



# Product Terms

DCMC

## 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 Product Terms shall be deemed to be payment of Service Fees, as defined in the General Terms.
- 1.4 By using or subscribing to the Service, Customer agrees that he/she/it has read, understand and are bound by:
  - 1.4.1 the General Terms and Conditions, Use Policies and other notices under the heading "General" on the Legal Webpage; and
  - 1.4.2 these terms that apply specifically to Network Maintenance Contract;  
(collectively "**the MWEB Business Terms**").
- 1.5 Customer's use of the Services indicates Customer's acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.
- 1.6 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-
  - 1.6.1 "**Application Form**" means the application Form/s completed and signed by Customer for the initiation of the Data Centre Management Contract, as same may be amended from time to time in terms of the Agreement;
  - 1.6.2 "**Computer System**" means the Server and the Operating Software combined in such Server to form Customer's data processing capability, which Computer System shall be managed, maintained and supported by MWEB Business in accordance with the provisions of these Product Terms;
  - 1.6.3 "**DCMC/Data Centre Management Contract**" means the Data Centre Management Contract Services contemplated in these Product Terms which MWEB Business renders to Customer in accordance with Customer's choices as set out in the Application Form under such heading or description whereby MWEB Business manages, maintains and support the Computer System on behalf of Customer in accordance with the provisions of these Product Terms and the Server Hosting Product Terms;
  - 1.6.4 "**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";
  - 1.6.5 "**Flexi Hours**" means the hours selected by Customer in the Application Form which hours shall be used by MWEB Business to provide the Data Centre Management Contract Services in accordance with the provisions of these Product Terms and/or any other Professional Services rendered by MWEB Business in accordance with the Professional Services Product Terms;
  - 1.6.6 "**Job Card**" means the document reflecting the (i) Flexi Hours utilized by MWEB Business in a month; and (ii) Professional Services rendered by MWEB Business at the specific request of Customer;
  - 1.6.7 "**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;
  - 1.6.8 "**Network Maintenance Contract**" means the terms and conditions applicable to the provision of the Network Maintenance Contract to Customer, which can be found under the name "Network Maintenance" at <http://www.mwebbusiness.co.za/legal.aspx> under the heading Product Terms;
  - 1.6.9 "**Network Maintenance**" means the Services contemplated in Network Maintenance Contract Product Terms which MWEB Business renders to Customer in accordance with Customer's choices as set out in the Application Form, under such heading or description whereby MWEB Business manages Customer local area network;
  - 1.6.10 "**Operating Software**" means, without being limited thereto, Linux, MS Windows, OS/2 , Windows back office and/or any other Microsoft products forming part of the Operating Software and exclude all Customer Software and/or any other software or applications specifically designed and developed for Customer and/or any other site specific customizations or set-up software such as network gens;

- 1.6.11 **“Professional Services”** means any additional, special and/or unusual services not specified in the Application Form requested by Customer and provided to Customer by MWEB Business on a Time and Material basis subject to the Professional Services Product Terms;
- 1.6.12 **“Professional Services Product Terms”** means the terms and conditions applicable to the provision of the Professional Service to Customer, which can be found under the name “Professional Services” at <http://www.mwebbusiness.co.za/legal.aspx> under the heading Product Terms;
- 1.6.13 **“Resource”** means either the employee, contractor, consultants and/or agents of MWEB Business, as the case may be, assigned by MWEB Business to provide the Data Centre Management Contract Services for Customer in accordance with the provisions of these Product Terms;
- 1.6.14 **“Server”** means the file server comprising of the computer hardware/machinery/equipment provided by Customer and hosted at the Location for the purposes of Data Centre Management Contract;
- 1.6.15 **“Server Hosting”** means the Services contemplated in the Server Hosting Product Terms which MWEB Business renders to Customer in accordance with Customer’s choices, as set out in the Application Form under such heading or description whereby: (i) MWEB Business hosts the Server at the Location; and (ii) supplies such ancillary/ additional Server Hosting services, as selected and/or specified in the Application Form;
- 1.6.16 **“Server Hosting Product Terms”** means the terms and conditions applicable to the provision of the Server Hosting to Customer, which can be found under the name “Server Hosting” at <http://www.mwebbusiness.co.za/legal.aspx> under the heading Product Terms. The Server Hosting Product Terms will be deemed to form part of the Agreement for this purpose;
- 1.6.17 **“Technical Assistance Centre”** means MWEB Business’ technical centre located at the Internet House, Block E, Greenacres Office Park, cnr of Barry Hertzog/Rustenburg & Victory Roads, Victory Park;
- 1.6.18 **“Time and Material”** means the fees and/or charges to be payable by Customer to MWEB Business for the provision of the Professional Services as listed in the Professional Services Terms; and
- 1.6.19 **“Unsupported Software/Application”** means the third party supplier software/applications installed and loaded on the Servers by the vendor for Customer’ and Customer’s client access and use.

