



## Product Terms

### LAN Software Terms

#### 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 this Software Terms shall be deemed to be payment of Service Fees, as defined in the General Terms.
- 1.4 For the sake of compatibility with the Agreement and more specifically the General Terms and where applicable, any reference made to the sale of Software shall be deemed to be Services rendered by MWEB Business.
- 1.5 By using or subscribing to the Software you agree that you have read, understand and are bound by:
- 1.5.1 the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on our Legal Notices Webpage; and
  - 1.5.2 the Product Terms set out herein;
- (collectively “the **MWEB Business Terms**”).
- 1.6 Your use of the Software indicates your acceptance without modification of the Terms, which will constitute a legal agreement between you and MWEB.
- 1.7 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-
- 1.7.1 “**Application Form**” means the application form/s completed and signed by Customer for the initiation of the Software Purchase agreement;
  - 1.7.2 “**Software Purchase**” means the sale of Software to Customer by MWEB Business in accordance with Customer’s selections as indicated by Customer in the Application Form under such heading or description; and
  - 1.7.3 “**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;
  - 1.7.4 “**Software**” means any licensed software purchased by Customer from MWEB Business, as selected by the Customer on the Application Form,
  - 1.7.5 “**Supplier**” means the MWEB supplier, manufacturer or licensed owner of the Software;

#### 2. SALE OF SOFTWARE



## Product Terms

### LAN Software Terms

MWEB Business sells the Software to Customer at the price set forth in the Application Form and/or any addendum thereto. Any Software sold by MWEB Business to Customer shall be deemed to be sold on the terms and conditions set out in the Terms and the Supplier's terms and conditions and licensing terms, which will be provided to you on request.

### 3. PAYMENT

3.1 Customer shall pay to MWEB Business in advance the full amount set out in the Application Form and/or any addendum thereto and/or any job card, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason. Customer agrees to provide MWEB Business with a debit order in its favour and further agrees that any amount due to MWEB Business, as set out above, may be debited by MWEB Business on its next debit order run.

3.2 All amounts are reflected to be exclusive of value added tax ("VAT").

3.3 All applicable taxes, rates or governmental levies, if any, and VAT shall be for the account of Customer.

3.4 Customer acknowledges: (i) that the price for Software is affected by the Rand and Dollar exchange and as such MWEB Business will be entitled to adjust the price for Software at any time should there be a change in the Rand and Dollar exchange; and (ii) agrees to allow MWEB Business to debit his/her/its account with the applicable price for Software for that month and/or to invoice him/her/it with the applicable price for Software.

3.5 Customer further acknowledges that the price for Software may be changed by the Supplier at any time and as such MWEB Business will be entitled to adjust the price for Software at any time should the Supplier increase the price for Software.

### 4. DELIVERY AND COLLECTION OF SOFTWARE

#### 4.1 Delivery and Installation (If requested)

4.1.1 Should the Agreement include delivery of the Software, MWEB Business or its agents will deliver the Software to Customer's premises at Customer's cost. A signed delivery note by Customer (including his/her/its employee, representative, carrier, agent or nominee) shall constitute prima facie proof that the Software was delivered to and received by Customer in good condition.



## Product Terms

### LAN Software Terms

- 4.1.2 Should the Agreement include installation and/or set-up and/or configuration of the Software MWEB Business and/or its agents shall attend to it during business hours and the relevant Service Fees shall be applicable. Customer shall allow MWEB Business or its agents, all reasonable access to its premises for the purposes of the installation and/or set-up and/or configuration of the Software. A signed confirmation (job card) by Customer (including his/her/its employee, representative, carrier, agent or nominee) that installation and/or set-up and/or configuration, whichever is/are applicable, of the Software was done shall constitute prima facie proof of that it was done according to specification and agreement. The Customer agrees that the final amount due to MWEB Business will be reflected on the job card signed by Customer after installation is completed. This amount may vary from the amount set out in the Application Form should the actual on site time be longer than quoted for.
- 4.1.3 MWEB Business shall use its reasonable endeavours to comply with the agreed delivery and/or installation and/or set-up and/or configuration date/s, whichever is/are applicable, but Customer shall not be entitled to cancel this Software Purchase or refuse to accept delivery, installation, set-up and or configuration because of MWEB Business' failure to do so on such date/s. The provisions of this clause are subject to Customer's termination rights detailed in clauses 7.11 of the General Terms where clause 7.11 of the General Terms is applicable to Customer.
- 4.1.4 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 customers or clients caused or arising in any manner whatsoever from the delivery and/or installation and/or set-up and/or configuration and/or use of the Software or failure to do so on the agreed date/s.

## 5. VENDOR'S/ MANUFACTURER'S WARRANTIES

- 5.1 Without derogating from the provisions of clause 10 of the General Terms, the Customer agrees, that the Software is sold on the condition that the Supplier's limited warranties, if any applies. MWEB Business does not warrant workmanship, performance, suitability or compatibility of the Software. The Customer must familiarise him/ her/it with the scope and cover of such limited warranty, which includes provisions relating to the does not cover damages caused by a failure to adhere to the Supplier's instructions and/or use by an unqualified person.
- 5.2 Customer's use of the Software is at his own risk and Customer indemnifies MWEB Business from any losses, damages, costs, claims or penalties of whatever nature because of Customer's use of the Software.

## 6. SUPPORT SERVICES



## Product Terms

### LAN Software Terms

Except if specifically agreed in terms of the Agreement nothing set out in this Software Purchase places any obligation on MWEB Business with regard to the maintenance and support of the Software and any such services shall only be rendered by MWEB Business to Customer if indicated in the Application Form and by the payment of the relevant Service Fees.

