PARTNER MASTER SERVICE AGREEMENT


By checking the "I have read, understand and accept the Terms and Conditions" box when registering for the Partner Program (as hereinafter defined), by logging into Sherweb’s administrative web Portal or by placing an order for any Services, You expressly agree to be bound by (i) all of the terms and conditions of this Partner Master Service Agreement with Sherweb (“MSA”) and (ii) by the following documents: (a) Service Schedule(s) (as defined below) for all Services that are sold to You or by You hereunder; (b) Sherweb Privacy Policy; (c) Sherweb Acceptable Use Policy; (d) Sherweb No-Spam Policy; (e) Trademark Guidelines; (f) Sherweb Partner Benefit Guide; and (g) any other document incorporated by reference into any of these documents. All of the above referenced documents, including their attachments, if any, are expressly incorporated herein by reference and are collectively referred to as the “Agreement”. Current copies of these documents are located at http://www.sherweb.com/legal.

Sherweb may, from time to time, update, revise, supplement and otherwise amend the Agreement or any document forming part of the Agreement by giving You notice. Sherweb will notify You of any amendments by email or by posting the new version on Sherweb’s website at http://www.sherweb.com/legal or at any other location communicated to You by Sherweb. Such changes will take effect immediately, unless otherwise indicated by Sherweb. You can review the most current versions of the Agreement and any document forming part of the Agreement at any time on Sherweb’s website at http://www.sherweb.com/legal, or at any other location communicated to You by Sherweb. Your continued participation in the Program after Sherweb posts a new version of the Agreement or any document forming part of the Agreement will constitute Your acceptance of the updated Agreement. If You do not wish to accept the updated Agreement, You may terminate the Agreement by giving written notice to Sherweb without Sherweb incurring any liability whatsoever.

Only one of Your authorized representatives may execute the Agreement. If you are an individual entering into the Agreement on behalf of a legal entity, you represent and warrant that you have the authority to bind such entity to the Agreement. If you do not have such authority, neither you nor such entity may accept the Agreement or use the Services.

BACKGROUND:

I. Sherweb offers certain hosted products and services, including hosted Exchange, Web Hosting, SharePoint Hosting, Hosted CRM, Microsoft Online Services and VoIP Services, provided by Sherweb and/or Third-Party Suppliers (as hereinafter defined), as well as a proprietary control panel to enable Partners and their Customers to monitor and control use of the Services;

II. You desire, and Sherweb is willing to grant You one or more of the following rights in relation to the Program for which You are registered:

   (a) If under the Reseller Program: a right to resell the Services to Customers using your own branding, in accordance with this Agreement;

   (b) If under the Distributor Program: a right to resell the Services to Customers in a co-branded manner, using Your branding elements and those of Sherweb, in accordance with this Agreement; or
NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definitions

Whenever used in the Agreement, the following capitalized terms shall have the respective meaning specified below:

(a) “Account” means the account created with Sherweb in connection with the Agreement that relates to Your subscription to, purchase, resale, distribution, promotion or use of the Services.

(b) “Account Information” means any information required in connection with or associated with Your Account, including Your Account Users, contact information, address, access information, Account number, login names, passwords, credit card and other financial information, security questions and their respective answers, Your Customers, and any other similar information.

(c) “Account User” means any of Your employees, consultants or independent contractors to whom You grant administrative permission to access the Portal, including the right to create, modify and delete Customer accounts, as well as the right to access and modify Your billing information and other functionalities available through the Portal.

(d) “Affiliate” means, with respect to any legal Entity, any other Entity who directly or indirectly controls, is controlled by, or is under direct or indirect common control with the first Entity; and for the purposes of this definition, an Entity “controls” another Entity if that Entity, directly or indirectly, possesses the power to direct or cause the direction of the management and policies of that other Entity, whether through (i) the ownership of more than fifty percent (50%) of the securities, or (ii) the capacity to elect the majority of the directors, or (iii) effective control by contract or otherwise; and “controlled by” and “under common control with” shall have corresponding meanings.

(e) “Agreement” means, collectively and as amended, (i) this MSA, (ii) any documents incorporated by reference into this MSA and (iii) their respective attachments, if any.

(f) “Applicable Law” means any and all applicable laws, rules and regulations, including any order, rule or decision of a governmental authority, Data Protection Law, as well as all standards and guidelines established by any authoritative industry organizations, and customary industry practices in any relevant jurisdiction.

(g) “AUP” means Sherweb’s Acceptable Use Policy located [here](#). The AUP shall be deemed a part of and shall be incorporated by reference into the Agreement.

(h) “Billing Cycle” refers to a one (1) month period beginning upon the Effective Date and renewing monthly.

(i) “Business Day” means any day other than a Saturday, Sunday or any statutory holiday in the Province of Québec.

(j) “Claim” or “Claims” means any claim, demand, action, suit, cause of action, assessment or reassessment, charge, judgment, debt, liability, expense, cost, damage or loss, direct or indirect, contingent or otherwise, including loss of value, reasonable professional fees, including fees of legal counsel on a lawyer-and-client basis, and all costs incurred in investigating, pursuing, enforcing or collecting any of the foregoing or in any proceedings relating to any of the foregoing.
“Commission” means all one-time and recurring payments and commissions that are contemplated to be paid by Sherweb to Advisor under the Advisor Program, or such other percentage of commission as agreed to in writing by Sherweb and You.

“Confidential Information” means (i) the terms of this Agreement; (ii) all non-public technical information about a Party’s business, affairs, goods and services, forecasts, technology (including programming and software code), trade secrets, marketing strategies, financial information, employee information, customer information and know-how; (iii) materials and documentation comprising or related to a Party’s Intellectual Property; or (iv) any other information which in the circumstances of its disclosure could be viewed by a reasonable person as confidential; in all cases whether oral or written, in electronic format or in any other form or media, and whether or not marked, designated or otherwise identified as “confidential”. Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act, omission, or breach of the Agreement by the Receiving Party (as defined below), (b) was in the Receiving Party’s lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party (as defined below) or obtained subject to an obligation to keep it confidential, (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure or (d) is independently developed by the Receiving Party. Your Confidential Information includes Service Data.

“Consumption Subscriptions” refers to a Subscription that does not expire unless cancelled.

“Customer Data” means any Service Data received by Partner from, or maintained by Partner on behalf of, a Customer in connection with the Services.

“Customer” means: i) for a Reseller, any Entity to whom Partner is permitted to resell Services using Partner’s own branding elements, in accordance with this Agreement; ii) for a Distributor, any Entity to whom Partner is permitted to resell Services on a co-branded basis, using branding elements of both Sherweb and Partner, in accordance with this Agreement; and iii) for an Advisor, any Entity referred to SherWeb by the Advisor for the purchase of the Services.

