



## Product Terms

### Online Backup (Server)

#### 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 Online Backup Customer agrees that he/she/it has read, understand and are 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 Online Backup 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 Online Backup (Server), as same may be amended from time to time in terms of the Agreement;
  - 1.5.2 “**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/GeneralTerms.aspx> under the heading General Terms; and
  - 1.5.3 “**Online Backup (Server)**” means the Services (license), contemplated in these Product Terms which MWEB Business renders/ supplies to Customer in accordance with Customer’s selections as indicated in the Application Form under such heading or description whereby Customer may do online backups of data from a server to a dedicated server hosted in the MWEB Business data centre.

#### 2. DURATION

- 2.1 The Online Backup (Server) shall commence with effect from the date of activation of the Online Backup (Server) 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.



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- 2.2 Either Party may terminate the Online Backup (Server) 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, the Online Backup (Server) shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate the Online Backup (Server) on 3 (three) calendar months written notice to the other to that effect.
- 2.4 Notwithstanding the provisions of clauses 2.1 and 2.2 above, MWEB Business shall be entitled to terminate the Online Backup (Server) at any time without incurring any liability of whatsoever nature should:
- 2.4.1 MWEB Business' relationship with Attix5 Africa Ltd be terminated; and/or
- 2.4.2 MWEB Business decides in its sole discretion to stop offering Online Backup (Server) to its customers.
- 2.5 In the event of a termination, Customer's use of Online Backup (Server) shall be deemed terminated. However, in the event that Customer logs on to Online Backup (Server) 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 Online Backup (Server) without notice to Customer.
- 2.6 To the extent that Online Backup (Server) provided to Customer is suspended by MWEB Business in terms of the provisions 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 Online Backup (Server), but Customer shall still be liable to pay the Service Fees during such suspension.

### 3. SERVICE FEES

- 3.1 Customer will be liable to pay the Service Fees for Online Backup (Server), in advance and in accordance with the provisions set out in the General Terms.
- 3.2 Service Fees are payable in accordance with the amount of licenses required (servers Customer wants to back up).

### 4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

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



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- 4.2 Although MWEB Business uses reasonable care and diligence to ensure that Online Backup (Server) 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 Online Backup (Server) 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 Online Backup (Server) 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 Online Backup (Server) and further that these circumstances and/or events are beyond MWEB Business control: (i) use of Online Backup (Server) by other customers; (ii) the Internet; (iii) limitations upon national and/or international bandwidth capacity; (iv) telecommunication service operator failures, which includes telecommunication links and line failures; (v) mobile telecommunication service operator failures; (vi) mobile network failures; (vii) operating systems; (viii) access technology failures; (ix) quality of service of telecommunication links or lines; (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 Online Backup (Server); and (xi) any other action, omission and/or failure not within MWEB Business' control which has an impact on Online Backup (Server).

## 5. TERMS AND CONDITIONS SPECIFIC TO ONLINE BACKUP (SERVER)

- 5.1 Should Customer be allowed by MWEB Business to make any amendments to its Online Backup (Server) Services online on the systems provided by MWEB Business, including the amount of licences then the Agreement, including these Online Backup (Server) Product Terms shall apply automatically to such amendments, irrespective if Customer has agreed to it at the time or not.
- 5.2 MWEB Business grants Customer, for the duration of Online Backup (Desktop), a limited, non-perpetual, non-exclusive, non-transferable license per server (as indicated on the Application Form) in respect of which it wants to use Online Backup (Desktop), which includes any software associated with it, in accordance with the provisions of the Agreement, including these Product Terms and/or in terms of instructions provided to Customer by MWEB Business from time to time.
- 5.3 Customer undertakes to use Online Backup (Server) 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 Online Backup (Server) in whole or in part in any way whatsoever to any third party.



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- 5.4 Customer acknowledges that all title and intellectual property rights in Online Backup (Server), including training and/or user manuals, provided to Customer is owned by and shall remain vested in MWEB Business, its licensors or suppliers, as the case may be. Except if otherwise agreed the Customer accordingly agrees not to copy, duplicate, reproduce, transmit, modify, reverse engineer, decompile, or disassemble Online Backup (Server) or any portion thereof, including any software associated with it in any way whatsoever and shall only use it for the purpose it is supplied.
- 5.5 MWEB warrants that, to the best of its knowledge, Online Backup (Server) does not infringe upon or violate any Intellectual Property Rights of any third party.
- 5.6 Customer acknowledges the nature of Online Backup (Server) and accordingly agrees that the specification and operation of Online Backup (Server) is known to him/her/it and accepts that it is suitable for the purpose it is intended to be used.

