



General Terms

1. PREAMBLE

- 1.1 MWEB Business is a leading South African Internet services provider company providing a range of comprehensive solutions in areas of Internet services, application services, content services, web development, e-commerce, and consultancy to businesses.
- 1.2 Customer has specific Internet based service requirements that are akin to those offered by MWEB Business.
- 1.3 Customer wishes to purchase services from MWEB Business and MWEB Business has agreed to provide certain services to Customer subject to the following General Terms (hereinafter defined).

2. INTERPRETATION

In these General Terms:

- 2.1 an expression which denotes: (i) any gender includes the other genders; (ii) a natural person includes a juristic person and *vice versa*; (iii) the singular includes the plural and *vice versa*.
- 2.2 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of these General Terms, shall not apply.
- 2.3 unless the context indicates a contrary intention the words and expressions defined in clause 3 shall, throughout these General Terms, bear the meanings assigned to them in that clause 3 and cognate expressions shall bear corresponding meanings.
- 2.4 words and expressions defined in an annexe shall, in that annexe, bear the meanings there assigned to them and cognate expressions shall bear corresponding meanings.
- 2.5 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.6 the word "**clause**" refers to clauses of these General Terms.
- 2.7 any reference to "**days**" shall be construed as being a reference to calendar "**days**" unless qualified by the word "**business**" in which instance a "**business day**" shall be any day other than a Saturday and a Sunday and/or a public holiday as gazetted by the government of the Republic of South Africa from time to time. Any reference to "**business hours**" shall be construed as being the hours between 08h00 (eight hundred hours) and 17h00 (seventeen hundred hours) on any business day.
- 2.8 the words "**include**" and "**including**" means "**include without limitation**" and "**including without limitation**". The use of the word "**including**" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it.



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2.9 terms other than those defined within these General Terms will be given their plain English meaning, and those terms, acronyms, and phrases known in the information technology industry will be interpreted in accordance with their generally accepted meanings.

2.10 defined terms appearing in these General Terms in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their ordinary meaning as qualified by clause 2.9 and shall, unless the context otherwise indicates, include the term as defined.

2.11 clause headings are included for convenience only and are not to be used in the interpretation hereof.

3. DEFINITIONS

3.1 "**Agreement**" means the agreement entered into between MWEB Business and Customer consisting of, *inter alia*, the MWEB Business Terms and any Application Form, or addendum thereto, completed and signed by Customer;

3.2 "**Application Form**" means the document on which you selected your service or product of choice;

3.3 "**Authority**" means the Independent Communications Authority of South Africa;

3.4 "**Customer Identifiers**" means usernames, passwords or email addresses provided to Customer as part of the Services, but expressly excluding Customer domain names managed by MWEB Business as part of the Services;

3.5 "**Customer**" means the party identified on the main application form, or in any addendum thereto, relating to the relevant service or product subscribed for by the Customer, which may be in either physical/paper/written or electronic format;

3.6 "**Electronic Communications Act**" means the Electronic Communications Act, 2005;

3.7 "**ECT Act**" means the Electronic Communications and Transactions Act, 2002;

3.8 "**General Terms**" means these terms and conditions;

3.9 "**IP Address**" means a globally unique numerical identifier of a node connected to the internet;

3.10 "**Legal Website**" has the meaning ascribed to it in clause 4.1;

3.11 "**Marks**" means any trademarks, logos, brand names, domain names or other marks of MWEB;

3.12 "**MWEB Business Terms**" means the Product Terms, the Use Policies and these General Terms;

3.13 "**MWEB Business**" or "**MWEB**" means MWEB Connect (Proprietary) Limited;

3.14 "**NCA**" means the National Credit Act, 2005;

3.15 "**Product Terms**" means the terms and conditions of that name referred to in clause 5 below;



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- 3.16 "RICA" means the Regulation of Interception of Communications and Provision of Communication Related Information Act, No 70 of 2002;
- 3.17 "**Services**" means the Services provided by MWEB Business to Customer in terms of the MWEB Business Terms;
- 3.18 "**Service Fees**" means fees and charges payable by Customer to MWEB Business in respect of the Services, which Service Fees are set out in the Application Form(s), and any addenda thereto, completed and signed by Customer in respect of the Services; and
- 3.19 "**Use Policies**" means the terms and conditions of that name referred to in clause 5 below.

4. INTRODUCTION

- 4.1 MWEB Business provides its Services to Customers subject to the terms and conditions of the Agreement, which includes the General Terms as well as the following additional terms and conditions:
- 4.1.1 the Product Terms;
- 4.1.2 the Use Policies; and
- 4.1.3 These General Terms, the Product Terms and Use Policies are published at <http://www.mwebbusiness.co.za/legal/GeneralTerms.aspx> (the "**Legal Website**") under such respective headings.
- 4.2 Regardless of the manner in which Customer has contracted with MWEB Business for the receipt of Services (whether by means of the conclusion of a written agreement, electronic application or by telephonic registration), these General Terms shall bind Customer and/or when Customer contracts for a new or additional Service or when Customer changes or adds to the Services which it receives.
- 4.3 MWEB Business reserves the right, at any time, to amend any of the MWEB Business Terms to which Customer is bound, including but not limited to these General Terms. An updated version of the MWEB Business Terms will be posted at URL: <http://www.mwebbusiness.co.za/legal/GeneralTerms.aspx> and the legal notice relating to such amendment will be posted on the Legal Website under the heading "**Notices**" together with the date on which the amendment will become effective, which unless stated to the contrary in the Product Terms will never be less than 30 (thirty) days from the date on which it was first published.
- 4.4 Customer agrees that it is its responsibility as a diligent user to peruse any amended MWEB Business Terms posted on the Legal Website and the legal notices relating to such amended MWEB Business terms under the heading "**Notices**" and Customer undertakes to regularly visit the Legal Website so as to remain advised of such amended MWEB Business Terms.
- 4.5 If Customer objects to any amended MWEB Business Terms which are binding upon it or are to become binding upon it, Customer is entitled to terminate its relationship with MWEB Business upon the terms and conditions set forth in clause 12.1 below.