“Customer Agreement” means the written agreement entered into between You and the Customer for the Services, which agreement shall include terms which are no less onerous than those set out in Sherweb’s Master Service Agreement reproduced here, the documents incorporated thereto including, if applicable, the Microsoft Customer Agreement, and any other agreement and document that are required to provide the Services, each as may be amended by Sherweb from time to time in accordance with the Agreement.

“Data Protection Law” means any Applicable Law that governs You or Sherweb, relating to data security, data protection or privacy.

“Documentation” means user guide, product sheet, technical specifications and other official documentation provided by Sherweb or its Third-Party Suppliers that describe the functionalities and specifications of the Services.

“End User” means any Customer’s individual end users who use the Services.

“Entity” means a corporation, company, cooperative, partnership, trust, unincorporated association, entity with legal personality or governmental authority or body, or any other legal entity.

“Effective Date” shall have the meaning ascribed thereto in Section 7.1.

“Feedback” means any suggestions, enhancement requests, recommendations or other feedback provided by You, Your Account Users, Your Customers or any End User to Sherweb in connection with the Services.

“Fees” means the fees payable for the Services, as set forth in Your Account.
“Fixed-Term Subscription” refers to a Subscription that is sold for a term of twelve (12) months (or any other specific term agreed in writing between the Parties).

“Intellectual Property” means anything that is or may be protected by any Intellectual Property Rights or any other intangible assets, whether protectable by Intellectual Property Rights or not, including all software, inventions, algorithms, architecture, class libraries, databases, documentation (both printed and electronic), design, industrial design, hardware design, logos, know-how, business methods, utility models, trade secrets, works, performances, Marks (as hereinafter defined), domain names, and Confidential Information, as applicable.

“Intellectual Property Rights” means all rights protectable by copyright, trademark, patent, industrial design or trade secret and any other intellectual, industrial or similar property rights in intangible assets recognized under Applicable Law.

“Marks” means any trademarks, service marks and trade names, whether or not registered.

“Marketing Materials” means current marketing or promotional material used to sell, promote and deliver the Services, which may include: (i) appropriate collateral materials (i.e. product one pager, user guide, case studies, training videos, FAQ, success stories and competitive reports); (ii) demonstrations to aid in the sale and marketing of the Services and recorded video of a client demonstration made by Sherweb; and (iii) research made or published with respect to on-demand content publishing.

“Net Revenue” means, for the purposes of the Advisor Program, the aggregate of all royalties, fees and other amounts actually received by Sherweb from Customers in consideration for the Services, excluding taxes. Services purchased by Partner or any of its Affiliates shall not be used for the purpose of calculating the Net Revenue.

“Monthly Subscription” refers to a one-month Subscription.

“NFR Program” refers to the Not For Resale program which enables Partners to use certain Services at a discount as per the NFR Program Guide.

“NFR Services” mean Services purchased by Partner under the NFR Program.

“NFR Program Guide” means the Not For Resale program guide available in the Partner Toolbox. The NFR Program Guide shall be deemed a part of and shall be incorporated by reference into the Agreement.

“No-Spam Policy” means Sherweb’s No-Spam Policy located here. The No-Spam Policy shall be deemed a part of and shall be incorporated by reference into the Agreement.

“Partner” or “Partners” means You, acting as Reseller or Distributor of the Services pursuant to this Agreement and, collectively, all of Sherweb’s Resellers and Distributors of the Services, including You.

“Partner Benefit Guide” means the Sherweb’s written guide located here describing the benefits granted to Partner under the Program. The Partner Benefit Guide shall be deemed a part of and shall be incorporated by reference into the Agreement.

“Partner Toolbox” means the web-based toolbox made available exclusively to Sherweb’s Partners and which contains guidance and resources to help Partners get started, build, sell, and market the Services under the Partner Program.

“Personal Data” means any information relating to an identified or identifiable natural person.
“Portal” means the applicable Sherweb administrative web portal located here, based on Your Account.

“Portal Service Schedule” means the specific product terms located here that specifically describe the Portal Service provided to You under the Agreement, including without limitation, service descriptions, specific terms and conditions, service availability warranty and other terms. The Portal Service Schedule shall be deemed a part of and shall be incorporated by reference into the Agreement.

“Privacy Policy” means Sherweb’s privacy policy located here, including the Service Data Privacy Statement located here. The Privacy Policy and associated Service Data Privacy Statement shall be deemed a part of and shall be incorporated by reference into the Agreement.

“Program” or “Programs” means, depending on the context, one of the following programs, as further described at https://www.sherweb.com/partners/partnership-models/, which are designed to govern Sherweb’s relationship with the following categories of partners:

(i) “Advisor” means a Partner that has been granted and accepted an appointment as a non-exclusive referral agent to Sherweb for the sale of the Services under Sherweb’s Advisor Program.

(ii) “Distributor” means a Partner that has been granted and accepted an appointment as a non-exclusive distributor of the Services to Customers or Sub-Distributors under Sherweb’s Distributor Program, and who is permitted to distribute the Services using branding elements of both Sherweb and Partner. It should be noted that entities that are referred to in the Agreement as “Sub-Distributors” under the Distributor Program may be referred to as resellers under the Program and should not be confused with Sub-Resellers under the Reseller Program.

(iii) “Reseller” means a Partner that has been granted and accepted an appointment as a non-exclusive reseller of the Services to Customers and Sub-Resellers under Sherweb’s Reseller Program, and who is permitted to resell the Services using only branding elements of Partner (except for Third-Party Services which must maintain branding elements of Third-Party Suppliers). It should be noted that entities that are referred to in the Agreement as “Sub-Distributors” under the Distributor Program may be referred to as resellers under the Program.

“Property Assets” means any and all Services, components of the Services, Third-Party Services, Marketing Material, Intellectual Property and other property made available to You, Your Customers and any End-User in connection with the Services, whether owned by Sherweb, a Third-Party Supplier or licensed to Sherweb by a third party.

“Processing/To Process/Processed” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

“Representative” has the meaning ascribed thereto in Section 14.3 below.

“Service” means (i) any and all cloud and software services and products, as such services and products are offered from time-to-time by Sherweb and subscribed to, purchased, used, resold, distributed or promoted by You pursuant to the Agreement, and which may include Third-Party Services; (ii) any Documentation or Marketing Materials related to the Services described in sub-section (i); and (iii) any enhancement, update, upgrade, Technical Support and professional services provided by Sherweb or any Third-Party Supplier in association with the Services described in sub-section (i).