## 2. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 2.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with Data Centre Management Contract on a 24 (twenty four) hour per day basis on each and every day for the continued duration of Data Centre Management Contract.
- 2.2 Although MWEB Business use reasonable care and diligence to ensure that Data Centre Management Contract 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 Data Centre Management Contract 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 Data Centre Management Contract is rendered "as is" and “as available” and is used at the Customers’ own discretion and risk.
- 2.3 Customer acknowledges that the following circumstances and events may impact upon its use of Data Centre Management Contract and further that these circumstances and/or events are beyond MWEB Business’ control: (i) use of Data Centre Management Contract by other customers; (ii) limitations upon national and/or international bandwidth capacity; (iii) telecommunication service operator failures, which includes telecommunication links and line failures; (iv) operating systems; (v) access technology failures; (vi) quality of service of telecommunication links or lines; (vii) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on Data Centre Management Contract; (viii) Unsupported Software/Applications; and (ix) any other action, omission and/or failure not within MWEB Business’ control which has an impact on Data Centre Management Contract.

## 3. DURATION

- 3.1 Data Centre Management Contract shall commence with effect from the date of installation of the Computer System 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.
- 3.2 Either Party may terminate the Data Centre Management Contract at the end of the Initial Period by giving the other Party 3 (three) calendar months written notice of termination 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.
- 3.3 Notwithstanding the provisions of clauses 3.1 and 3.2 above, Customer acknowledges and agrees that the Data Centre Management Contract shall be automatically terminated at time by MWEB Business (without incurring any liability of whatsoever nature to Customer), in the event of termination of the Server Hosting Services and/or Network Maintenance Contract Services.
- 3.4 If neither Party has given notice as contemplated in clause 3.2 above, the Data Centre Management Contract shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate the Data Centre Management Contract on 3 (three) calendar months written notice to the other to that effect.

- 3.5 In the event of a termination, Customer's use of the Data Centre Management Contract shall be deemed terminated. However, in the event that Customer logs on to the Computer System 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 the Data Centre Management Contract without notice to Customer.
- 3.6 To the extent that the Data Centre Management Contract provided to Customer is suspended by MWEB Business in terms of clauses 9.12 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 Data Centre Management Contract, but Customer shall still be liable to pay the Service Fees during such suspension.

#### 4. SERVICE FEES

- 4.1 Customer shall pay MWEB Business the Services Fees specified in the Application Form in accordance with the provisions set out in the General Terms.
- 4.2 Customer shall pay MWEB Business the fees and charges specified in the quotation and/or Job Card in respect of the Professional Services rendered in accordance with the provisions of the Professional Services Product Terms and any other Service rendered on behalf of Customer when Customer no longer has the Flexi Hours available within 30 (thirty) days from date of invoice. All these Services and/or Professional Services shall be charged on a Time and Material basis.
- 4.3 If Customer is currently being debited for the Services Fees, Customer acknowledges and authorizes MWEB Business to automatically debit the fees and charges set out in clause 4.2 above together with the Services Fees on MWEB Business' next billing run.