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5. PRODUCT AND USE POLICIES

- 5.1 The Product Terms represent the terms and conditions within the MWEB Business Terms that govern Customer's use of MWEB Business' individual product Services selected by Customer. For the avoidance of doubt, it is recorded that Customer may use and/or select one or more different product Services. To the extent that any Product Terms are binding upon Customer, those Product Terms are deemed included in these General Terms, together with such other MWEB Business Terms as may be binding upon Customer.
- 5.2 Customer will only be bound by such of the Product Terms as are applicable to the particular MWEB Business product Services that Customer uses and Customer will immediately be so bound upon first use thereof. To the extent that Customer uses any one or more product Services offered by MWEB Business, Customer acknowledges that it is bound by the particular Product Terms relating to the product Services that it uses. The Product Terms, as amended from time to time, are posted on the Legal Website under the heading Product Terms and the Product Terms applicable to a specific product Service shall have the same name as such Service.
- 5.3 The Use Policies represent the terms and conditions pertaining generally to Customer's use of the Services and will commonly include, without limitation, privacy and confidentiality terms and conditions, MWEB's Codes of Conduct and Service Charter, use rules, security policies and similar policies which are, in most instances, of general application to all MWEB Business customers regardless of the product Service which they may use. The Use Policies are deemed to be applicable to all MWEB Business customers unless specifically stated to the contrary in any Product Terms, which are also binding upon Customer. To the extent that any Use Policies are binding upon Customer, such Use Policies are deemed included in these General Terms together with such other MWEB Business Terms as may be binding upon Customer.
- 5.4 Customer is required at all times to comply with the Use Policies which are deemed to form part of the MWEB Business Terms. The Use Policies, as amended from time to time, are posted on the Legal Website under the heading General Terms.
- 5.5 To the extent that any product Service used by Customer is subject to a specific use term as identified in the applicable Product Terms, the Use Policies shall be deemed to be augmented by such specific use terms for the purposes of use by Customer of that particular product Service.
- 5.6 For avoidance of doubt, unless the contrary is evident from the construction of a particular provision in any Product Terms or in the Use Policies, any term defined in these General Terms and used in any Product Terms or Use Policies shall bear the meaning as defined herein.
- 5.7 For avoidance of doubt, unless the contrary is evident from the construction of a particular provision in any Product Terms or in the Use Policies, the provisions of clause 2 in these General Terms shall be of application to the Product Terms and the Use Policies.

6. CUSTOMER STATUS



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- 6.1 MWEB Business customers may be incorporated entities (such as companies and close corporations), partnerships or individuals.
- 6.2 To the extent that a person enters into an Agreement, including the MWEB Business Terms in a representative capacity on behalf of Customer who is an incorporated entity or on behalf of an unincorporated association or partnership of individuals or in any other representative capacity recognised in South African law, Customer hereby warrants that such person is legally authorised to do so and indemnifies MWEB Business against any loss or damage that MWEB Business may sustain resulting from such person's lack of authority.
- 6.3 To the extent that the Agreement is signed by a person acting in a representative capacity on behalf of Customer, the signing party hereby warrants that all of the information relating to the entity, partnership, association or other person whom he represents and which he has supplied to MWEB Business at any time will be true, accurate and complete. MWEB Business reserves the right to treat all misrepresentations by Customer or its representatives as a fraud and such person indemnifies MWEB Business against any loss or damage that MWEB Business may sustain resulting from such person's lack of authority.
- 6.4 If MWEB Business discovers that Customer has fraudulently contracted for receipt of Services or that its representatives have contracted without contractual capacity to do so, MWEB Business will be entitled to terminate the Agreement and/or Services immediately without any further liability to Customer whatsoever and Customer will not be entitled to claim any restitution or refund of any amount already paid for the Services regardless of whether Customer used the Services or not, save as otherwise agreed to between the parties.

7. COMMENCEMENT, DELIVERY AND DURATION

- 7.1 Customer shall upon application for a Service, provide MWEB Business with his/her/its full names, identity number, residential and business or postal address, a certified copy of Customer's identity document and, if Customer is a juristic person, the person representing Customer must provide MWEB Business with a certified copy of his or her identity document, his or her full names, identity number, residential and postal address as well as with Customer's business name and address, Customer's company or close corporation registration number and a certified copy of Customer's business letterhead.
- 7.2 Where a sole proprietor or unincorporated partnership applies for a Service or product that sole proprietor or partnership may be subject to a credit referencing or risk assessment process. This means that MWEB Business may request and receive Customer's Confidential Information, Consumer Credit Information and Prescribed Information (as defined in NCA) ("Assessment Information") from registered credit bureaux in order to perform a financial means test, to determine whether the sole proprietor or unincorporated partnership will be in a position to meet its obligations under the intended Agreement.



