



Product Terms

Server Hosting

IMPORTANT NOTE: SHOULD CUSTOMER HAVE SUBSCRIBED TO “SERVER HOSTING: MANAGED SERVER HOSTING” THESE PRODUCT TERMS WILL NOT APPLY. THE PRODUCT TERMS APPLICABLE TO SUCH SERVICE IS “MANAGED SERVER HOSTING”, WHICH CAN BE FOUND UNDER SUCH NAME AT <http://www.mwebbusiness.co.za/Legal.aspx> under the heading Product Terms.

1. INTERPRETATION

- 1.1 Unless the context clearly indicates the contrary, any term defined in the General Terms when used herein, shall bear the same meaning as defined in the General Terms.
- 1.2 To the extent that there is any contradiction between the General Terms and these Product Terms the following order of precedence shall apply: (i) these Product Terms; and (ii) the General Terms.
- 1.3 By using or subscribing to Server 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 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 Server 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 “**24 Hour Reboot Service**” means the additional Server Hosting service, Customer can subscribe to at additional Service Fees, as contemplated in clause 6.12;
 - 1.5.2 “**Application Form**” means the application form completed and signed by Customer for the initiation of Server Hosting, as same may be amended from time to time in terms of the Agreement;
 - 1.5.3 “**Data Traffic**” means TCP/IP packets originating from the Server to the Internet and packets originating from the Internet to the Server;
 - 1.5.4 “**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”;
 - 1.5.5 “**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;



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- 1.5.6 **“Professional Management and Back-Up”** means the additional Server Hosting service to which Customer can subscribe at additional Service Fees, more fully set out in clause 7;
- 1.5.7 **“Server”** means the file server comprising of computer hardware/ machinery/equipment, which is/are either provided by Customer or owned by MWEB Business and rented to Customer, in terms of the Equipment Rental Services Product Terms for the purposes of hosting in terms of Server Hosting;
- 1.5.8 **“Server Hosting”** means the Services contemplated in these Product Terms which MWEB Business renders to Customer in accordance with Customer’s selection, as indicated on 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;
- 1.5.9 **“Software”** means: (i) software that controls basic, low-level Server hardware operations, and file management, without the user thereof having to operate it or application software, provided by MWEB Business or rented to Customer by MWEB Business, as selected by the Customer and indicated on the Application Form; Such supply or rental is an additional Server Hosting service to which additional Service Fees apply; (ii) SPLA and
- 1.5.10 **“SPLA Software”** means software rented by Customer from MWEB Business and supplied by Microsoft Corporation, as contemplated in clause 8. Such rental is an additional Server Hosting service to which additional Service Fees applies.

2. DURATION

- 2.1 The Server Hosting shall commence with effect from the date of activation of the Server 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.
- 2.2 Either Party may terminate Server Hosting at the end of the Initial Period in accordance with the General Terms. 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, Server Hosting shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate Server Hosting in accordance with the General Terms.
- 2.4 In the event of a termination, Customer’s use of Server Hosting shall be deemed terminated. However, in the event that Customer logs on to Server 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 Server Hosting without notice to Customer.



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2.5 To the extent that Server 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 Server 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 Server Hosting on a 24 (twenty four) hour per day basis on each and every day for the continued duration of Server Hosting.

4.2 Although MWEB Business uses reasonable care and diligence to ensure that Server 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 Server 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 Server 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 Server Hosting and further that these circumstances and/or events are beyond MWEB Business' control: (i) use of Server 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 equipment which has an impact on Server Hosting; and (viii) any other action, omission and/or failure not within MWEB Business' control which has an impact on Server Hosting.

5. TERMS AND CONDITIONS SPECIFIC TO SERVER HOSTING

5.1 The Server will be housed at the Location. Customer shall under no circumstances be entitled to remove the Server from the Location irrespective of anything to the contrary contained in the Product Terms for Equipment Rental insofar as it applies.