“Service Availability” means, for a particular Service, the ability for any End User to access and use such Service.
(vv) “Service Data” means all data provided to Sherweb, placed on Sherweb’s servers, or used, posted, stored or otherwise transferred or transmitted to Sherweb in connection with the Services, including text, sound, video or image file, material, product, content, IP address and similar address, recording, message, software, Account Information, account-related setting, Customer Data and which may include, without limitation, Personal Data.

(ww) “Service Data Privacy Statement” means Sherweb Privacy Statement located here with regard to Service Data Processed on Your behalf during provision of the Services and that is intended to supplement and clarify the Sherweb Privacy Policy. The Service Data Privacy Statement shall be deemed a part of and shall be incorporated by reference into the Agreement.

(xx) “Service Outage” means a period of time during which a Service is unavailable resulting in a degradation of the Service that has a material adverse effect on You or any End User.

(yy) “Service Schedule(s)” means the Service-specific product terms located here that specifically describe the Services used by You or Your Customers and their End Users under the Agreement, including without limitation, service descriptions, specific terms and conditions, service availability warranty and other terms. Each Service Schedule shall be deemed a part of and incorporated by reference into the Agreement.

(zz) “Sub-Distributor” means a business entity You have appointed as a distributor of the Services in the form of co-branded applications to Customers under Sherweb’s Distributor Program, in compliance with the terms of the Agreement.

(aaa) “Sub-Reseller” means a business entity You have appointed as a reseller of the Services as white-label applications to Customers under Sherweb’s Reseller Program, in compliance with the terms of the Agreement.

(bbb) “Subscription” means a right to use certain Services for a defined term.

(ccc) “Subscription Plan” means any service plan set forth and accepted by You upon ordering any Service, and which describes the Services selected and ordered by You, their corresponding itemized fees and the applicable Term, as shown in Your Account.

(ddd) “Taxes” means all national, provincial and municipal, income, franchise, consumption, business, gross receipt, property, sales, use, excise, value-added, goods and services taxes, and all other similar taxes, duties, fees, charges or surcharges whether now or hereafter enacted, however designated, imposed on or based on the provision, sale or use of the Services.

(eee) “Technical Support” means technical assistance and support services provided in connection with the Services, which may be related to (but not limited to) the Account set-up and configuration, access to the Services, and the resolution of other technical issues related to the Services.

(fff) “Term” means the period of time between the Effective Date (as defined above) and the expiration or termination of the Agreement.

(ggg) “Third-Party Services” means any software, services or products that are owned and/or offered by a Third-Party Supplier and that are provided, made available, displayed, run or accessed through or in association with the Services.

(hhh) “Third-Party Supplier” means any vendor or licensor of software, services or products included in or offered in association with the Services, and any of its Affiliates.

(iii) “Trademark Guidelines” means Sherweb’s guidelines for the use of Sherweb’s Marks located here. The Trademark Guidelines shall be deemed a part of and shall be incorporated by reference into the Agreement.
(jjj) “You” or “Your” means the Entity on whose behalf the Agreement is accepted.

2. Appointment

2.1. Grant of Rights. Subject to the terms and conditions of the Agreement, Sherweb hereby appoints You and You hereby accept such appointment as follows:

(a) If under the Reseller Program: Sherweb hereby appoints You as Sherweb’s non-exclusive reseller and grants You the limited, non-exclusive, non-transferable, non-sublicensable and revocable right to promote and resell the Services to Customers using only Your branding elements. As a Reseller, You or Your Sub-Resellers will provide Services to Customers through a web portal or online marketplace with Your own branding or Your Sub-Reseller’s branding, provided that You shall be wholly responsible for any Marks used for such branding, including any claims of infringement of any third party’s Marks. For clarity, while the Reseller Program allows for the web portal or online marketplace to feature the Marks of the Reseller or its Sub-Resellers, the Services themselves may nonetheless include Marks and other proprietary notices of Sherweb or Third-Party Suppliers. You shall not alter, obscure or remove any branding, copyright, Mark or patent notice of Sherweb or any third-party on the Services, and You shall comply at all times with the Trademark Guidelines.

(b) If under the Distributor Program: Sherweb hereby appoints You as Sherweb’s non-exclusive distributor of the Services and grants You the limited, non-exclusive, non-transferable, non-sublicensable, and revocable right to distribute the Services to Customers using branding elements of both Sherweb and You. As a Distributor, You and Your Sub-Distributors will provide the Services to Customers through a web portal or online marketplace co-branded along with Sherweb’s Marks and Distributor’s Marks (or Sub-Distributor’s Marks), provided that You shall be wholly responsible for any of Your Marks used for such co-branding, including any claims of infringement of third-party Marks, unless such infringement relates solely to Sherweb’s Marks. Sherweb shall work together with You to achieve mutually satisfactory display of both Parties’ Marks. For clarity, while the Distributor Program allows for the web portal or online marketplace to feature the Marks of the Distributor or its Sub-Distributors, the Services themselves may nonetheless include Marks and other proprietary notices of Sherweb or Third-Party Suppliers. You shall not alter, obscure or remove any branding, copyright, Mark, or patent notice of Sherweb or of any third-party on the Services, and You shall comply at all times with the Trademark Guidelines.

(c) If under the Advisor Program: SherWeb hereby appoints You as SherWeb’s non-exclusive referral agent of the Services and grants You the limited, non-exclusive, non-transferable, non-sublicensable, and revocable right to promote the Services and refer SherWeb to Customers under the terms provided herein. As an Advisor, You have no authority to bind SherWeb or enter into an agreement on behalf of SherWeb.

2.2. Marketing Materials. In the context of this Agreement, Sherweb may provide You with Marketing Materials. Sherweb hereby grants You, and You hereby accept, a non-exclusive, limited, worldwide, royalty-free, fully paid-up, revocable, non-transferable and non-sublicensable license, for the Term, to use, reproduce and distribute the Sherweb Marketing Materials to prospective or current Customers, for the sole purpose of marketing and distributing the Services under this Agreement. You may not copy or modify the Marketing Materials or use the Marketing Materials for purposes unrelated to the marketing and distribution of the Services, unless expressly authorized otherwise by Sherweb.

2.3. Limitation. The grant of rights under this Section 2 is reserved for Entities that are providing services to multiple Customers in a competitive market. The Agreement is not to be used by Entities that are Affiliates of Customers or not at arm’s length with Customers in order to gain advantageous pricing. If Sherweb determines, in its sole discretion, that You infringe this requirement, Sherweb shall be entitled to refuse Your participation in the Program and to terminate the Agreement upon five (5) days’ notice.
2.4. Benefits. Subject to the terms and conditions of the Agreement, Sherweb hereby grants You the benefits described in the Partner Benefit Guide, the whole in accordance with the terms set forth in the Partner Benefit Guide.