#### 5. TERMS AND CONDITIONS SPECIFIC TO DATA CENTRE MANAGEMENT CONTRACT SERVICES

- 5.1 MWEB Business shall with effect from the installation of the Computer System at the Location:
  - 5.1.1 provide Customer with the Data Management Services in accordance with these Product Terms, Network Maintenance Contract Product Terms and Server Hosting Product Terms;
  - 5.1.2 supply all expertise required for the effective performance of the Data Centre Management Contract Service;
  - 5.1.3 ensure that the Resource selected by MWEB Business provides the Data Centre Management Contract Services in accordance with the provisions of these Product Terms, Network Maintenance Contract Product Terms and Server Hosting Product Terms.
- 5.2 Customer acknowledges and agrees that the Data Centre Management Contract Services shall:
  - 5.2.1 only remain available to Customer whilst the Computer System is:
    - 5.2.1.1 hosted at the Location; and
    - 5.2.1.2 utilized by Customer under normal conditions of use. For the avoidance of doubt, the Parties record and agree that "**normal conditions of use**" shall, for the purposes of providing the Data Centre Management Services in terms of these Product Terms, mean that the Computer System is used in accordance with the user documentation, functional specification document and other manuals and prescriptions for use of such Computer System.
    - 5.2.1.3 be provided to Customer, subject to the: (i) Product Terms set out herein; (ii) Server Hosting Product Terms; and (iii) Network Maintenance Contract Product Terms. In the event of termination of the Data Centre Management Contract and/or Network Maintenance Contract, the Computer System will from the effective date of termination of the Data Centre Management Contract, fall within the *auspices* of the Server Hosting Product Terms unless Customer has specifically included the hosting of the Computer System in the notice of termination.
- 5.3 MWEB Business will as part of the Data Centre Management Contract, exclusively manage, maintain and support the Operating Software installed on the Server which management, maintenance and support will:
  - 5.3.1 include any patches, upgrades, updates, security updates/patches of whatever nature including the re-installation of the Operating Software; and
  - 5.3.2 exclude management and/or maintenance relating to any content, application and/or data hosted in the Server;
  - 5.3.3 exclude installation of the Operating Software; and
  - 5.3.4 exclude the licensing of the Operating Software including the licence for the re-installed Operating Software and/or the management of such licence. Customer is responsible for keeping copies of the Operating Software at its premises.

5.4 Customer herewith authorises MWEB Business to implement any patches, upgrade, updates including security updates/patches of the Operating Software, as and when it deems fit. Although MWEB Business will use its reasonable commercial endeavours not to affect the: (i) Server/s; (ii) the Unsupported Software/Application; and/or (iii) hosting of any content, application, and/or data of whatever nature, stored in the Server/s, MWEB Business (without limiting the generality of the General Terms), expressly disclaims any direct, indirect, incidental, special, punitive or consequential loss, loss of data, loss of profit or any damage which arise or may arise out of such maintenance, patching, upgrade, update including security update and/or patches. Customer is therefore advised to ensure that the Unsupported Software/Application including the content, application and/or data hosted in the Server is always backed-up.

5.5 Customer acknowledges and agrees that:

5.5.1 if MWEB Business manages the Computer System on behalf of Customer, MWEB Business does not allow any customer and/or third party to access the Computer System either remotely or at the Location however, MWEB Business has agreed to provide Customer (including Customer's employees, agents, contractors and vendors of the Unsupported Software/Application), remote access and/or access at the Location, for the purposes of: (i) installing, re-installing, loading, updating, upgrading, managing and/or maintaining the Unsupported Software/Application including the security update and/or patching of such Unsupported Software/Application in the Server; and/or (ii) updating, deleting, removing, amending any content, application and/or data hosted in the Server;

5.5.2 access to the Computer System by Customer (including Customer employees, agents, contractors and vendors of the Unsupported Software/Application) is granted by MWEB Business to Customer at Customer's own risk;