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- 7.3 MWEB Business is entitled to perform a financial means test each time when a sole proprietor or partnership applies for a service or product.
- 7.4 The applicant on behalf of a sole proprietor or unincorporated partnership consents to MWEB Business requesting, receiving and reporting Customer's Assessment Information from and to registered credit bureaux in accordance with the provisions and for the purposes of the NCA; and the sharing of such Information by registered credit bureaux and such other persons as contemplated in the NCA, for the prescribed purposes of the NCA.
- 7.5 An electronic transaction and related credit agreement for the supply of products or services, concluded by a sole proprietor or partnership, may be cancelled by the sole proprietor or unincorporated partnership in terms of section 44 of the ECT Act for any reason and without penalty:
- 7.6 in the case of products, within 7 (seven) days of the date of receipt of the goods; and
- 7.7 in the case of Services, within 7 (seven) days of the date of the conclusion of the Agreement subject to the exclusions in section 42 (2) of the ECT Act which include (without limitation), Services that began with the consent of the sole proprietor or unincorporated partnership requesting the Service before the end of the 7 (seven) day period referred to in clause 7.6, goods which by their nature cannot be returned, or computer software which is unsealed by the sole proprietor or unincorporated partnership.
- 7.8 The provisions of the NCA do not apply to a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time that the agreement is concluded, equals or exceeds the threshold value determined from time to time by the relevant Minister in terms of 7 (1) of the NCA. If an instalment agreement which falls within the ambit of the NCA was concluded at a location other than the registered business premises of MWEB Business, but not electronically, a juristic person below the aforementioned threshold, sole proprietor or partnership will be entitled to terminate that Agreement within 5 (five) business days of the date of signature of the Agreement, by:
- 7.9 delivering a termination notice to MWEB Business by hand or by registered mail; and
- 7.10 by tendering the return of any goods, or paying in full for any Services, received in terms of the Agreement.
- 7.11 In the event that an instalment agreement as contemplated in clause 7.8 above was concluded electronically, the 7 (seven) day period under the ECT Act as set out in clause 7.5 above will apply.
- 7.12 If Customer is a sole proprietor or an unincorporated partnership you acknowledge and agree that MWEB Business will provide Customer with an opportunity in respect of all electronic transactions to— (i) review the entire electronic transaction; (ii) correct any mistakes; and (iii) withdraw from the transaction, before finally placing the order.



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- 7.13 Customer acknowledges and agrees that the Agreement and the MWEB Business Terms shall subject to Customer's credit vetting approval, become binding on Customer with effect from the date of receipt of the duly signed Application Form by MWEB Business. For the avoidance of doubt, Customer acknowledges and agrees that MWEB Business shall:
- 7.14 not be obliged to notify Customer either in writing or verbally that MWEB Business has received the duly signed Application Form;
- 7.15 not be obliged to send a written notice to Customer advising Customer that its/his/her credit vetting has been approved; and
- 7.16 send a written notice to Customer advising Customer that its/his/her credit vetting has not been approved and as such, the Agreement and/or MWEB Business Terms will no longer be binding on the parties as envisaged in this clause 7.12.
- 7.17 Subject to the provisions of clause 7.18 Customer acknowledges that the implementation and activation of the Services might not be effected on the proposed date and shall, therefore not terminate the Agreement and the MWEB Business Terms as a result of any delay caused by third parties (including without limitation Telkom, Neotel) with regard to the implementation and activation of the Services, provided MWEB Business uses its reasonable commercial endeavours to implement and activate the Service within a reasonable time.
- 7.18 Services or products which are procured pursuant to an electronic transaction by a sole proprietor or an unincorporated partnership as contemplated in clause 7.5 will be dispatched, delivered or rendered to Customer within 30 (thirty) days from the date on which MWEB Business received Customer's Application Form, unless otherwise agreed to between us, failing which Customer will be in a position to cancel the Agreement on 7 (seven) days written notice to us.
- 7.19 Where Services or products are procured pursuant to an electronic transaction by a sole proprietor or an unincorporated partnership as contemplated in clause 7.5, MWEB Business will immediately notify Customer where the Services or products required by Customer are unavailable and where MWEB Business as result thereof is unable to perform in terms of the Agreement. MWEB will under such circumstances refund any payments to Customer within 30 (thirty) days of the aforementioned notification of unavailability.
- 7.20 The Parties undertake to do all such things, perform all such acts and take all such steps and procure the doing of all such things, performance of all such acts and the taking all of such steps as may be necessary, incidental or conducive to the implementation of the terms and conditions of this Agreement. In particular, Customer shall accept installation of and provision of the required Service(s) whenever tendered by MWEB Business.
- 7.21 Customer further acknowledges that the term of all Services including is for an indefinite period, unless:
- 7.21.1 Customer has terminated the Agreement as provided for in clauses 7.5; 7.8 and 7.18;



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7.21.2 Customer has contracted for a particular Service with MWEB Business in respect of which there is a minimum duration as set out in the Product Terms and/or Application Form;

7.21.3 Customer has terminated the Services in terms of the provisions of clause 12.1 below.

7.22 Notwithstanding the provisions of clause 7.21 above, Customer acknowledges that this Agreement will continue indefinitely and Customer will remain bound thereby for as long as Customer uses any Service and/or product offered by MWEB Business in terms of the Product Terms. The Agreement will terminate simultaneously with the termination for any reason of all Services and/or product provided to Customer in terms of the Product Terms.

