



## Product Terms

### Premier Hosting

#### 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 Premier Hosting 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 notice 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 Premier Hosting 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 Premier Hosting, 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 “**Premier Hosting**” means the Services contemplated in these Product Terms MWEB Business renders to Customer in accordance with Customer’s choices, as set out in the Application Form under such heading or description; and
  - 1.5.4 “**Server**” means the MWEB Business file server used to supply Premier Hosting to Customer including any software loaded by MWEB Business on such server that controls basic, low-level server hardware operations, and file management, without the user thereof having to operate it or application software, but excludes any software, application and/or component as contemplated in 5.7.

#### 2. DURATION

- 2.1 Premier Hosting shall commence with effect from the date of activation of the Premier Hosting 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.



## Product Terms

### Premier Hosting

- 2.2 Either Party may terminate Premier Hosting at the end of the Initial Period by giving the other Party at least 3 (three) calendar months written notice prior to the end of the Initial Period. Any notice of termination given by Customer during the Initial Period shall only become effective upon the expiry of the Initial Period.
- 2.3 If neither Party has given notice as contemplated in clause 2.2 above, Premier Hosting shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate Premier Hosting 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 Premier Hosting shall be deemed terminated. However, in the event that Customer logs on to Premier Hosting 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 Premier Hosting without notice to Customer.
- 2.5 To the extent that Premier Hosting provided to Customer is suspended by MWEB Business in terms of the provisions of clauses 9 and 12 of the General Terms or for any other reason whatsoever, Customer acknowledges that it will forfeit its access to and/or use of Premier Hosting, but Customer shall still be liable to pay the Service Fees during such suspension.

### 3. SERVICE FEES

- 3.1 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. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with Premier Hosting on a 24 (twenty four) hour per day basis on each and every day for the continued duration of Premier Hosting.
- 4.2 Although MWEB Business uses reasonable care and diligence to ensure that Premier Hosting 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 Premier Hosting 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 Premier Hosting 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 Premier Hosting and further that these circumstances and/or events are beyond MWEB Business' control: (i) use of Premier Hosting 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



## Product Terms

### Premier Hosting

equipment which has an impact on Premier Hosting; and (viii) any other action, omission and/or failure not within MWEB Business' control which has an impact on Premier Hosting.

#### 5. TERMS AND CONDITIONS SPECIFIC TO PREMIER HOSTING

- 5.1 MWEB Business shall provide Customer with the: (i) hosting space, more fully described in the Application Form, on the Server in order to host Customer's website; and (ii) a Username and Password to enable Customer to access the said website via FTP ("file transfer protocol").
- 5.2 The maximum Internet bandwidth allocation to Customer's website shall be in accordance with the selection made in the Application Form.
- 5.3 MWEB Business shall use reasonable endeavours to ensure that Customer's hosting space is secure to prevent unauthorized access.
- 5.4 MWEB Business shall use reasonable commercial endeavours to: (i) procure the availability of Premier Hosting website 99 (ninety nine) percent of the time, calculated over 3 (three) consecutive months; and (ii) correct any availability issues within its control within 4 (four) business hours of such problem being reported to MWEB Business.
- 5.5 MWEB Business shall, as part of Premier Hosting, provide Customer with monthly statistics relating to Customer's website, which statistics will be available to Customer at the following URL: <http://webstats.mweb.net>. or as directed from time to time.
- 5.6 Customer acknowledges that the specifications of the Server are known to him/her/it and accepts that it is suitable for the purpose of rendering Premier Hosting to him/her/it. MWEB Business will in its sole discretion, and without being under any obligation to do so, maintain, and/or upgrade the Server, which will include any patches, updates, security updates/patches of whatever nature. Customer herewith authorises MWEB Business to implement any of the above, as and when it deem fit. Although MWEB Business will use its reasonable endeavours not to affect Premier Hosting or the hosting of any content, application, and/or data of whatever nature MWEB Business, without limiting the generality of the General Terms, expressly disclaims any direct, indirect, incidental, special, punitive or consequential loss or damages which arise or may arise out of such maintenance and/or upgrades.
- 5.7 Customer agrees that any software, application and/or component required and loaded by Customer or loaded on behalf of Customer for the website will be his/her/its own responsibility and is loaded at his/ her/ its sole risk and responsibility. Customer shall indemnify MWEB Business from any losses, damages, costs, claims, penalties, fines of whatever nature resulting from Customer's installation and/or use of any software, application and/or component on its website
- 5.8 Notwithstanding the provisions of clause 5.7 above Customer acknowledges that MWEB Business will be entitled, but without having any obligation to do so: (i) in its own discretion determine which software, applications and/or components may be loaded by Customer on or for the website; and (ii) have the right to:



## Product Terms

### Premier Hosting

(a) disallow the installation of any software, application and/or component required by Customer; (b) suspend Customer's web site and/or access to the website via FTP without notice to Customer should Customer install any software, application and/or component which may affect the: (a) security, operation of the MWEB Business' server and network infrastructure; and/or (b) use and/or access to Premier Hosting by MWEB Business' customer's. Customer shall indemnify MWEB Business from any losses, damages, costs, claims, penalties, fines of whatever nature resulting from Customer's installation and/or use of any software, application and/or component on its website.

5.9 The licensing of all installed software, application and/or component contemplated in clause 5.7 and 5.8 shall be the sole responsibility of Customer. 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 Premier Hosting and Customer furthermore indemnifies MWEB Business from any losses, damages, costs, claims, penalties, fines of whatever nature resulting from 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.

5.10 Customer will be solely responsible for all the support, maintenance and/or upgrades of any software, application, and/or component, installed in terms of clause 5.7. which will include any code settings, configurations, modifications, patches, updates and security updates/patches of whatever nature. MWEB Business shall provide Customer with technical support relating to FTP, but in the form of connectivity checks only

5.11 Customer further acknowledges that Premier Hosting does not include development and/or maintenance services of Customer's website in any way whatsoever.

5.12 Customer shall when accessing and/or using Premier Hosting: (i) comply with any applicable laws and regulations; and (ii) remain solely responsible for: (a) securing all necessary licenses, consents, and/or permissions for the publication and/or use of the database and/or content or any part thereof, including without limitation all trademarks, logos, names and branding contained therein; (b) ensuring that its use, publication and display of the database and/or content will not infringe any copyright, trademark, patent, trade secret or other proprietary or intellectual property right of any third party or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any third party; (c) the quality and performance of any aspect of the Customer's website, database and/or content thereof; (d) ensuring that its website database and/or content thereof remains current, correct and up-to-date; (e) the modification and/or enhancement to its website, database and/or content thereof; (f) dealing with persons who access Customer's website, database and/or content and shall not refer any complaints or enquiries relating to such web site, database and/or content to MWEB Business; and/or (g) ensuring that the website, database and/or content is and will at all times remain free from computer viruses, worms, Trojan horses and other malicious code.



## Product Terms

### Premier Hosting

5.13 MWEB Business shall not be responsible for the database and/or content displayed, contained and/or published on Customer's website. Customer furthermore agrees that MWEB Business has no interest in the contents and/or database of Customer's website hosted in terms of Premier Hosting and agrees that nothing that MWEB Business does in the performance of its obligations in terms of Premier Hosting shall be construed as an assumption of responsibility or liability by MWEB Business for any content and/or database displayed or published on Customer's website whether or not MWEB Business had knowledge of such database and/or content or not. Without limiting the generality of the General Terms and Use Policies Customer hereby indemnifies MWEB Business and holds it harmless against any liability and/or any claim of whatever nature made by any person for any loss or damage suffered or arising directly or indirectly from the display and/or publication of any content and/or database on Customer's website hosted in terms of Premier Hosting.

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