5.2 If the Server is provided by Customer:

5.2.1 Customer will deliver the Server to the Location at its own cost;

5.2.2 except if otherwise agreed, as an additional Server Hosting service to which additional Service Fees apply



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- 5.2.2.1 Customer shall be responsible for the set-up and configuring of the Server;
- 5.2.2.2 MWEB Business will not be responsible for the Server including maintenance, repair, virus protection, upgrades, updates, security updates/patches or the like.
- 5.2.3 All risk of loss, damage and/or destruction of or to the Server while housed at the Location shall remain vested in Customer, and Customer shall make its own arrangement regarding the insurance thereof;
- 5.2.4 Customer warrants and represents that is the owner of the Server and/or that it has the right to be in possession of the Server. Without limiting the provisions of the General Terms Customer hereby unconditionally and irrevocably indemnifies MWEB Business and agrees to hold MWEB Business harmless from and against any claims, costs, losses, harm, liabilities, expenses, damages, fines or injury, of whatever nature, including legal fees on an attorney and own client scale, directly and/or indirectly suffered or incurred by MWEB Business or for any such claims instituted against MWEB Business by a third party, arising out of or relating to a breach of the aforementioned warranty.
- 5.2.5 Customer furthermore agrees that the Server or any other equipment in MWEB Business' possession, which relates to Server Hosting shall be held by MWEB Business as security for the Customer's fulfillment of all its obligations in regards to Server Hosting.
- 5.3 MWEB Business shall be responsible for the installation of the Server at the Location, which installation shall include the following:
- 5.3.1 allocation of dedicated rack space for the Server in accordance with the Customer's selection in the Application Form;
- 5.3.2 allocation of an IP Address and/ or additional IP Addresses (if selected on the Application Form) for the Server to enable a connection from the Server to MWEB Business' network, so as to enable and facilitate the transmission of Data Traffic as well as the provision of the relevant IP Address information (including IP gateway's, DNS servers and subnet information) and Customer Identifiers to Customer;
- 5.3.3 provisioning the amount of Internet bandwidth for the purposes of clause 5.3.2, in accordance with the Customer's choices in the Application Form; and
- 5.3.4 configuration of a unique VLAN (Virtual Local Area Network).
- 5.4 Except if otherwise stated MWEB Business shall grant Customer access to the Server either remotely or at the location and Customer agrees to, without limiting the applicability of the provisions of the Agreement, subject itself to MWEB Business' security policies and/or its occupational health and safety rules.



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5.5 MWEB Business will use reasonable endeavours to provide a smooth, uninterrupted electrical power supply (UPS) to the Server. Other than as specifically provided in these Product Terms, MWEB Business will not be liable for any loss or damage as a result of any interruption in the power supply.

5.6 **Software**

5.6.1 MWEB Business shall supply and install the Software (except for the SPLA unless if Customer has rented the SPLA from MWEB Business), in accordance with the specifications agreed upon by the Parties. For that purpose Customer agrees to supply MWEB Business with all the relevant information and co-operation needed to enable MWEB to do the installation.

5.6.2 The Software is provided by MWEB Business in accordance with the inherent software license agreement attached to the applicable software and subject to the provisions of clause 5.6.3 Customer will acquire such rights to the Software, as allowed by such licensors/ licenses.

5.6.3 The Customer acknowledges that: (i) SPLA is never owned by Customer, but licensed on a monthly basis for the duration of Server Hosting through an arrangement that Microsoft South Africa Limited has with MWEB Business; (ii) upon termination of the Server Hosting Services, MWEB Business shall prior to the removal of the Server from the Location, format the Server in order to remove the SPLA Software from the Server failing which, Customer shall remain directly liable to MWEB Business and/or Microsoft for all damages suffered by MWEB Business and/or Microsoft as a result of illegal and/or unauthorized usage of the SPLA Software. Customer furthermore agrees to be bound by the terms and conditions related to such Software, which are contained in clause 8 below.