7.23 MWEB reserves the right to recover the balance of the Service Fees for the remainder of the minimum duration or initial period, as the case may be, in the case of early termination.

8. CUSTOMER IDENTIFIERS AND IP ADDRESS

8.1 Any Customer Identifiers allocated to Customer or created by Customer using the Services will, subject to Customer remaining in compliance with the MWEB Business Terms, entitle Customer to access the Services for which Customer has contracted. Customer Identifiers are personal to Customer and Customer will be liable for any loss or damage sustained by MWEB Business or by any third party as a result of any actions by Customer or any other person to whom Customer has disclosed its Customer Identifiers. Customer is accordingly advised to keep its Customer Identifiers confidential. Customer agrees to advise MWEB Business immediately should any other person gain access to its Customer Identifiers. In addition, Customer hereby indemnifies MWEB Business against any claim howsoever arising from: (i) Customer's disclosure of its Customer Identifiers to a third person; (ii) the use of such Customer Identifiers by a third person and/or (ii) any action by Customer or third party as a result of it. Customer shall not permit and/or initiate a simultaneous network logon while utilising one username and not attempt to circumvent MWEB Business' user authentication processes or attempt to gain access to the Services if it is not expressly authorised to do so.

8.2 While the Customer Identifiers and/or IP Address(es) are personal to Customer, Customer acknowledges them to be MWEB Business' property and accordingly Customer may not sell, lease, transfer, assign or otherwise alienate its rights in respect of the Customer Identifiers and/or IP Address(es), and the use of such Customer Identifiers and/or IP Address(es) shall only be for the duration of the Service it has been allocated for.

9. SERVICE FEES, CHARGES AND PAYMENT

9.1 Unless otherwise stated in the relevant Product Terms, all Service Fees payable by Customer in terms of the MWEB Business Terms for Services are payable in advance.



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- 9.2 For the purposes of this clause 9 “**month**” or “**monthly**” may not refer to a calendar month, but to a billing month as determined by MWEB Business from time to time.
- 9.3 To the extent that Customer requires MWEB Business to debit its Service Fees due to MWEB Business in terms of the MWEB Business Terms on a periodic basis (whether monthly, quarterly or annually or upon any other periodic basis), Customer hereby authorise MWEB Business to effect the necessary transfers from Customer designated bank account at the beginning of each and every month (or other period as agreed) for the continued duration of the Agreement or relevant Services.
- 9.4 To the extent that Customers elect to be invoiced rather than utilise the electronic transfers mechanism described in clause 9.3 above, MWEB Business will invoice Customer monthly (or otherwise as agreed) in advance in respect of the Service Fees payable in terms of the Agreement and the Customer shall be obliged to pay such Service Fees on the payment date specified in the invoice.
- 9.5 It is specifically recorded that, in respect of specific Services the payment mechanism may be set forth in such Services' Product Terms and/or an application form. In such instances, payment of the amounts owing by Customer will be effected in accordance with the provisions contained in the Product Terms and/or application form.
- 9.6 Where Customer's use of any Services commences during a month rather than at the start of that month, Customer will be charged on a *pro rata* basis for those Services provided during that month.
- 9.7 Customer acknowledges and agrees that: (i) the Application Form is accepted by MWEB Business only on the basis that the Services Fees and/or Charges specified in the Application Form will be the applicable Services Fees and/or Charges on the date of activation of the Services by MWEB Business; (ii) the Services Fees and/or any Charges specified in the Application Form are based on the rates of exchange, supplier rates, freight charges, railage, insurance, costs of labour and material and any other charges of whatsoever nature, ruling on the date the Application Form was sent to Customer; (iii) any variation occurring in any of the afore-said rates, costs and/or charges subsequent to the date of sending of the Application Form to Customer but prior to: (a) activation of the Services (b) delivery of the any hardware and/or or software required for the implementation of the Services by MWEB Business, shall entitle MWEB Business to amend the Services Fees and/or the Charges specified in the Application Form accordingly. MWEB Business shall send the duly amended Application Form reflecting the applicable Service Fees and/or Charges for Customer's signature.
- 9.8 Customer acknowledges and agrees further that MWEB Business shall be entitled to amend or vary the Services Fees and/or Charges at any time during the Initial Period should: (i) the current Services Fees and/or Charges be affected by the rates of exchange; (ii) there be any amount of tax, duty or other charges of whatsoever nature imposed by any law, regulation or enactment which comes into force after the activation of the Services by MWEB Business; and (iii) there be any other additional costs of whatsoever nature arising due to factors beyond the control of MWEB Business, and Customer shall in all these



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instances, not be entitled to terminate the Services during the Initial Period failing which, such termination shall be subject to the provision of clause 12.1 below.

9.9 MWEB Business reserves the right to amend or vary the Service Fees from time to time and any amendment or variation to such Service Fees will be deemed to be an amendment of the MWEB Business Terms. In the event that MWEB Business amends its Service Fees, MWEB Business will give Customer at least 30 (thirty) day's prior written notice of such amended Service Fees, by posting the revised Service Fees on the "Notices". If Customer objects to any amended or varied Service Fees which affect it, Customer shall be entitled to terminate its relationship with MWEB Business after the expiry of the period selected by the Customer in the Application Form subject to the terms and conditions set forth in clause 12.1 below.