2.5. NFR Program. To be eligible for the NFR Program, You must at all times (unless otherwise approved by Sherweb) meet the minimum requirements and eligibility criteria for participation as set forth in the NFR Program Guide. Use of the NFR Services is subject to the terms of this Agreement, including the terms of the NFR Program Guide. Sherweb may discontinue, or change the terms of the NFR Program, and may terminate Your participation into the NFR Program at any time.

3. Partner Obligations

3.1. Promotion, Marketing and Publicity. You agree to use commercially reasonable efforts to market and promote the Services to existing and prospective Customers, and to do so in accordance with the Marketing Materials that may be provided to You by Sherweb. Other than Marketing Materials that may be made available to You by Sherweb, You are responsible for creating any additional advertising materials that You may consider appropriate to market and promote the Services, at Your own cost and expense. In all cases, Your marketing and promotion of the Services shall at all times be performed in accordance with Applicable Law, the Trademark Guidelines and without infringing on any third-party rights, including Intellectual Property Rights.

3.2. General Obligations. You agree to comply with (and to refrain from engaging in a conduct that could lead to a foreseeable risk of violation of) the terms and conditions of the Agreement (together with all documents incorporated by reference) and with all applicable Sherweb procedures and policies that may be communicated to you from time to time and that further define the provision and use of the Services. You further agree (i) not to use or access the Services to publish, transfer, display, store, distribute or disseminate or otherwise transmit, load upon or make available anything (including information, files, software, data or other content) that is inappropriate, inaccurate, illegal, profane, defamatory, obscene or indecent, or any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software, program or device that may be damaging, or to damage, inappropriate, hack into or misuse the Service, and (ii) not to otherwise use the Services for unlawful, prohibited, illegal, inappropriate, offensive, damaging or otherwise unsuitable purposes, including in connection with activities involving junk email, spamming, hacking, defamation, abuse, harassment, stalking, threatening or otherwise violating the rights of any person.

3.3 Customer Agreement. If You are a Reseller or Distributor, You are solely responsible to ensure that, for each Customer: (i) prior to accessing the Services, the Customer agrees to, and is legally bound, with You or with Your Sub-Reseller or Sub-Distributor, as the case may be, by the Customer Agreement; (ii) the Customer Agreement is effective and binding in all applicable jurisdictions where the Customer does business and where its End Users are located; (iv) Services will only be provided to such Customer; (iii) the Customer complies at all times with the terms of the Customer Agreement (including enforcing, at Your own expense, the terms of the Customer Agreement with at least the same degree of diligence used by You to enforce similar agreements, but in no event less than a reasonable degree of diligence); and (v) You will promptly notify Sherweb about any known or suspected violations by the Customer of the terms and conditions of the Customer Agreement. You acknowledge and agree that (a) Sherweb shall be deemed to be a third-party beneficiary of the Customer Agreement and You will use Your reasonable efforts, at Your own expense, to assist Sherweb should it wish to enforce the terms of the Customer Agreement directly against Your Customer and that (b) the acts or omissions of any of Your Customers in connection with the Services shall be deemed to be acts or omissions by You and any breach by Your Customer of the Customer Agreement shall be deemed to be a breach by You.

3.4. Sub-Resellers and Sub-Distributors. If You are a Reseller or a Distributor and You appoint Sub-Resellers or Sub-Distributors, You are solely responsible to ensure that: (i) prior to becoming a Sub-Reseller or Sub-Distributor, each Sub-Reseller and Sub-Distributor agrees to and is legally bound by a written agreement for the resale or distribution of the Services, the terms of which are no less restrictive than the terms of this Agreement (“Sub-
Partner Agreement”); (ii) each Sub-Partner Agreement is effective and binding in all applicable jurisdictions where the Sub-Reseller or Sub-Distributor conducts business; (iii) each Sub-Reseller and Sub-Distributor complies at all times with the Sub-Partner Agreement (including enforcing, at Your own expense, the terms of the Sub-Partner Agreement); (iv) You will promptly notify Sherweb about any known or suspected violations of the terms and conditions of the Sub-Partner Agreement by a Sub-Reseller or Sub-Distributor. You acknowledge and agree that: (a) Sherweb shall be deemed to be a third-party beneficiary of the Sub-Partner Agreements and You will use all reasonable efforts, at Your own expense, to assist Sherweb in enforcing the terms of the Sub-Partner Agreements; and (b) the acts or omissions of any of Your Sub-Resellers or Sub-Distributors in connection with the resale or distribution of the Services, shall be deemed to be acts or omissions by You and any breach by Your Sub-Resellers or Sub-Distributors of the Sub-Partner Agreement will be deemed to be a breach by You of this Agreement.

4. Account

4.1. Portal. Subject to the terms and conditions of the Agreement and the Portal Service Schedule, You may, for the Term, access and use the Portal to manage Your Account, update Your Account Information, order or remove Services and manage Your Customers.

4.2. Account Information. Your failure to timely update Your Account Information could result in unauthorized access to Your Account, in the impossibility to access or use the Services, in the impossibility of communicating with You or of processing payment on Your Account. Accordingly, You agree to maintain accurate Account Information by providing updates to Sherweb promptly when any of Your Account Information requires changes. You acknowledge and agree that in the event of any dispute regarding access to or legal ownership of an account or any portion thereof, including Your Account, (i) upon request, You will provide Sherweb with any documentation it reasonably requests to establish ownership and rights on Your Account and any related Service Data; and (ii) Sherweb will resolve such dispute in its sole discretion. You acknowledge and agree that any Account User identified by You as an administrator with respect to Your Account has the authority to bind You to any amendments, modifications or acknowledgements related to the Agreement or the Services.

4.3. Security. You are solely responsible for (i) maintaining the confidentiality and security of Your password and other access information associated with Your Account, and (ii) all activities that occur in connection with Your Account, whether initiated by You, by others on Your behalf or by any other means. You will notify Sherweb immediately of any unauthorized use of Your Account, or any other actual or potential breach of security. You acknowledge and agree that Sherweb will not be liable for any loss that You may incur as a result of any party using or accessing Your Account, either with or without Your knowledge and/or authorization. Sherweb specifically disclaims all liability for any activity in Your Account, whether authorized by You or not.

