.2 Customer shall use of the SPLA Software shall be in accordance with the provisions of clause 10 below.
- 7.3 SPLA Software is never owned by Customer, but licensed to Customer for the duration of Server Hosting Product Terms through an arrangement that Microsoft Corporation has with MWEB.
- 7.4 Customer furthermore agrees to be bound by the terms and conditions related to the SPLA Software,



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which are contained in clause 10 below.

- 7.5 Upon termination of the Server Hosting Services, MWEB Business shall prior to the removal of the Server from the Location by Customer, format the Server in order to remove the SPLA Software from the Server failing which, Customer shall remain directly liable to MWEB and/or Microsoft Corporation for all damages suffered by MWEB and/or Microsoft as a result of illegal and/or unauthorized usage of the SPLA Software.
- 7.6 Where MWEB is not installing and managing the SPLA Software on Customer's behalf, Customer shall indemnify and hold MWEB and Microsoft harmless from any claims arising as a result of: (i) improper installation of the SPLA Software on the Computer System; (ii) any software virus introduced by Customer; (iii) Customer's including his/her/its employees, agents and/or contractor's breach of the provisions of this Agreement; (iv) unauthorised installation, use, access, copying, reproduction and/or distribution of the SPLA Software. ***In addition, Customer shall be liable to MWEB and/or Microsoft Corporation for all damages, costs and expenses, including reasonable attorneys fees, resulting from Customer's including his/her/its employees, agents and/or contractor's continued distribution of an allegedly infringing SPLA Software after MWEB has notified Customer to stop.***

8. SERVICE LEVEL AGREEMENT

- 8.1 MWEB will provide Customer with Server Hosting set out herein in accordance with this Service Level Agreement ("Service Level Agreement").
- 8.2 MWEB will maintain an average of 99% service uptime over a consecutive period of 3 (three) months, provided that no three month period or any period forming part of such three month period shall be used more than once for the purpose of calculating the reduction in terms of clause 8.3 below.
- 8.3 Should the service uptime fall below the prescribed service uptime level, Customer shall be entitled to the following reduction of the Server Hosting Service Fees in respect of the relevant 3 (three) month period. Any reduction of Service Fees may only be claimed as a credit against future Service Fees.
- | | | |
|-------|---------------|----------------|
| 8.3.1 | 99 - 100% | no reduction |
| 8.3.2 | 95 - 98.999% | 25 % reduction |
| 8.3.3 | 90 - 94.999% | 50 % reduction |
| 8.3.4 | Less than 90% | 70% reduction |
- 8.4 The liability of MWEB for failing to achieve the minimum service uptime in terms of this Service Level Agreement will be limited to the reduction contemplated in clause 8.3 above.
- 8.5 For the purpose of this Service Level Agreement:
- 8.5.1 service uptime will be measured by MWEB's monitoring software and only with reference to



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MWEB's network availability and UPS power;

8.5.2 the calculation of service uptime and the calculation of any reduction of Service Fees will exclude any downtime, outage or interruption or unavailability of the Server Hosting, as a result of, or caused by:

8.5.2.1 any outage, interruption or unavailability of the services or facilities of an external or third party telecommunications or network provider to which the MWEB network infrastructure is connected;

8.5.2.2 any outage, interruption or unavailability caused by Customer's hardware, software and/or applications;

8.5.2.3 scheduled downtime for general maintenance, enhancements, upgrades or modifications (or of an otherwise scheduled nature). MWEB shall use its reasonable endeavours to notify Customer of such downtime and shall furthermore use its reasonable endeavours to provide such notification at least 24 (twenty four) hours prior to such scheduled downtime.

8.5.2.4 Force Majeure;

8.5.2.5 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 hosting service; and

8.5.2.6 any factor beyond the reasonable control of MWEB.

8.6 MWEB will provide the monitoring service, and on a monthly basis provide uptime reports on request by Customer should Server statistics be required.

8.7 Should Customer wish to claim any reduction of Service Fees, Customer will, within 30 (thirty) days from the end of any 3 (three) months measurement period, notify MWEB in writing of the reduction claimed, the dates of the measurement period and the dates, times and duration of non-availability of Server Hosting service. MWEB may request further documentation and supporting data from Customer to compare against its own monitoring data.