5.5.3 although the access to the Operating Software is intended to be limited only to MWEB Business for the purposes of providing Data Centre Management Contract Services, MWEB Business does not have the tools to monitor, restrict and/or prevent any access to the Operating Software by Customer (including Customer's employees, agents, contractors and/or vendors of the Unsupported Software/Application), whilst accessing the Server remotely and/or at the Location and as such, MWEB Business cannot guarantee that Customer (including Customer's employees, agents, contractors and/or vendors of the Unsupported Software/Application), will not tamper with the Operating Software either intentionally or otherwise. Customer therefore acknowledges that the Operating Software can be tampered with at any time without MWEB Business having knowledge of such and shall therefore not hold MWEB Business liable for any direct, indirect, punitive, special, consequential loss, loss of profit, loss of data and/or any damage suffered by Customer and as a result of access to the Operating Software by Customer (including Customer's employees, agents, contractors and/or vendors of the Unsupported Software);

5.5.4 the management and/or maintenance of the Operating Software does not include the management and/or maintenance of any content, application and/or data hosted on the Server, such management and/or maintenance shall remain Customer's responsibility. Any deletion, removal, amendment, update and/or correction of any content, application and/or data hosted on the Server shall be deemed to have been made by Customer and/or with Customer prior authority;

5.5.5 MWEB Business does not without limiting the generality of the General Terms, warrant that Customer will always have access to the Computer System either remotely or at the Location, but will use its reasonable endeavours to provide Customer with access reasonably required to access the Computer System. Should MWEB Business at any time have reason to believe that Customer including Customer's employees, agents, contractors including vendors of the Unsupported Software/Application is failing to comply with MWEB Business' network security policy and/or health, safety standards and network security policies it shall be entitled to deny Customer access to the Location;

5.5.6 MWEB Business' Access Form will be required to be signed by Customer's employees, agents, contractors including vendors of the Unsupported Software/Application prior to accessing the Computer System at the Location;

5.5.7 MWEB Business Access Form will have to be completed and sent to MWEB Business prior to accessing Computer System remotely;

5.5.8 MWEB Business does not monitor and/or validate Customer's remote access to the Computer System and should the Computer System be accessed remotely by Customer (including Customer's employees, agents, contractor and/or vendors of the Unsupported Software/Application), without submission of the Access Form, MWEB Business shall not be held responsible for any direct, indirect, incidental, special, punitive or consequential loss, loss of data, loss of profit or any damage suffered by Customer as a result of such access;

5.5.9 MWEB Business will require Customer's employees, agents, contractors and vendors of Unsupported Software/Application to comply with MWEB Business health safety standards and security policies whilst accessing the Computer System at the Location and/or network security policies whilst accessing the Computer System remotely;

5.5.10 he/she/it will be responsible for ensuring that any person accessing the Computer System at the Location and/or remotely to: (i) install, re-install, load, download, upload, upgrade and/or update the Unsupported Software/Application; and/or (ii) delete, remove, amend, update and/or correct any content, application and/or data hosted on the Server complies with Customer's security and backup policies;