5. Ownership

5.1. Property Assets. You acknowledge and agree that Sherweb and/or its Third-Party Suppliers own all proprietary rights, including Intellectual Property Rights, on the Property Assets. You shall not, directly or indirectly: (i) use, sell, rent, lease, encumber, host, copy, license, publish, display, distribute, or otherwise transfer or make the Services or Property Assets available to a third party, except as expressly permitted by the Agreement; (ii) use the Services available on a time share or service bureau basis, or distribute them as part of an OEM or other similar arrangement; (iii) disclose any Property Asset to a third party (except for Marketing Materials that are intended to be distributed); (iv) alter, or permit the alteration of any Property Asset; (v) modify, reprogram, translate, disassemble, decompile, reverse engineer or otherwise attempt to derive source code from any Property Asset; (vi) remove, modify or obscure any copyright, Mark or other proprietary rights notices that appear on any Property Asset; (vii) acquire or seek to acquire any ownership interest on any Property Asset; (viii) knowingly take any action that jeopardizes Sherweb’s or its Third-Party Suppliers’ proprietary rights on any Property Asset; (ix) create any derivative works from any software made available as part of the Services or attempt to inspire Yourself from the source code or from the software architecture to develop a competing offering. Except as expressly provided herein, nothing in the Agreement shall be interpreted as granting You or any other person or entity, any right, title,
or interest on the Services or the Property Assets. You shall ensure that Customers comply at all times with the terms of this Section 5 and You shall use commercially reasonable efforts to prevent any unauthorized distribution, copying, use or pirating of Property Assets. You shall not distribute or make the Services available through another reseller or distributor except as a Sub-Reseller of Reseller or a Sub-Distributor of a Distributor and subject to the terms of the Agreement. You are liable to Sherweb for any breach of the limitations set out in this Section 5.1 by You or any Customer and by your Sub-Resellers and Sub-Distributors, as the case may be.

5.2. **Service Data.** As between the Parties, You retain all right, title and interest in and to the Service Data. Sherweb acquires no rights in the Service Data other than the rights You grant to Sherweb in the performance of the Services pursuant to the Agreement.

6. **Fees and Payment Terms**

6.1. **Responsibility.** If You are a Reseller or a Distributor: (i) You are solely responsible for billing Your Customers, Sub-Resellers or Sub-Distributors and collecting their payments; and (ii) You may set the prices for the Services provided to the Customers, Sub-Resellers and Sub-Distributors. If You are an Advisor, SherWeb is solely responsible for billing the Customers and may set the prices, promotions, discounts, and any other business terms applicable for the Services at its sole discretion.

6.2. **Reseller and Distributor Payment Terms.** If You are a Reseller or Distributor, the following terms apply:

6.2.1. **Fees.** In consideration for the rights granted by Sherweb under the Agreement, beginning on the Effective Date, You shall pay Sherweb the Fees, together with any and all applicable Taxes related to the Services provided.

6.2.2. **Billing.** Sherweb will invoice You on a monthly basis at the end of each Billing Cycle according to the number of Services allocated through Your Account and which are active at the date of the invoice. You will be able to view and print Your invoice from Your Account using the Portal. Sherweb reserves the right to invoice You, including any amended or corrected invoices, for a period of up to twelve (12) months after the Services are provided, except in connection with a reassessment of Taxes initiated by a government Entity, in which case the reassessment of Taxes can occur at any time. The following terms apply with respect to Your Subscriptions:

(a) **Monthly Subscriptions.** Monthly Subscriptions are billed monthly.

(b) **Fixed-Term Subscriptions.** If available, for Fixed Term Subscriptions, You may choose to be billed and pay on a monthly or annual basis. If billed monthly, You will be billed based on the applicable monthly Subscription price. If billed annually, You will be billed in advance and in full at Your next scheduled monthly invoice.

(c) **Consumptions Subscriptions.** Consumption Subscriptions are billed monthly based on usage during the preceding Billing Cycle and the Fee effective upon the billing date.

6.2.3. **Payment Method.** Except as otherwise agreed to in writing by Sherweb, the Fees shall be paid by credit card. Payment will be applied to Your credit card immediately upon issuance of Your invoice. If, after fifteen (15) days from the initial attempt to charge an invoiced amount on the credit card, Sherweb is still unable to charge Your credit card, Sherweb may, at its discretion: (i) immediately suspend access to the Services; during such suspension, existing Service Data will not be destroyed; or (ii) terminate the Agreement and delete all Your Service Data pursuant to Sections 7.2 and 7.5 of the Agreement.

6.2.4. **Late Payment.** If You fail to make payment of any amounts invoiced in strict conformity with the above requirements, Sherweb shall have the right, in addition to any other rights or remedies under the Agreement, to assess, and You shall pay, a finance charge equal to 18% per annum, compounded monthly (effective rate
of 19.56% per annum) or the maximum rate permitted by Applicable Law if lower than 18% per annum. While amounts are due under this Agreement, Sherweb also reserves the right to suspend access to the Services and, during such suspension, existing Service Data will not be destroyed.

6.2.5. Billing Disputes. In the event You dispute in good faith any portion of an invoice issued by Sherweb, You shall pay the undisputed portion of the invoice and submit a written claim for the disputed amount, documenting the basis of Your claim. All claims must be submitted to Sherweb in writing within ninety (90) days after issuance of the invoice. You acknowledge that You are able to and that it is reasonable to require You to dispute invoices within that time.

6.3. Advisor Commission. If You are an Advisor, SherWeb will pay You a Commission on a monthly basis, based on the Net Revenue received by SherWeb. In order to receive Your Commission, You need to provide SherWeb Your bank account information. SherWeb will pay the Commission by direct deposit within thirty (30) days after the end of the calendar month in which the amounts are received by SherWeb. If, in any given calendar month, the Commission is less than one hundred dollars ($100.00) (the “Threshold Commission”), then payment will be withheld until such time as the total Commission equals or exceeds the Threshold Commission. If You do not provide Your bank account information to SherWeb, then payment will be withheld until such time as provide Your bank account information, up to a maximum period of twelve (12) months, after which SherWeb reserves the right to cancel the Commission accrued for the period preceding that twelve (12) month period. You hereby agree that SherWeb’s reasonable determination of Commission shall be final and not subject to review or appeal, except in the case of manifest error.

6.4. Fee Increase. Sherweb reserves the right to increase the Fees applicable to the Services upon fourteen (14) calendar days’ prior notice to You. Your continued participation in the Program after Sherweb notifies You of a Fee increase will constitute Your acceptance of such Fee increase. If You do not agree with such Fee increase, You will have the right to terminate the affected Services immediately upon notice, provided that such notice of termination is received within fourteen (14) calendar days of the date on which you are notified of the Fee increase. The Fees for a current Subscription will not change during the Subscription Term (as defined below). If the Fees increase during a then-current Subscription Term, the updated Fees will become applicable upon renewal of current Subscriptions or immediately for any new Subscriptions. Notwithstanding the foregoing, the Fee for a Service sold on a consumption basis may change during the Billing Cycle, in which case You will be charged the Fee that is effective on the billing date.