5.6.4 MWEB Business will in its sole discretion, and without being under any obligation to do so, maintain and/or upgrade the Software installed in terms of clause 5.6, which will include any patches, updates, security updates/patches of whatever nature. The Customer herewith authorises MWEB Business to implement any of the above, as and when it deems fit. Although MWEB Business will use its reasonable endeavours not to affect Server 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 losses or damages which arise or may arise out of such maintenance and/or upgrades.

5.6.5 MWEB Business will not be responsible for any software and/or applications not applied for in terms of the Application Form, including the licensing thereof.

5.6.6 Customer agrees that any software and/or applications contemplated in clause 5.6.5 needed and loaded, if allowed, by Customer on the Server will be its own responsibility and is loaded at its sole risk and responsibility. The licensing of all such installed software and/or applications shall be the sole responsibility of Customer. All software shall be licensed in accordance with the vendor's software license agreements. Without limiting the generality of the General Terms or any of the rights of the



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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 Server Hosting Service and Customer furthermore indemnifies MWEB Business from any losses, damages, costs, claims, penalties, fines of whatever nature, because of Customer's failure to license the software and/or applications correctly and/or at all. MWEB Business retains the right to carry out routine checks to validate such software license agreements.

5.6.7 Customer will be solely responsible for all the maintenance and/or upgrades of the software and/or applications, which will include any patches, updates and security updates/patches of whatever nature installed in terms of clause 5.6.6.

5.7 MWEB Business will use reasonable endeavours to provide a smooth, uninterrupted electrical power supply (UPS) to the Server. Other than as specifically provided in these Product Terms, MWEB Business will not be liable for any loss or damage as a result of any interruption in the power supply.

6. SERVICE LEVEL AGREEMENT

6.1 MWEB Business will provide Customer with Server Hosting set out herein in accordance with this Service Level Agreement ("Service Level Agreement").

6.2 MWEB Business will maintain an average of 99% service uptime over a consecutive period of 3 (three) months, provided that no three month period or any period forming part of such three month period shall be used more than once for the purpose of calculating the reduction in terms of clause 6.3 below.

6.3 Should the service uptime fall below the prescribed service uptime level, Customer shall be entitled to the following reduction of the Server Hosting Service Fees in respect of the relevant 3 (three) month period. Any reduction of Service Fees may only be claimed as a credit against future Service Fees.

6.3.1 99- 100% no reduction

6.3.2 95-98.999% 25 % reduction

6.3.3 90-94.999% 50 % reduction

6.3.4 Less than 90% 70% reduction

6.4 The liability of MWEB Business for failing to achieve the minimum service uptime in terms of this Service Level Agreement will be limited to the reduction contemplated in clause 6.3 above.

6.5 For the purpose of this Service Level Agreement:

6.5.1 service uptime will be measured by MWEB Business' monitoring software and only with reference to MWEB Business' network availability and UPS power;

6.5.2 the calculation of service uptime and the calculation of any reduction of Service Fees will exclude any downtime, outage or interruption or unavailability of the Server Hosting, as a result of, or caused by:



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- 6.5.2.1 any outage, interruption or unavailability of the services or facilities of an external or third party telecommunications or network provider to which the MWEB Business network infrastructure is connected;
 - 6.5.2.2 any outage, interruption or unavailability caused by Customer's hardware, software and/or applications;
 - 6.5.2.3 scheduled downtime for general, maintenance, enhancements, upgrades or modifications (or of an otherwise scheduled nature). MWEB Business shall use its reasonable endeavours to notify Customer of such downtime and shall furthermore use its reasonable endeavours to provide such notification at least 24 (twenty four) hours prior to such scheduled downtime.
 - 6.5.2.4 force majeure;
 - 6.5.2.5 any action or omission of the Customer, including without limitation, accidental damage, operator errors, abnormal operating conditions, the connection of unauthorised peripheral equipment, improper use, misuse, neglect or abuse of hosting service; and
 - 6.5.2.6 any factor beyond the reasonable control of MWEB Business.
- 6.6 MWEB Business will provide the monitoring service, and on a monthly basis provide uptime reports on request by Customer should Server statistics be required.
- 6.7 Should Customer wish to claim any reduction of Service Fees, Customer will, within 30 (thirty) days from the end of any 3 (three) months measurement period, notify MWEB Business in writing of the reduction claimed, the dates of the measurement period and the dates, times and duration of non-availability of Server Hosting service. MWEB Business may request further documentation and supporting data from Customer to compare against its own monitoring data.
- 6.8 All service requests and technical support calls can be logged 24 hours per day, 365 days per year with MWEB Business' Technical Assistance Centre by:
- 6.8.1 E-mail premier@mweb.com
 - 6.8.2 Telephone 0860 000 158
- 6.9 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.
- 6.10 MWEB Business will endeavour to resolve the problem immediately. Should MWEB Business' Technical Assistance Centre not be able to resolve the problem immediately, the problem will be escalated as follows:
- 6.10.1 Supervisor – Technical Assistance Centre
 - 6.10.2 Manager – Technical Assistance Centre
 - 6.10.3 Second Level Support Manager