8.8 All service requests and technical support calls can be logged 24 hours per day, 365 days per year with MWEB's Customer Care Centre by logging at[details to be inserted]:

8.9 MWEB will keep Customer informed of the progress of the problem resolution. MWEB will endeavour to adhere to the following times (in business hours) with regard to feedback:

8.9.1 Critical Disruptions: Total loss of all services 1 hour



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8.9.2	Service Disruptions: Serious degradation of services	2 hours
8.9.3	Service Incidents: Minor loss/degradation of services	4 hours
8.9.4	Service Queries: No loss/degradation of services	4 hours

8.10 **24 Hour Reboot Service:** (if subscribed to)

Customer shall have access to the services of qualified MWEB technical staff outside of normal business hours to reboot the Server, should Customer not be able to reboot it remotely.

8.11 No Server will be reinstalled if custom DLL's were operational on the old system and are required on the new installation.

8.12 No software and/or application other than that indicated in the Application Form will be installed or troubleshot by MWEB's technical staff under any circumstances.

8.13 Server and SQL backups will be performed if selected in the Application Form.

8.14 MWEB will not be responsible for any loss of data should Customer require a Server reinstall.

9. **PROFESSIONAL MANAGEMENT AND BACK-UP (IF SUBSCRIBED TO)**

9.1 This additional Server Hosting service shall only be available, should the Server be rented by Customer from MWEB in terms of the Equipment Rental Services Product Terms.

9.2 Should Customer subscribe to the additional Server Hosting service, Customer's Server Hosting shall be totally outsourced to MWEB and subject to the Service Level Agreement in clause 8 MWEB will attend to all maintenance and repair on the Server and Software on a 24 hour basis.

9.3 Customer shall not have any access to the Server.

9.4 MWEB will use reasonable endeavours to provide the best possible practices with regard to the backup services, but will not accept any liability for the loss of any data as a result of faulty hardware or software relating to the backup procedure.

10. **MICROSOFT END USER LICENCE FOR SPLA SOFTWARE (IF SUBSCRIBED TO)**

Customer acknowledges that: (i) MWEB is duly appointed to license certain Microsoft software products to Customer in terms of a Microsoft Service Provider License Agreement entered into with the Microsoft Corporation; (ii) if Customer has selected any SPLA Software to be rented to it by MWEB, the terms and conditions set out below will apply to the rental of such Microsoft software products to Customer. These are the Microsoft Terms and Conditions:

"TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SPLA SOFTWARE"

This document concerns your use of Microsoft software, which includes computer software provided to you by MWEB as described below, and may include associated media, printed media, an "online" or electronic



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documentation (individual and collectively “**Licensed Products**”). MWEB does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which MWEB needs to inform you. Your right to use the Licensed Products is subject to your Agreement with MWEB, and to your understanding of, compliance with and consent to the following terms and conditions, which MWEB does not have authority to vary, alter or amend.

1. DEFINITIONS

“**Client Software**” means software that allows a Device to access or utilise the services or functionality provided by the Server Software.

“**Device**” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” or electronic device.

“**Server Software**” means software that provides services or functionality on a computer acting as a Server.

“**Software Documentation**” means any end user document included with server software;

“**Redistribution Software**” means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

- OWNERSHIP OF LICENSED PRODUCTS.** The Licensed Products are licensed to MWEB from an affiliate of the Microsoft Corporation (“Microsoft”). All intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music text and “applets” incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of the Licensed Products or any intellectual property rights to you.
- USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices by MWEB only in accordance with the instructions, and only in connection with the services, provided to you by MWEB. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.
- USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to you by MWEB, you may have access to certain “sample”, “redistributable” and/or software development (“**SDK**”) software code and tools (individually and collectively “**Redistribution Software**”). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO MWEB, WHICH TERMS MUST BE PROVIDED TO YOU BY**



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MWEB. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by MWEB.

5. **COPIES.** You may not make copies of the Licensed Products, provided however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorised by MWEB; and (b) you make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with MWEB, upon notice from MWEB or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the Licensed Products.
6. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILED AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.
7. **NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and you may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and MWEB.
8. **TERMINATION.** Without prejudice to any other rights, MWEB may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with MWEB or MWEB's agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.
9. **NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY MWEB AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.**
10. **PRODUCT SUPPORT.** Any support for the Licensed Products is provided to you by MWEB and is not provided by Microsoft or its affiliates or subsidiaries.
11. **NOT FAULT TOLERANT.** THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
12. **EXPORT RESTRICTIONS.** The Licensed Products are of U.S. origin for purposes of U.S export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed



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Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

- 13. LIABILITY FOR BREACH.** In addition to any liability you may have to MWEB, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.”