9.10 Customer acknowledges that it is not entitled to withhold any payment of any Service Fees due to MWEB Business by reason of any alleged breach of the MWEB Business Terms by MWEB Business or for any other reason whatsoever. In addition, Customer acknowledges that it is not permitted to apply set off to or demand any discount, rebate or reduction in respect of any Service Fees owed to MWEB Business.

9.11 To the extent that MWEB Business incurs any additional expenditure relating to the tracing and/or collection of unpaid amounts, those costs shall be for the account of Customer.

9.12 In all instances, regardless of the means by which Customer contracts for any of the Services, Customer acknowledges that it is its responsibility to familiarise itself with the Service Fees and the date of payment of the Service Fees applicable to such Services. Upon Customer acceptance of any MWEB Business Terms or the Agreement, Customer will be deemed to have agreed to the then current Service Fee in respect of the Services for which Customer has contracted.

9.13 Customer may direct any billing complaint to us in accordance with the Billing Complaints Handling Procedure, which is set out in our Code of Conduct and Service Charter which is included in the Use Policies. Unless otherwise agree by MWEB Business and Customer, MWEB Business will reach a decision on the dispute or complaint and communicate it to Customer within fourteen (14) working days of receipt of the complaint.

9.14 Should Customer, fail to pay any amount on the due date for payment or should Customer fail to pay any amount due to MWEB Business after receipt of MWEB Business' decision in terms of clause 9.13, then MWEB Business may, without prejudice to any of its other rights:

9.14.1 take all such further steps as may be necessary to recover the outstanding amount from Customer, including without limitation the use of debt collection mechanisms; and if the debt arises from an agreement which is a credit agreement, then in accordance with the collection and repayment practices as prescribed in the NCA;



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9.14.2 charge interest at the rate of 2% above the prime overdraft rate published by MWEB Business' bankers from time to time on the overdue amount, calculated from the due date until the date of payment (both dates inclusive), which interest, if charged, will be capitalized monthly;

9.14.3 suspend Customer's access to the Service without notice to Customer until such time as the outstanding amount has been paid in full; or

9.14.4 terminate the Agreement with immediate effect.

9.15 Subject to the provisions of clause 9.13, the Service Fees due and payable by Customer to MWEB Business at any time shall be determined and proved by a certificate signed by either the General Manager or Financial Manager of MWEB Business', whose appointment, qualification and authority need not be proved.

9.16 Customer acknowledges that, subject to MWEB Business being required to do so by any law of any jurisdiction in which Customer is resident or to which Customer is subject, MWEB Business is entitled to receive and claim payment from Customer in respect of any value added taxation and/or sales tax or any other similar statutory tax or levy imposed on the provision of Services to Customer.

9.17 MWEB Business will use reasonable endeavours to inform Customer well in advance and in any event prior to suspension or disconnection about the possibility of suspension or disconnection in the case of non-payment.

10. RETURN, EXCHANGE AND REFUNDS

10.1 MWEB Business' exchange, return and refund policies in respect of products, in particular hardware, provided to Customer under the Agreement are dealt with in the Product Terms.

10.2 MWEB Business' policy in respect of exchanges, returns and refunds depends on the type of product, goods and the policy of the manufacturer or supplier thereof. Where the manufacturer or supplier does not have an exchange, return and/or refund policy in place, no mention of such policy will be made in the Product Terms.

10.3 Warranties, if any, will ordinarily be included in the product or hardware packaging.

10.4 MWEB Business will consider requests for other refunds, for example where an account was debited with the wrong amount, on an ad hoc basis in accordance with the Billing Complaints Handling Procedure referred to in clause 9.13.

10.5 MWEB Business will endeavour to put alternative measures in place where goods or products received by Customer under the Agreement are defective and are taken in for repairs, subject to the availability of substitute goods or products and/or the terms and conditions of the commercial arrangement between MWEB Business and the supplier or manufacturer of the goods or products.

11. SECURITY AND PRIVACY



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- 11.1 MWEB Business reserves the right to take whatever action it may deem necessary at any time to preserve the security and reliable operation of its network infrastructure and Customer undertakes that it will not do or permit anything to be done which will compromise MWEB Business' security
- 11.2 Customer may not utilize any Service in any manner which may compromise the security of MWEB Business' network, or any other network connected to MWEB Business' network, or tamper with a service or such a network in any manner whatsoever.
- 11.3 MWEB Business takes reasonable steps to secure Customer payment information. MWEB Business uses a payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of the transaction concerned.
- 11.4 MWEB Business will deal with Customer's personal information in accordance with the provisions of our Privacy Policy which is available on our Legal Webpage.