#### 5.7 **Installation**

- 5.7.1 The Parties shall prior to the installation date of the Online Backup (Server) software on Customer's server agree to the specific requirements pertaining to the installation and configuration of the Online Backup (Server) software, provided that Customer's requirements shall not fall outside the scope of Online Backup (Server).
- 5.7.2 Should any "plug in" be required to ensure the operation of Online Backup (Server) on the server MWEB Business shall provide it at additional Service Fees specified in the Application Form. Customer agrees to be bound by the terms and conditions of any licensing agreement of a Licensor of such "plug in" that is acquired and installed;
- 5.7.3 Customer shall accept installation of the Online Backup (Server) software including any plug in required by allowing MWEB Business or its agents, reasonable access to its premises to install and configure Online Backup (Server) or any required plug-in whenever tendered by MWEB Business. A signed delivery note shall constitute prima facie proof that Online Backup (Server) has been delivered, received, installed and configured in accordance with Customer's specified requirements, as agreed by the Parties and that it is operational, whether such delivery note is signed by Customer or his/her/its employee or representative.
- 5.7.4 Should Customer require MWEB Business to attend to the first backup by way of a data dump on the relevant MWEB Business server instead of an online backup, MWEB Business shall attend to it, provided that:
- 5.7.4.1 the size of the backup exceeds 5 Gigabytes; and
- 5.7.4.2 MWEB Business may charge additional Service Fees, as stipulated in the Application Form, for such data dump.



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- 5.7.5 Although MWEB Business shall use the necessary skill and diligence when attending to the performance of any functions/tasks contemplated in clause 5.7 it shall be done at Customer's risk. Without limiting the generality of the General Terms MWEB Business expressly disclaims any direct, indirect, incidental, special, punitive or consequential loss or damages, including claims from third parties, which arise or may arise out of any function or task performed in terms of clause 5.7.
- 5.8 Customer acknowledges and agrees that since it is responsible to determine the selection of what Customer wants to back up and to do such backups MWEB Business, its licensors or its suppliers take no responsibility in any way whatsoever for it.
- 5.9 Without limiting the generality of the General Terms, MWEB Business expressly disclaims any direct, indirect, incidental, special, punitive or consequential losses or damages, including claims from third parties, which arise or may arise out of any backup done using Online Backup (Server), which is not available, accessible and/or usable by Customer.
- 5.10 Customer specifically agrees that it shall not;
- 5.10.1 circumvent any component and/or process of Online Backup (Server) or cause it to be done in any way whatsoever; and
- 5.10.2 use/ access Online Backup (Server) or cause it to be used and/or accessed in any way other than authorised by MWEB Business in terms of these Product Terms.
- 5.11 **Restoration of data**
- 5.11.1 No additional Service Fees are charged for online restoration of data on a server from a backup done for that server.
- 5.11.2 Should the Customer require any on-site restoration of data on the server from the available backup of that server, MWEB Business shall attend to it without charge:
- 5.11.2.1 should the total storage space for such backup data be more than 5 Gigabytes; and
- 5.11.2.2 not more than once during each six month period for the duration of the Agreement.
- 5.11.3 MWEB Business may charge Service Fees, which it may determine in its sole discretion, for the restoration of any data other than data restoration contemplated in clause 5.11.2.
- 5.11.4 A signed delivery note or the like shall constitute prima facie proof that a requested restoration has been delivered, received, installed and that it is operational, whether such delivery note is signed by Customer or his/her/its employee or representative.



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- 5.11.5 Although MWEB Business shall use the necessary skill and diligence when requested to attend to the restoration of data such restoration shall be done at Customer's risk and MWEB Business does not guarantee that such restoration shall be successful. Without limiting the generality of the General Terms MWEB Business expressly disclaims any direct, indirect, incidental, special, punitive or consequential loss or damages, including claims from third parties, which arise or may arise out of any unsuccessful restoration or restoration attempt.
- 5.12 The maximum storage space per server/license shall be the storage space, as indicated in the Application Form or as it may be amended by the parties from time to time by agreement.
- 5.13 Upon termination of Online Backup (Server) or the termination of any license for any reason whatsoever, whichever is applicable, such license/s shall terminate and Customer shall immediately cease any use of Online Backup (Server)/ license, which shall include any software, training and/or user manuals. All backups made shall be deleted upon such termination. Customer shall ensure that any software associated with Online Backup (Server)/ license shall be removed from the relevant server/s.
- 5.14 Customer acknowledges and agrees that any encryption key issued to Customer is its own and absolute responsibility and if lost MWEB Business shall not be able to provide it to Customer resulting in any backups made by Customer using Online Backup (Server) to be of no use.
- 5.15 Customer accepts full responsibility for the content of any backup delivered/ transmitted/ sent/ done using Online Backup (Server). Customer furthermore agrees that MWEB Business has no interest in the contents of any such backup and agrees that nothing that MWEB Business, its licensors or its suppliers do in the performance of its/their obligations in terms of Online Backup (Server) shall be construed as an assumption of responsibility or liability by MWEB Business, its licensors or suppliers of the content/ data which is delivered/ transmitted/ sent/ stored using the Online Backup (Server) whether or not MWEB Business its licensors or suppliers had knowledge of such content. Without limiting the generality of the General Terms Customer indemnifies MWEB Business, its licensors or suppliers and agrees to hold MWEB Business, its licensors or suppliers harmless from and against any costs, losses, harm, liabilities, expenses, damages, fines or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit loss of anticipated savings, loss of goodwill or legal fees on an attorney and own client scale, directly and/or indirectly suffered or incurred by MWEB Business or for any such claims instituted against MWEB Business by a third party, arising out of or relating to the delivering/ transmitting/ sending/ storing of any data or content via Online Backup (Server).