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6.10.4 Technical Operations Manager

6.11 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:

6.11.1 Critical Disruptions: Total loss of all services	1 hour
6.11.2 Service Disruptions: Serious degradation of services	2 hours
6.11.3 Service Incidents: Minor loss/degradation of services	4 hours
6.11.4 Service Queries: No loss/degradation of services	4 hours

6.12 **24 Hour Reboot Service:** (if subscribed to)

Customer shall have access to the services of qualified MWEB Business technical staff outside of normal business hours to reboot the Server, should Customer not be able to reboot it remotely.

6.13 No operating systems will be reinstalled if custom DLL's were operational on the old system and are required on the new installation.

6.14 No software other than that indicated in the Application Form will be installed or troubleshot by MWEB Business' technical staff under any circumstances.

6.15 Operating system and SQL backups will be performed if selected in the Application Form.

6.16 MWEB Business will not be responsible for any loss of data should Customer require a system reinstall.

7. PROFESSIONAL MANAGEMENT AND BACK-UP (IF SUBSCRIBED TO)

7.1 This additional Server Hosting service shall only be available, should the Server be rented by Customer from MWEB Business in terms of the Equipment Rental Services Product Terms.

7.2 Should Customer subscribe to the additional Server Hosting service, Customer's Server Hosting shall be totally outsourced to MWEB Business and subject to the Service Level Agreement in clause 6 MWEB Business will attend to all maintenance and repair on the Server and Software on a 24 hour basis.

7.3 Customer shall not have any access to the Server.

7.4 MWEB Business will use reasonable endeavours to provide the best possible practices with regard to the backup services, but will not accept any liability for the loss of any data as a result of faulty hardware or software relating to the backup procedure.

8. MICROSOFT SOFTWARE RENTAL LICENCE (IF SUBSCRIBED TO)

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



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Business, the terms and conditions set out below will apply to the rental of such Microsoft software products to Customer. These are the Microsoft Terms and Conditions:

“TERMS AND CONDITIONS”

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

DEFINITIONS

“**Client Software**” means software that allows a Device to access or utilise the services or functionality provided by the Server Software.

“**Device**” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” or electronic device.

“**Server Software**” means software that provides services or functionality on a computer acting as a Server.

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

1. OWNERSHIP OF SOFTWARE PRODUCTS.

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

2. USE OF CLIENT SOFTWARE.

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

3. USE OF REDISTRIBUTION SOFTWARE.



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

YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“**SPUR**”) APPLICABLE TO MWEB, WHICH TERMS MUST BE PROVIDED TO YOU BY MWEB. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by MWEB Business.

4. COPIES.

You may not make copies of the SOFTWARE PRODUCTS, provided however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorized by MWEB Business; and (b) you make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with MWEB Business, upon notice from MWEB Business or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.

5. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILED AND DISASSEMBLY.

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

6. NO RENTAL.

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

7. TERMINATION.

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

8. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.

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

9. PRODUCT SUPPORT.



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

10. NOT FAULT TOLERANT.

THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

11. EXPORT RESTRICTIONS.

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

12. LIABILITY FOR BREACH.

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