6.5. Taxes. Each party will be responsible for Taxes based on its own capital, net income, and for Taxes on any property it owns. In the event Taxes must be withheld from any payment to Sherweb, You will increase the payment to Sherweb so that the amount received by Sherweb is the same as it would have been if no Taxes were withheld. You shall, in addition to the other amounts payable under the Agreement, pay all Taxes which are levied or imposed on the transactions contemplated by the Agreement. As such, You acknowledge and agree that You are solely responsible for the payment of all Taxes imposed by any governmental authority in connection with the resale and/or supply of the Services under the Agreement and that You will collect and remit to applicable governmental tax authorities all such Taxes.

6.6. Tax Exemption. If You provide Sherweb written documentation of Your tax-exempt status in a form reasonably acceptable to Sherweb, Sherweb will not charge You any Taxes exempted due to Your request and supporting documentation. Such documentation of Your tax-exempt status shall include a valid and properly executed tax exemption certificate(s) and/or statement(s) of indemnification for any taxes from which You seek exemption. You will pay any and all remaining non-exempt Taxes. For clarity, the establishment of exemption from any Taxes is Your sole responsibility and Sherweb is not obligated to consider any retroactive request for tax exemption.
7. Term and Termination

7.1. Effective Date. The Agreement shall be effective upon the date You join the Partner Program, Your acceptance of the Agreement or Your use or access to any of the Services, whichever occurs first ("Effective Date"), and shall remain in effect until it is terminated by either Party in accordance with the terms of the Agreement.

7.2. Termination for Convenience. Except as otherwise agreed by the Parties, this Agreement may be terminated by either Party upon delivery of a written notice of its intent to terminate the Agreement ("Notice of Intent to Terminate"), effective thirty (30) days after delivery of such Notice of Intent to Terminate.

7.3. Immediate Suspension or Termination. Sherweb shall have the right, at its option, to terminate the Agreement or suspend Your Account or Services, in whole or in part, immediately and without prior notice, on the occurrence of any of the events detailed below (each an “Event of Default”). In relation to any Event of Default that is capable of being cured, Sherweb reserves the right, while the Event of Default remains uncured, to elect not to provide any further Technical Support pursuant to Section 9 hereof or to elect not to process new purchases of Services, renew subscriptions for Services or update seat counts for existing subscriptions of Services. For the purposes of this Section 7.3, each of the following events is considered an Event of Default, irrespective of whether it is triggered by any actions or omissions or You, Your Customers, Your Sub-Resellers or Your Subdistributors, as the case may be:

(a) You are in material breach of your obligations under this Agreement, provided that such breach is capable of being cured, and further provided that such breach remains uncured after a thirty (30) day notice to You (or fifteen (15) days if the breach is a failure by You to make any payment to Sherweb when due under the Agreement); or

(b) In the event You are in material breach of Your obligations under the Agreement more than two (2) times notwithstanding any cure of such breaches; or

(c) In the event You are in breach of Your obligations under the Agreement and such breach is incapable of being cured;

(d) If Sherweb determines that You engaged or engage in illegal or deceptive trade practices or that You have violated, violate or that You are reasonably likely to violate: (i) the AUP or any other principles, guidelines, policy or procedure disclosed to You, and set forth by Sherweb or its Third-Party Suppliers, in connection with the Services; (ii) Section 2.3 of the MSA; (iii) Section 3 of the MSA; (iv) Section 12 of this Agreement; (iv) any Property Asset or any Intellectual Property Right of Sherweb, its Third-Party Suppliers or any third party; (v) Your confidentiality obligations under the Agreement; or (vi) Your non-solicitation obligation under the Agreement; or

(e) If the sale or distribution of the Services by You, as the case may be, would harm or devalue the business, brand or name of Sherweb or its Third-Party Suppliers; or

(f) If Your use of the Services results in, or is the subject of, actual or potential legal action or threatened legal action against Sherweb or any of its Affiliates, vendors, partners, representatives or customers, whether such actual or potential legal action or threatened legal action is eventually determined to be with or without merit.

7.4. Termination Related to Bankruptcy and Insolvency. Either Party may terminate this Agreement immediately by serving on the other Party a Notice of Intent to Terminate in the event the other Party (i) terminates or suspends its business; (ii) becomes subject to any bankruptcy, insolvency or other similar proceedings under Applicable Law, including as a result of a proposal or arrangement being made to that Party’s creditors; (iii) becomes insolvent or subject to direct control by a trustee, receiver or similar authority; or (iv) has wound up or is being liquidated, voluntarily or otherwise.
7.5. **Third-Party Supplier Termination.** In the event a Third-Party Supplier of one or more Third-Party Services terminates the applicable agreement with Sherweb, in whole or in part, including with respect to individual Services or with respect to a particular Customer, Sherweb may terminate the Agreement, in whole or in part, within the same deadline as the Third-Party Supplier, including termination of only those Services or termination only in relation to such Customer as terminated by the Third-Party Supplier without any liability or further obligation.

7.6. **Effects of Termination.** Termination will not cancel or waive any fees owed to Sherweb or incurred prior to or upon termination and except as expressly provided herein, Sherweb shall not be required to reimburse any prepaid fees. Upon termination of the Agreement, in whole or in part: (i) Sherweb will close Your Account; (ii) Sherweb may charge any unpaid balance to Your credit card on file or otherwise invoice You for such unpaid balance; (iii) You will promptly remove all references to the terminated Services and any Marks or Sherweb branding from Your web portal or marketplace; (iv) You will promptly stop all use of the Services and uninstall and remove all copies of software provided by Sherweb or Third-Party Suppliers from Your Customers’ devices, or otherwise render such Services permanently unusable by You or Your Customers, and You will require that Your Customers return or destroy all copies of such software that they received; (v) Sherweb will have no obligations to You, for payment or otherwise, with respect to Your Customers; and (vi) Sherweb may irrevocably delete Your Service Data upon the effective termination date, unless otherwise set forth in the applicable Service Schedule. You are solely responsible for securing all necessary Service Data from Your Account prior to termination. Sherweb shall not be responsible for any loss of Service Data or any damages arising from the deletion of Service Data following termination of the Services.

7.7. **Other Relief.** Any termination of the Agreement: (i) does not relieve either Party of its obligations that have accrued under this Agreement or operate to discharge any liability that has been incurred by either Party prior to the effective date of termination; and (ii) shall be without prejudice to any other rights (including any right of indemnity), remedy or relief vested in or to which the terminating Party may otherwise be entitled against the other Party.