12. TERMINATION AND SUSPENSION

- 12.1 Unless Customer has contracted for a particular Service in respect of which there is a minimum duration or initial period or in terms of which the termination period is different either Party may, subject to the termination provisions in clauses 7.5; 7.8 and 7.18 above, terminate the Agreement together with all Services, or any individual Services on 30 (thirty) days written notice to the other Party. Where Customer has contracted for a particular product Service in respect of which there is a minimum duration, as set out in the Product Terms and/or Application Form, such Service may only be terminated at the end of the specified minimum period. The addresses to which such written notices are to be sent to MWEB Business appears on the Legal Website and that of the Customer the address specified in terms of clause 18.10. Any purported notice of termination sent to MWEB Business at any address not specified on the Legal Website or communicated in any manner other than as specified on the Legal Website may, at MWEB Business' sole discretion, be deemed invalidly given and without force or effect. A termination notified in terms of this clause 12.1 shall take effect upon the first day of the month following the expiry of the 30 (thirty) day notice period, save that where such termination notice is given and received on a day other than the first day of any month, such notice will take effect upon the first day of the following month. MWEB Business reserves the right to charge Customer an additional re-connection fee should Customer request MWEB Business to restore any Service that has been suspended by Customer.
- 12.2 Should Customer be in breach of any of the MWEB Business Terms or the Agreement, then MWEB Business is entitled, without prejudice to any other rights that MWEB Business may have and without notice to Customer, to:- (i) forthwith claim immediate payment of all outstanding charges due to MWEB Business plus a cancellation fee equal to the remainder of all Service Fees and/or charges that would have become due and payable for the unexpired portion of the minimum duration set out in the Product Terms and/or Application Form; (ii) terminate or suspend Customer's use of any or all of the Services (but in the case of a billing dispute only after having reached a decision in accordance with the Billing Complaints Handling



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Procedure referred to in clause 9.11 above); (iii) terminate its relationship with Customer and/or (iv) list Customer with any of the credit bureau agencies and (v) to appoint tracing agents as required. In all instances, MWEB Business is entitled to retain all Service Fees and charges already paid by Customer and recover all of its costs associated with Customer's breach, including without limitation, default administration charges, collection costs, legal costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction of such judgement or in regards to the enforcement of the MWEB Business Terms or the Agreement.

12.3 Customer acknowledges that where MWEB Business is in possession of any of Customer property in consequence of its provision to Customer of a particular product and/or Service, and Customer is in default of Customer's payment obligations to MWEB Business, MWEB Business shall be entitled to retain such property pending Customer's settlement of all amounts owed by Customer to MWEB Business. In addition, where Customer fails to make settlement of all amounts owed to MWEB Business within 90 (ninety) days of any notice by MWEB Business to Customer in such regard, MWEB Business is entitled, but not obliged, to dispose of such property in order to defray any MWEB Business expenses as well as any amounts owned by Customer to MWEB Business.

12.4 Where the Customer is in possession of any of MWEB Business' property in consequence of the provision to Customer of a particular Service and the Services to which that property relates are terminated, Customer will immediately return such property to MWEB Business, and shall not be entitled to retain such property for any reason whatsoever.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 Customer is obliged to comply with all laws applicable to any intellectual property rights (including without limitation trade secrets, copyright, trade marks, registered designs, and patents) in respect of any data, files and/or information accessed, retrieved or stored by Customer through Customer's use of the Services.

13.2 Customer is prohibited from using any of MWEB Business' Marks without the prior written approval of MWEB Business.

13.3 Customer hereby grants MWEB Business a non-exclusive licence to use its Marks for the limited purposes of enabling MWEB Business to exercise its rights or to fulfil its obligations under the MWEB Business Terms.

13.4 Other than as specifically provided in the MWEB Business Terms, MWEB Business will wholly and exclusively retain all existing and become the exclusive and unencumbered owner of all intellectual property right(s) employed in or otherwise related to its network infrastructure, e-commerce network infrastructure, business and the provision of any of the Services in terms of the MWEB Business Terms.

14. MONITORING OF CONTENT

14.1 Customer acknowledges that it is bound by the Use Policies in relation to its use of the Services.



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14.2 For the avoidance of doubt, and without in any manner limiting the enforceability of the Use Policies, Customer acknowledges that MWEB Business has no knowledge of, nor interest in Customer content hosted by MWEB Business or published by MWEB Business on Customer's behalf or by Customer using the Services and further that MWEB Business does not in any way contribute or approve such content. Accordingly Customer agrees that if MWEB Business, in its sole and unfettered discretion determines that Customer's content is in violation of any law or of the Use Policies, it may:

14.2.1 forthwith request Customer to remove such content; and/or

14.2.2 forthwith require Customer to amend or modify such content; and/or

14.2.3 without notice terminate access to any Services and/or suspend or terminate any Services; and/or

14.2.4 without notice, delete the offending content from the Services.

14.3 Save as specifically provided in clause 14.4 below, Customer confirms that nothing that MWEB Business does in the performance of its obligations in this regard will be construed as an assumption of responsibility or liability by MWEB Business for Customer content and the publication thereof, whether or not MWEB Business has knowledge of such content. Customer hereby indemnifies MWEB Business against any liability and any claims or fines or penalties of whatever nature made by any person for any loss or damage suffered arising directly or indirectly from MWEB Business' hosting of Customer content or the publication thereof.

14.4 MWEB Business will use reasonable endeavours to notify Customer of any action taken in terms of this clause 14, but does not warrant that notice shall be given to Customer prior to such action being taken.

15. INTERCEPTION OF COMMUNICATIONS

15.1 Customer acknowledge that MWEB Business and/or a third party Network Operator, as the case may be, may under the circumstances as prescribed in RICA, be required to intercept, block, filter, read, delete, disclose and use communications sent or posted via MWEB Business's or the Network Operator's network.

