



## Product Terms

# Managed Internet Gateway

## 1. INTERPRETATION

- 1.1 Unless the context clearly indicates the contrary, any term defined in the General Terms when used herein, shall bear the same meaning as defined in the General Terms.
- 1.2 To the extent that there is any contradiction between the General Terms and these Product Terms the following order of precedence shall apply: (i) these Product Terms; and (ii) the General Terms.
- 1.3 By using or subscribing to the Managed Internet Gateway Customer agrees that he/she/it has read, understand and are bound by:
  - 1.3.1 the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on MWEB Business’ Legal Website; and
  - 1.3.2 the Product Terms set out herein;  
(collectively the “**MWEB Business Terms**”).
- 1.4 Customer’s use of the Managed Internet Gateway indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.
- 1.5 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto:
  - 1.5.1 “**Application Form**” means the application form completed and signed by Customer for the initiation of Managed Internet Gateway, as same may be amended from time to time in terms of the Agreement;
  - 1.5.2 “**General Terms**” means the terms and conditions set out in the general terms and conditions for MWEB Business’ customers, which is available at <http://www.mwebbusiness.co.za/legal/GeneralTerms.aspx> under the heading “General Terms”;
  - 1.5.3 “**Equipment**” means, depending on the Customer’s selections as indicated by Customer in the Application Form under the heading or description of Managed Internet Gateway, either:
    - 1.5.3.1 the file server provided by Customer, which meets the requirements of Managed Internet Gateway; or
    - 1.5.3.2 the file server owned by MWEB Business and rented to Customer, which is subject to the Product Terms for Equipment Rental and relevant terms and conditions of the Agreement; or
    - 1.5.3.3 the file server sold by MWEB Business to Customer;
  - 1.5.4 “**Mail Spooling**” means the Services provided by MWEB Business to Customer in terms of clause 5.6;
  - 1.5.5 “**Managed Internet Gateway**” means the Services rendered by MWEB Business to Customer in accordance with Customer’s selections as indicated by Customer in the Application Form under such heading or description, which Service comprises of (i) the use of the software application supplied and



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installed by MWEB Business on the Equipment, which provides the Customer with Internet and e-mail management functionality and reporting; (ii) Mail Spooling; and (iii) the rental or purchase of Equipment (if selected);

1.5.6 **“Product Terms for Equipment Rental”** means the terms and conditions applicable to the rental of the Equipment, if selected in the Application Form, which can be found under the name “Equipment Rental” at <http://www.mwebbusiness.co.za/legal/ProductTerms.aspx> and under the heading Product Terms. **The Product Terms for Equipment Rental will be deemed to form part of the Agreement for this purpose;**

1.5.7 **“Product Terms for Equipment Purchase”** means the terms and conditions applicable to the purchase of the Equipment, if selected in the Application Form, which can be found under the name “Equipment Purchase” at <http://www.mwebbusiness.co.za/legal/ProductTerms.aspx> and under the heading Product Terms. **The Product Terms for Equipment Purchase will be deemed to form part of the Agreement for this purpose;** and

1.5.8 **“Software”** shall have the meaning ascribed to it in clause 1.5.5 (i).

## 2. DURATION

- 2.1 Managed Internet Gateway shall commence with effect from the date of activation of the Managed Internet Gateway 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.
- 2.2 Either Party may terminate Managed Internet Gateway 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.
- 2.3 If neither Party has given notice as contemplated in clause 2.2 above, Managed Internet Gateway shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate Managed Internet Gateway on 3 (three) calendar months written notice to the other to that effect.
- 2.4 In the event of a termination, Customer's use of Managed Internet Gateway shall be deemed terminated. However, in the event that Customer logs on to Managed Internet Gateway 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 Managed Internet Gateway without notice to Customer.



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2.5 To the extent that Managed Internet Gateway provided to Customer are suspended by MWEB Business in terms of the provisions of clauses 9 and 12 of the General Terms or for any other reason whatsoever Customer acknowledges that it will forfeit its access to and/or use of Managed Internet Gateway, but Customer shall still be liable to pay the Service Fees during such suspension.

### 3. SERVICES FEES

3.1 Customer shall pay MWEB Business the Services Fees specified in Application Form in accordance with the provisions set out in the General Terms.

### 4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

4.1 MWEB Business undertakes to use its reasonable endeavors to provide Customer with Managed Internet Gateway on a 24 (twenty four) hour per day basis on each and every day for the continued duration of Managed Internet Gateway.

4.2 Although MWEB Business use reasonable care and diligence to ensure that Managed Internet Gateway 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 the Managed Internet Gateway 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 Managed Internet Gateway is rendered "as is" and "as available" and is used at the Customers' own discretion and risk.

4.3 Customer acknowledges that the following circumstances and events may impact upon its use of the Managed Internet Gateway and further that these circumstances and/or events are beyond MWEB Business control: (i) use of the Managed Internet Gateway by other customers; (ii) limitations upon national and/or international bandwidth capacity; (iii) telecommunication service operator failures; telecommunication links failures; (iv) mobile service operator failures; (v) operating systems; (vi) access technology failures; (viii) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on the Managed Internet Gateway; and (ix) any other action, omission and/or failure not within MWEB Business' control which has an impact on the Managed Internet Gateway.

### 5. TERMS AND CONDITIONS SPECIFIC TO MANAGED INTERNET GATEWAY

5.1 Customer acknowledges and agrees that Internet access (limited only to ISDN, ADSL or Leased Line) is a prerequisite for the use of Managed Internet Gateway and such Internet access may only be provided by MWEB Business. Customer shall therefore include such Services in the Agreement should it not otherwise subscribe to it through MWEB Business.