#### 7. LICENSING AND INTELLECTUAL PROPERTY RIGHTS

7.1 Where applicable, MWEB Business grants to Customer a non-transferable, personal, non-exclusive sub-license to use any Software and shall use such Software in compliance with the terms and conditions as provided by the Supplier and/or MWEB Business. Customer shall not copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software or convert the whole or any part of the Software from object code into source code.

7.2 MWEB Business will not be responsible for the licensing of any software unless such software forms part of the Software or is specified in the Application Form. In this regard, Customer must ensure that he/she/it received the Software licence key from MWEB Business at the time of delivery.

7.3 All rights, title and interest in and to all intellectual property relating to any Software owned by the Supplier shall at all times remain the sole property of such Supplier.

7.4 Customer warrants that the use of the Software shall not infringe any intellectual property rights of any third party.

#### 8. TERMS SPECIFIC TO SOFTWARE

8.1 MWEB Business shall supply and install the Software in accordance with the specifications agreed upon by the Parties. For that purpose Customer agrees to supply MWEB Business with all the relevant information and co-operation needed to enable MWEB to do the installation.

8.2 The Software is provided by MWEB Business in accordance with the inherent software license agreement attached to the applicable software and subject to the provisions of clause 8.3 Customer will acquire such rights to the Software, as allowed by such licensor's licenses.

8.3 Customer acknowledges and agrees that the Software is sold to him by MWEB Business subject to the terms and conditions related to such Software, which are contained in clause 9 below.



## Product Terms

### LAN Software Terms

- 8.4 MWEB Business will in its sole discretion, and without being under any obligation to do so, maintain and/or upgrade the Software installed in terms of clause 8.1, which will include any patches, updates, security updates/patches of whatever nature. The Customer herewith authorises MWEB Business to implement any of the above, as and when it deems fit. Although MWEB Business will use its reasonable endeavours not to affect the hosting of any content, application, and/or data of whatever nature MWEB Business, 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.
- 8.5 MWEB Business will not be responsible for any software and/or applications not applied for in terms of the Application Form, including the licensing thereof.
- 8.6 Customer agrees that any software and/or applications contemplated in clause 8.5 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 the Agreement and/or any 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.
- 8.7 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 8.6.

## 9. MICROSOFT SOFTWARE RENTAL LICENCE

Customer acknowledges that: (i) MWEB Business is duly appointed to license certain Microsoft software products to Customer in terms of a Microsoft Application Service Provider License Agreement entered into with the Microsoft Corporation; (ii) if Customer has selected any Software to be rented to it by MWEB Business, 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***



## Product Terms

### LAN Software Terms

*This document concerns your use of Microsoft software, which includes computer software provided to you by MWEB Business as described below, and may include associated media, printed media, an “online” or electronic documentation (individual and collectively “**SOFTWARE PRODUCTS**”). MWEB Business does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which MWEB Business needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your Agreement with MWEB Business, and to your understanding of, compliance with and consent to the following terms and conditions, which MWEB Business does not have authority to vary, alter or amend.*

#### **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.*

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

#### **1. OWNERSHIP OF SOFTWARE PRODUCTS.**

*The SOFTWARE PRODUCTS are licensed to MWEB Business from an affiliate of the Microsoft Corporation (“**Microsoft**”). All intellectual property rights in and to the SOFTWARE PRODUCTS (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music text and “applets” incorporated into the SOFTWARE PRODUCTS) are owned by Microsoft or its suppliers. The SOFTWARE 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 SOFTWARE PRODUCTS does not transfer any ownership of the SOFTWARE PRODUCTS or any intellectual property rights to you.*

#### **2. USE OF CLIENT SOFTWARE.**

*You may use the Client Software installed on your Devices by MWEB Business only in accordance with the instructions, and only in connection with the services, provided to you by MWEB Business.*

#### **3. USE OF REDISTRIBUTION SOFTWARE.**

*In connection with the services provided to you by MWEB Business, you may have access to certain “sample”, “redistributable” and/or software development (“**SDK**”) software code and tools (individually and collectively “**Redistribution Software**”).*



## Product Terms

### LAN Software Terms

*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 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 Business.*

#### **4. COPIES.**

*You may not make copies of the SOFTWARE PRODUCTS, provided however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorised by MWEB Business; 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 Business, upon notice from MWEB Business or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.*

#### **5. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.**

*You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCTS, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.*

#### **6. NO RENTAL.**

*You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.*

#### **7. TERMINATION.**

*Without prejudice to any other rights, MWEB Business may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.*

#### **8. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.**

*ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY MWEB Business AND NOT BY MICROSOFT OR IT'S AFFILIATES OR SUBSIDIARIES.*

#### **9. PRODUCT SUPPORT.**

*Any product support for the SOFTWARE PRODUCTS is provided to you by MWEB Business and is not provided by Microsoft or its affiliates or subsidiaries.*



## Product Terms

### LAN Software Terms

#### **10. NOT FAULT TOLERANT.**

*THE SOFTWARE 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 SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.*

#### **11. EXPORT RESTRICTIONS.**

*The SOFTWARE PRODUCTS are of U.S origin for purposes of U.S export control laws. You agree to comply with all applicable international and national laws that apply to SOFTWARE PRODUCTS, including the U.S Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S and other governments. For additional information, see <http://www.microsoft.com/export/>.*

#### **12. LIABILITY FOR BREACH.**

*In addition to any liability Customer have to MWEB Business, Customer agrees that it will also be legally responsible directly to Microsoft for any breach of these terms and conditions."*

Customer agrees that it is his/her/its responsibility to obtain the latest copy of the Supplier's terms and conditions and indemnifies MWEB Business for any claim whatsoever as a result of Customer's failure to comply with such terms and conditions.