15.2 A copy of RICA is available at <http://www.info.gov.za/acts/2002/a70-02>

16. GENERAL LIMITATION

16.1 Save as specifically provided to the contrary in the Product Terms and in the Use Policies—

16.1.1 the Services are provided "as is" and "as available" and without any warranty of any nature whatsoever whether express or implied including without limitation warranties of merchantability, fitness for purpose, title or non-infringement.

16.1.2 any third party services and products accessible or used in conjunction with the Services, but which are not provided by MWEB Business, are provided subject to those terms specified by the providers thereof.



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16.1.3 MWEB Business is not liable and will not be liable under any circumstances, for any direct, indirect, incidental, special, punitive or consequential loss or damages which arise, or may arise, out of the Services and/or use thereof. This exclusion of liability applies notwithstanding the fact that MWEB Business may have been advised of the possibility of such loss or damage being incurred prior to its occurrence.

16.1.4 MWEB Business is not liable and will not be liable under any circumstances, for any direct, indirect, incidental, special, punitive or consequential loss or damages which result or may result from Customer's use of any third party services or products accessible or used in conjunction with the Services, but not provided by MWEB Business. This exclusion of liability applies notwithstanding the fact that MWEB Business may have been advised of the possibility of such loss or damage being incurred prior to its occurrence.

16.1.5 Customer acknowledges that the Services are provided subject to the terms and conditions imposed on MWEB Business by any network operator or third party provider of Services and all applicable laws and regulations and that Customer hereby indemnifies MWEB Business from any liability for any loss or damage suffered by Customer or any third party as a consequence of any interruption or unavailability of the Services attributable to any regulatory body or civil or criminal process instituted against MWEB Business.

16.1.6 Customer's sole and exclusive remedy if it is dissatisfied with the Services for any reason whatsoever, is termination of the Services, or part thereof, as provided for and upon the terms stated in clause 12 above.

16.2 Customer hereby unconditionally and irrevocably indemnifies MWEB Business and agrees to hold MWEB Business free from all costs, losses, claims harm, liabilities, expenses, damages, fines or injury of whatsoever nature suffered or incurred by MWEB Business or instituted against MWEB Business by any third party as a direct or indirect result of Customer's use of the Services, Customer's failure to comply with any of the MWEB Business Terms, or any downtime, outage, interruption in or unavailability of the Services. Included, but without limitation, within the ambit of downtime, outage, interruption in or unavailability of the Services is any of the following: (i) software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services; (ii) non-performance or unavailability, of whatever nature and howsoever arising of any of the services provided by a third party telecommunications service provider (including, but not limited to, line failure) or in any international services or remote mail servers; (iii) non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks to which Customer or MWEB Business' network infrastructure is connected; and (iv) repairs, maintenance, upgrades, modification, alterations or replacement of any hardware forming part of the Services or any faults or defects of whatever nature in such hardware.



General Terms

- 16.3 In the event of an instance of *Force Majeure*, any delay or failure in performance or breach by MWEB Business occasioned thereby or resulting therefrom will not be deemed a breach of the MWEB Business Terms by MWEB Business, nor shall it subject MWEB Business to any liability whatsoever. For the purposes of these MWEB Business Terms, the term "*Force Majeure*" shall mean an act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, blockade, embargo, sanctions, epidemics, act of any government or other authority, compliance with government orders, demands or regulations or any circumstance of like or different nature beyond MWEB Business' reasonable control.
- 16.4 Customer acknowledges that it has no claim against MWEB Business and Customer hereby indemnifies MWEB Business against any liability in respect of any loss, damage or cost caused by or arising from; (i) any breach of security by any third party or any breach of confidentiality by a third party or otherwise arising from any access howsoever obtained by a third party to Customer's information, data or content; (ii) damage, contamination or corruption of any kind of Customer's data, material, information and/or content howsoever occasioned; (iii) repairs, maintenance, upgrades, modification, alterations, replacement or work of any nature done on Customer's hardware, software or systems by any party other than MWEB Business; (iv) without limiting the foregoing, any fact, cause or circumstances whatsoever and howsoever arising if MWEB Business substantially performed its obligations under the MWEB Business Terms.
- 16.5 Although MWEB Business applies reasonable endeavours to provide disaster recovery, MWEB Business does not specify any recovery time, nor is MWEB Business liable for any loss or damage of whatever nature incurred or suffered by Customer arising from or in connection with any cause whatsoever as a result of its failure to provide, or delay in providing, or providing only partial, disaster recovery. Customer is cautioned to make back-ups of its data. Nothing contained in the MWEB Business Terms shall be construed as a representation that any back-ups of data implemented by MWEB Business will be successful or in any way will avoid disaster.
- 16.6 MWEB Business is entitled to suspend temporarily its obligations in terms of the MWEB Business Terms in order to service, repair, maintain, upgrade, modify, alter, replace or improve any of the Services. Where the circumstances permit, MWEB Business will apply best endeavours to provide prior notice of any such suspension to Customer and MWEB Business is not liable for any loss or damage of whatever nature incurred or suffered by Customer arising from or in connection with from any cause whatsoever as a result of such suspensions.

17. EMERGENCY CALLS

- 17.1 Should Customer make use of the 112 emergency service number whilst using any of the MWEB Business' Services, Customer acknowledges and agrees that:



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17.1.1 MWEB Business can disclose the caller line identity either to the 112 emergency centre or to any third party that may carry the call to the 112 emergency centre;

17.1.2 the 112 emergency service number will become the exclusive national public emergency number; and

17.1.3 the 112 emergency number must be used during emergencies instead of the 10111, 10177 and 107.