5.2 Customer undertakes to use Managed Internet Gateway solely for internal purposes and shall not be entitled to directly or indirectly transfer, distribute, re-distribute, copy, sell, re-sell, lease, rent, lend, license, sub-license Managed Internet Gateway in whole or in part in any way whatsoever to any third party.



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5.3 Apart from the Software, Internet access as contemplated in clause 5.1 and the Equipment (if supplied by MWEB Business in terms of the Agreement) Customer is responsible for the supply configuration and maintenance of all other hardware, software, technical infrastructure, systems, network infrastructure telecommunication lines, telecommunication equipment, which is or may be necessary for the use/ access of Managed Internet Gateway.

5.4 Should the Equipment be provided by Customer, Customer warrants and represents that it is the owner and/or has the right to be in possession of the Equipment and has the relevant permission to load the Software on the Equipment. Customer shall furthermore retain ownership/ right to possess for the duration of Managed Internet Gateway and/or shall furthermore, without limiting the generality of the Agreement, not allow any third party to take direct and/or indirect possession of the Software in any way whatsoever.

#### 5.5 **Software**

5.5.1 Subject to the terms and conditions of the Agreement, including these Product Terms, MWEB Business grants Customer a limited, non-perpetual, non-exclusive, non-transferable license to use the Software for the duration of Managed Internet Gateway.

5.5.2 Customer acknowledges the nature of the Software and accordingly agrees that the specification and operation of the Software is known to him/her/it and accepts that it is suitable for the purpose it is intended to be used.

5.5.3 Customer acknowledges that all title and intellectual property rights in the Software, including training and/or user manuals, provided to Customer is owned by and shall remain vested in MWEB Business, its licensors or suppliers, as the case may be. Except if otherwise agreed the Customer accordingly agrees not to copy, duplicate, reproduce, transmit, modify, reverse engineer, decompile, or disassemble the Software or any portion thereof in any way whatsoever and shall only use it for the purpose it is supplied.

5.5.4 MWEB warrants that, to the best of its knowledge, the Software does not infringe upon or violate any Intellectual Property Rights of any third party.

5.5.5 The Parties shall prior to the installation date of the Software agree to the specific requirements pertaining to the installation and configuration of the Software, provided that Customer's requirements shall not fall outside the scope of this Service.

5.5.6 Customer shall accept installation of the Software by allowing MWEB Business or its agents, reasonable access to its premises and by activating the Software and/ or Managed Internet Gateway whenever tendered by MWEB Business. A signed delivery note shall constitute prima facie proof that the Software has been delivered, received, installed and configured in accordance with Customer's specified requirements, as agreed by the Parties whether such delivery note is signed by Customer or his/her/its employee or representative.



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5.5.7 Customer acknowledges and agrees that since it is responsible to do everything related to the set-up, creation or removal of users, including the determination of the hierarchy and permissions of the users MWEB Business takes no responsibility in any way whatsoever for such set-up, creation or removal in any way whatsoever.

5.5.8 Customer specifically agrees that it shall not;

5.5.8.1 circumvent any component and/or process of the Software or cause it to be done in any way whatsoever; and

5.5.8.2 use/ access the Software or cause it to be used and/or accessed in any way other than authorised by MWEB Business in terms of these Product Terms.

5.5.9 Upon termination of this Managed Internet Gateway for any reason whatsoever, the license referred to in this clause 5 shall terminate and Customer shall immediately cease any use of the Software. MWEB Business may in its own discretion request the return of the Software, including training and/or user manuals, provided to Customer and/or MWEB Business shall have the right to access Customer's premises to remove the Software from the Equipment.

#### 5.6 **Mail Spooling**

5.6.1 Except if otherwise agreed by the Parties Managed Internet Gateway shall include mail spooling Services for the users contemplated in this Product Terms.

5.6.2 MWEB Business shall not accept or deliver any mail messages: (i) exceeding 25 Megabytes (twenty five); and (ii) with more than 50 (fifty) recipients.

5.6.3 MWEB Business shall, as part of the Mail Spooling and if requested by Customer: (i) conduct IP check-ups on Customer's mail servers; (ii) conduct ETRN check-ups on Customer's mail servers; and (iii) conduct error check-ups on Customer's mail servers, provided that such additional Services will be subject to any further terms and conditions that MWEB Business may prescribe at the time that Customer requests such additional Services. Notwithstanding the foregoing, MWEB Business shall not send manual ETRN requests.

5.6.4 MWEB Business shall not be responsible for the support of any third party applications or configuration.

5.6.5 Customer undertakes to take all reasonable steps to prevent the Mail Spooling from being used as a relay, and MWEB Business reserves the right to suspend or terminate Mail Spooling if relaying occurs, until such time Customer has taken steps to prevent same.

5.6.6 MWEB Business assumes no responsibility for the failure of any e-mail delivery or the loss of any e-mail.

#### 5.7 **Support**



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- 5.7.1 Customer shall allow MWEB Business remote access to the Equipment for the purposes of conducting error check-ups on the Software, repairing or replacing any defective Software.
- 5.7.2 Customer shall further allow MWEB Business' support staff or its agents with reasonable access to its premises and to the Equipment to perform support services;
- 5.7.3 MWEB Business will once during each 24 hours endeavour to, initiate a connection to the Equipment to back-up the configuration file of the Equipment. MWEB Business does not guarantee that the connection and/or the back-up and/or the restoration of the configuration will be successful. In addition to the provisions of clause 16 to the General Terms, Customer indemnifies and holds MWEB Business free from all loss, damages claims and/or costs of whatsoever nature suffered or incurred by Customer as a result of loss of such data, whether occasioned by any act or omission of MWEB Business or its duly authorized agents.
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