8. **Service Orders and Subscription Plans**

8.1. **Service Orders for Customer.** When You purchase Services from Sherweb for resale or distribution to a Customer, You must electronically submit an order via the Portal, or by such other reasonable means as Sherweb may specify from time to time. Upon receipt of each order, a Subscription Plan will be created specific to such purchase, setting forth the initial term, Fee structure, payment schedule and other terms and conditions with respect to such purchase, and Sherweb will provision the Services based on the Customer information provided by You.

8.2. **Subscription Term.** Except for a Consumption Subscription, the term of each Subscription Plan (“**Subscription Term**”) shall be an initial term with a specific duration to be agreed to by You and the Customer (e.g., one (1) month, one (1) year or some other mutually agreed-upon period) (a “**Subscription Initial Term**”), followed by renewal periods with a duration to be agreed to by You and the Customer (a “**Subscription Renewal Term**”). Each Subscription Plan will renew automatically at the end of the then current Subscription Term, unless terminated in accordance with this Agreement or except as otherwise provided in a Service Schedule.

(a) **Monthly Subscriptions.** The Subscription Initial Term for a Monthly Subscription is defined as one (1) month beginning upon the provision date of the Subscription, through the remainder of the Billing Cycle. A Subscription Renewal Term for a Monthly Subscription is defined as one (1) month beginning at the end of the Subscription Initial Term and each subsequent month thereafter.

(b) **Fixed-Term Subscriptions.** The Subscription Initial Term for a Fixed-Term Subscription is defined as twelve (12) months (or any other specific term agreed in writing between the Parties) beginning upon the provision date of the Subscription. A Subscription Renewal Term for a Fixed-Term Subscription is defined as twelve (12) months, except as otherwise provided in a Service Schedule.
8.3. Disablement and Cancellation of Subscriptions. The following terms apply if You terminate a current Subscription:

(a) **Monthly Subscriptions.** If You terminate a Monthly Subscription prior to the end of the then current Subscription Term, the monthly invoice shall represent the value of the Services rendered up to the effective date of termination.

(b) **Fixed-Term Subscriptions - Cancellation by You.** If You terminate a Fixed Term Subscription prior to the end of the then current Subscription Term, Sherweb (i) will not provide a refund in connection with Your cancelled Subscriptions, (ii) reserves the right to invoice You for any future scheduled billings for that Subscription; and (iii) reserves the right to invoice You all Fees previously waived, discounts, or rebates applied or granted for that Subscription.

(c) **Fixed-Term Subscriptions - Cancellation by Sherweb.** If a Fixed Term Subscription is cancelled by Sherweb or a Third-Party Supplier prior to the end of the then current Subscription Term, (i) notwithstanding Section 7.6, You will receive a prorated credit for the unused prepaid portion of the cancelled Subscription in Your subsequent invoice, provided that such cancellation is not due to Your violation of the Agreement (or that of your End-Users), and (ii) Sherweb will not invoice You for any future scheduled billings for that Subscription. Any refund of prepaid Fees by Sherweb shall constitute the maximum extent of Sherweb’s liability for termination of the Subscription.

(d) **Consumptions Subscriptions.** Consumption Subscriptions can be cancelled at any time and any usage before cancellation will be billed in the next scheduled billing date.

9. **Technical Support**

9.1. **Technical Support.** Except as otherwise set forth in the Agreement, Sherweb will provide You 24/7/365 Technical Support, including by phone and email, in accordance with the terms set forth below. You may designate up to four (4), but no more than four (4), Account Users who are authorized to call Sherweb’s Technical Support services (“Designated Support Users”). No support to Customers and End Users will be provided by Sherweb, except as otherwise mutually agreed in writing by the Parties.

9.2. **Reseller.** If You are a Reseller, You are responsible for providing 24/7/365 Technical Support to Your Sub-Resellers and Customers. You hereby represent and warrant that (A) You will use commercially reasonable efforts to service and support Your Customers in connection with the Services, (B) You have current access to all online tools required to perform Your obligations, and (C) You will inform Sherweb of any difficulties You encounter in servicing Your Customers.

9.3. **Distributor and Advisor.** If You are a Distributor or an Advisor, SherWeb will provide 24/7/365 Technical Support to Your Sub-Distributors and Customers, including by phone and email, in accordance with the terms set forth below. Each of Your Sub-Distributors and/or Customers may designate up to four (4), but no more than four (4), Designated Support Users.

9.4. **Request.** In order to receive Technical Support, a Designated Support User must send a request to Sherweb with the following information:

- Account name (or Sub-Reseller, Sub-Distributor or Customer Account name, if applicable):
- Issue involved:
- Date and time the issue occurred:
- Detailed description of the issue:
- Error messages (if applicable):
- Screenshots or any other visual element that could help solve the issue:
If the foregoing information is not received by Sherweb, Sherweb reserves the right not to respond to the request for Technical Support until complete information has been provided and, in any event, Sherweb shall have no liability for delays in responding to an incomplete request for Technical Support.

9.5. Maintenance. Sherweb and Third-Party Suppliers may be required to perform routine maintenance from time to time in connection with the Services, which may interrupt or otherwise impact the Services, depending on the nature of the work. Routine maintenances are planned to occur during off-peak hours (Eastern Time) and Sherweb will use commercially reasonable efforts to notify You at least forty-eight (48) hours prior to such maintenance. Sherweb or Third-Party Suppliers may also be required to perform emergency maintenance. Emergency maintenance may happen without notice; in case of emergency maintenance, Sherweb will use commercially reasonable efforts to notify You as soon as reasonably possible and to perform such maintenance in a manner that will not unreasonably interrupt the Services. It is Your responsibility to understand these notifications and take the necessary actions to minimize the impact on Your business.

9.6. Hardware and Minimum Technical Requirements. Unless You have purchased them directly from Sherweb, You shall provide all hardware, software, services and other components necessary to access and use the Services. Sherweb makes no representations or warranties that third-party hardware, software, services, and other components will be compatible with the Services. To access and use the Portal, You must provide, without limitation (i) an Internet connection and wireless plan with sufficient bandwidth, data and quality, (ii) a fully functional Internet browser, (iii) tools to develop and publish content, as You find suitable and necessary, and (iv) tools to access database servers, if applicable.