17.2 Customer acknowledges and agrees further that:

17.2.1 the MWEB Business Services are *best effort* services and are not in any manner whatsoever guaranteed by MWEB Business.

17.2.2 MWEB Business does not in any manner whatsoever guarantee that any emergency number dialled via the MWEB Business Services shall be carried over to the call centre of such emergency number and/or to the third party that may carry the call to the emergency centre;

17.2.3 use of the MWEB Business Services by Customer and/or any user to dial any emergency number is at Customer's own discretion and risk.

18. GENERAL

18.1 Customer may escalate any complaint arising from, or in connection with, any Service rendered or provided by MWEB Business, to either MWEB Business or the Authority, in accordance with the Complaints Handling, Resolution and Escalation procedure in our Code of Conduct and Service Charter which is included in the Use Policies.

18.2 Customer agrees that MWEB Business may from time to time send Customer communications regarding (without being limited to) special offers/discounts which MWEB Business may negotiate for and offer to its members, operational changes that may affect the Service and/or new services or products launched by MWEB Business from time to time.

18.3 Customer acknowledges that in MWEB Business' provision of the Services to Customer, MWEB Business shall be entitled to do all things necessary in order to give effect to any legislation, regulation or ruling of a competent authority.

18.4 Customer is not entitled to cede, assign or delegate or in manner whatever transfer (including but not limited to the sub-letting or re-sale of any bandwidth, disk space, server capacity or web hosting) any Customer rights or obligations under the MWEB Business Terms or the Agreement without MWEB Business' prior written consent. In the event of any change in Customer's controlling interest, MWEB Business is entitled to terminate the MWEB Business Terms on notice to Customer. Customer is required to notify MWEB Business in writing of any change in its controlling interest within 14 (fourteen) days of such change.

18.5 MWEB Business is entitled to cede, assign, transfer or delegate all or any of its rights or obligations under the MWEB Business Terms or Agreement without Customer's consent.



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- 18.6 The MWEB Business Terms will in all respects be governed by and construed under the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 18.7 Both parties record and agree that Johannesburg shall be deemed to be the place where the parties have concluded the Agreement or any portion thereof.
- 18.8 Unless MWEB Business otherwise elects, only South African courts and/or other competent South African regulatory authorities shall have jurisdiction to hear any disputes arising pursuant to the Agreement. To the extent that MWEB Business elects to proceed against Customer in a South African Magistrate's Court, Customer hereby consents to the jurisdiction of those courts notwithstanding the fact that the amount of any claim against Customer may exceed the jurisdiction of those courts. To the extent that MWEB Business elect to proceed in any dispute in a South African High Court, Customer hereby consents to the jurisdiction of the Witwatersrand Local Division of the High Court of South Africa. Customer hereby agrees that all legal costs awarded in MWEB Business' favour shall be payable by Customer on the scale as between attorney and own client.
- 18.9 Customer acknowledges that the Agreement constitute the whole of the agreement between MWEB Business and Customer relating to the matters dealt with in it and save to the extent otherwise provided therein, no undertaking, representation, term or condition relating to the subject matter of the Agreement not incorporated therein shall be binding on MWEB Business.
- 18.10 Customer selects as its address for the purposes of receiving legal process and notices, the address furnished to MWEB Business on the application form when Customer first subscribed for the Services. Customer is required to notify MWEB Business in writing of any change of address.
- 18.11 Customer agrees that any notices (other than legal process) that MWEB Business may send to Customer may be sent via e-mail. MWEB Business selects as its address for the purposes of receiving legal process and notices the current address specified on the Legal Website (MWEB Business' Domicilium Citandi et Executandi^o). Any purported notice of termination sent to MWEB Business at any address not specified on the Legal Website or communicated in any manner other than as specified on the Legal Website may, at MWEB Business' sole discretion, be deemed invalidly given and without force or effect.
- 18.12 Any waiver, indulgence, relaxation or extension of any of the MWEB Business Terms or the Agreement will be effective only in the specific instance and for the purpose given. No failure or delay on MWEB Business' part in exercising any of its rights, powers or privileges in terms of the MWEB Business Terms will constitute or be deemed to be a waiver of those terms, nor will any single or partial exercise by MWEB Business of any of its rights, powers or privileges preclude it from any other or further exercise thereof or the exercise of any other rights, powers or privileges.



General Terms

18.13 Save as expressly provided to the contrary in the MWEB Business Terms, any conflict in the provisions stated in these General Terms and those stated in the Product Terms and Use Policies will be resolved in accordance with the following order of precedence:

- 18.13.1 the Product Terms;
- 18.13.2 the General Terms; and
- 18.13.3 the Use Policies.

18.14 Any provision of the MWEB Business Terms or Agreement that contemplates performance, compliance or observance subsequent to any termination or expiration of the MWEB Business Terms shall survive any such termination or expiration and continue in full force and effect.

18.15 Each provision of the MWEB Business Terms or Agreement is severable from the other provisions. Should any provision be found by an authority of competent jurisdiction to be invalid or unenforceable for any reason, MWEB Business reserves the right either to amend that provision in terms of clause 17.15 or to remove that provision in its entirety. The remaining provisions of the MWEB Business Terms or Agreement shall nevertheless remain binding and continue with full force and effect.

18.16 All MWEB Business Terms can be accessed, stored, and reproduced electronically.