- 5.5.11 he/she/it shall be responsible for ensuring that the Unsupported Software/Application including the content, application and/or data hosted on the Server including the Unsupported Software/Application is always backed up;
- 5.5.12 he/she/it shall be responsible for notifying MWEB Business in writing prior to the: (i) installation, re-installation, loading, downloading and/or uploading of any Unsupported Software/Application; (ii) upgrading and/or updating of any Unsupported Software/Application including security update/patches; and/or (iii) the deletion, removal, amendment, update and/or correction of any content, application and/or data hosted in the Server. Should the: (i) Server crash; (ii) the Operating System be corrupted and/or (iii) any content application and/or data be corrupted after the loading and/or installation of any Unsupported Software/Application and/or after any update, upgrade including security update/ patches, Customer shall be responsible for fixing, repairing and/or correcting the Computer System including the content, application and/or data hosted on the Server. MWEB Business shall not without limiting the provisions of the General Terms, be held responsible for any damages, losses including loss data, expenses and/or claims of whatever nature caused by any action or omission of Customer (including Customer's employees, agents, contractors and/or vendors), whilst accessing the Computer System remotely and/or at the Location. Customer shall be responsible for ensuring that its data is always backed up;
- 5.5.13 MWEB Business will not be responsible for the Unsupported Software/Application installed on the Servers, including the licensing thereof. Any Unsupported Software/Application, required, loaded, installed re-installed, updated, upgraded by Customer (including Customer's employees, agents contractors and vendors of the Unsupported Software/Application), on the Server/s will be Customer's own responsibility and is loaded, installed at Customer's sole risk and responsibility. The licensing of all such installed Unsupported Software/Application shall be the sole responsibility of Customer. All Unsupported Software/Application 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 including Data Centre Management Contract Services. 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;
- 5.5.14 MWEB Business does not: (i) monitor and/or validate the Unsupported Software/Application including to determine if such Unsupported Software/Application is suitable for Customer, Customer's business and/or clients; and/or (ii) monitor and/or validate the content, application and/or data hosted in the Server. Any access and/or use of the Unsupported Software/Application including access to, use of and/or reliance on the content, application and/or data hosted on the Server will be Customer's own responsibility. MWEB Business shall without limiting the generality of the General Terms and/or in law be held responsible for any direct, indirect, consequential loss, loss of profit, loss of data including any damage of whatsoever nature which result from access and/or use of the Unsupported Software/Application including access, use of and/or reliance on the content, application and/or data hosted in the Server;
- 5.5.15 he/she/it will be solely responsible for all the management, maintenance, updates and/or upgrades of the Customer Software/Application, which will include any patches, updates and security updates/patches of whatever nature installed in terms of clause 5.5.13.
- 5.6 In addition to any other rights MWEB Business may have in terms of the Agreement and in law and without limiting such rights, Customer indemnifies MWEB Business against any charges, damages, losses, expenses and/or claims of whatever nature incurred/ levied by and/or against MWEB Business, caused by the action or omission of Customer whilst accessing the Computer System remotely and/or at the Location.

## **6. DATA CENTRE MANAGEMENT CONTRACT SERVICES PROCESS**

- 6.1 MWEB Business shall on a monthly basis and during Flexi Hours, investigate and/or check the health of the Computer System in order to ensure that the Computer System functions properly without faults, errors and/or interruption.
- 6.2 MWEB Business will use its reasonable commercial endeavours to provide Customer with a report relating to the technical health and status of the Computer System.
- 6.3 In the event of any fault, error and/or interruption in the Computer System occurring which causes the Computer System to malfunction, MWEB Business undertakes to use its reasonable commercial endeavours to take appropriate action to restore, correct, fix and/or repair the Computer System as soon as MWEB Business becomes aware of such error, fault and/or interruption and/or Customer reports an error, a fault or interruption in the Computer System. Customer acknowledges that MWEB Business will use the Flexi Hours to repair, correct and/or fix such error, fault and/or interruption. Any service rendered in excess of the Flexi Hours will be billed on a Time and Material basis.

## **7. SUPPORT SERVICES**

- 7.1 All Data Centre Management Contract Service requests and technical support calls can be logged 24 hours per day, 365 days per year with MWEB Business' Technical Assistance Centre by:
- |       |           |  |
|-------|-----------|--|
| 7.1.1 | E-mail    | <a href="mailto:ascsupport@mweb.com">ascsupport@mweb.com</a> |
| 7.1.2 | Telephone | 011 340 7393   |
- 7.2 Customer will be required to provide the Technical Assistance Centre with its company name, customer number, contact person, contact details and a complete description of the problem.

- 7.3 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:
  - 7.4 In the event that the fault logged to MWEB Business relating to the Unsupported Software/Application, MWEB Business will notify Customer and Customer shall escalate the fault to the vendors of such Unsupported Software/Application for resolution. Customer shall be obliged to notify MWEB Business upon receipt of the written resolution from the vendors of the Unsupported Software/Application.
  - 7.5 In the event that Customer requires hardware replacement, MWEB Business shall use its reasonable endeavours to collect the hardware from the supplier. Customer shall be billed all travelling costs including any other costs incurred by MWEB Business to collect the hardware from the supplier.
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