9.7. Error Corrections. For the purposes hereof, an “Error” shall mean a material failure of the Services to perform in accordance with any Documentation such that the Services are significantly impaired or degraded. A Customer may report any suspected Error to You. In such a case, You shall obtain from Customer and provide to Sherweb a detailed, written description and documentation of the suspected Error. You and Customer must cooperate with all investigations conducted by Sherweb or its Third-Party Suppliers in relation to the Error. The only responsibility of Sherweb and its Third-Party Suppliers in relation to a reported Error is to use all commercially reasonable efforts to correct the Error. An Error correction may consist of a separate patch, a workaround or it may be included in the next available update, upgrade or release of the Services, at the discretion of Sherweb and its Third-Party Suppliers. Should Sherweb or its Third-Party Suppliers be unable to correct an Error with respect to a particular Service (the “Affected Service”) within thirty (30) days after Your notification, Your sole remedy shall be to terminate the Affected Service immediately, in which case the provisions of Section 8.3 of the MSA shall apply, except that Sherweb shall refund to You any prepaid fees and shall not have the right to reinstate any fees previously waived, discounts or rebates applied with respect to the Affected Service. Such refund of prepaid fees, if any, shall constitute the maximum extent of Sherweb’s liability for failure to correct an Error.

9.8. Updates. Sherweb reserves the right to change or upgrade any equipment or software that it uses to provide the Services without notice to You. Sherweb will install security patches, minor updates, upgrades, and service packs (“Updates”) as it determines in its sole discretion, and reserves the right but has no obligation, to roll back any Updates. Updates may change system behavior and functionality and as such may negatively affect the Services. Sherweb cannot foresee nor be responsible or liable for service disruption or changes in functionality or performance due to Updates. Sherweb is not responsible or liable for issues that may arise from incompatibilities between Your Service Data and the Services, including any Updates.

9.9. Beta Products and Services. Notwithstanding anything to the contrary contained in the Agreement, the Service Unavailability Warranty shall not apply to Services provided or Accounts created on experimental “Beta” plans and platforms, and Sherweb shall have no liability whatsoever in relation to any such “Beta” plans or platforms, or any related databases, website content, and email messages, whether direct or indirect, or otherwise.

9.10. New Releases and Replacement. Sherweb or Third-Party Suppliers may modify a Service (by adding new features or functionalities to, or removing existing features or functionalities from, a Service) or release a new
version of a Service at any time and for any reason, including to address customer needs or otherwise address competitive demands, to respond to a government regulation, order or law, or to advance innovation in its Service offerings. You acknowledge and agree that Sherweb or Third-Party Suppliers may replace a Service with another Service offering equivalent functionalities at any time. Any such modification or replacement shall not constitute a default by Sherweb under the Agreement, provided that if You believe that such modification or replacement substantially decreases the Service offering, Your sole recourse shall be to terminate the Service immediately, in which case the provisions of Section 8.3 of the MSA shall apply, except that Sherweb shall refund to You any prepaid fees and shall not have the right to reinstate any fees previously waived, discounts or rebates applied with respect to the Service. Such refund of prepaid fees, if any, shall constitute the maximum extent of Sherweb’s liability for any modification to or replacement of the Service.

9.11. **End of Life.** You acknowledge and agree that Sherweb may, at any time and for any reason, including to address competitive demands, respond to a government regulation, order or law, or to advance innovation in its Service offerings, terminate a particular Service or cease to provide, with respect to a particular Service, (i) Technical Support, (ii) bug fixes, security fixes or other Updates or (iii) maintenance services (“End of Life”). For any Service being planned for End of Life, Sherweb will notify You at least ninety (90) days prior to the End of Life effective date, and Sherweb’s only liability in connection with the End of Life shall be to use commercially reasonable efforts to assist You with appropriate planning and propose alternative services with substantially equivalent functionalities.

9.12. **Service Availability Warranty.** Sherweb will use commercially reasonable efforts to achieve the level of performance set out for each Service, as further defined in each applicable Service Schedule (“Service Availability Warranty”). Any period where a particular Service is unavailable, but such unavailability is caused by or associated with any of the following, shall not be considered a Service Outage: (i) any circumstance beyond Sherweb’s reasonable control, including but not limited to a failure or error in a device or hardware not provided by Sherweb, denial of service or similar attacks, mail bombs, DNS resolution, domain name expiration, hardware failure, Internet availability, power failure, Your act or omission or those of Your Customers, Your portion of the network or that of Your Customer, IP transit provider issues, SYN attacks or any other Force Majeure event; (ii) periods of time where customer premises equipment is being replaced or repaired; (iii) number porting, whether inbound or outbound; (iv) any issues related to a Third-Party Supplier; or (v) any scheduled and emergency maintenance (collectively the “Service Outage Exclusions”). Also, any period of unavailability lasting less than five (5) consecutive minutes shall not be considered a Service Outage.

9.13. **Service Credit.** Subject to the Service Outage Exclusions, and unless otherwise stated in the applicable Service Schedule, in the event Sherweb does not comply with the applicable Service Availability Warranty in any given calendar month, You will be credited or refunded: (i) an amount equal to five percent (5%) of the amount due and payable for the affected Service during the reference month; and (ii) for every one percent (1%) loss of availability below the Service Availability Warranty during the same calendar month, an additional amount equal to two and a half percent (2.5%) of the amount due and payable for the affected Service during the reference month, the whole calculated in accordance with the terms set forth in Section 9.15 below (collectively referred to as the “Service Credit”). Under no circumstances shall the Service Credit exceed twenty-five percent (25%) of the amount due and payable for the affected Service in the reference month. For further clarity, should the applicable Service Schedule provide for a different Service Credit than the one set forth in this section, the Service Schedule shall take precedence and You shall be only entitled to the Service Credit set forth in the applicable Service Schedule.

9.14. **Service Credit to Customer.** Only You, as Reseller or Distributor, shall be entitled to any Service Credit and Customer shall place with You any request for a Service Credit that Customer may claim in relation to the Services. You are solely responsible for any such Service Credit claimed by Your Customers and, as a result, You have an obligation to pass on to your Customers any Service Credit that may be paid to You by Sherweb pursuant to Section 9.13 above and 9.15 below.
9.15. **Service Credit Request and Calculation.** If You are a Reseller or Distributor and Sherweb does not comply with the applicable Service Availability Warranty for a particular Service in any given calendar month, You will be credited and/or refunded in accordance with the terms set forth below and the applicable Service Schedule ("Service Credit"). To request a Service Credit, You must send a Service Credit request within fifteen (15) days of the Service Outage to feedback@sherweb.com. The Service Credit request must contain Your Account name, contact information, a detailed description of the Service(s) affected, the start and end time of the Service Outage, a description of how Your use (or that of Your Customer(s)) was adversely affected, and the Service Credit requested. Before processing a request for Service Credit, Sherweb will review the information submitted in the Service Credit request. Sherweb calculates Service Availability based on both the monitoring system and the incident report from Sherweb’s engineering team. Sherweb calculates the Service Credit based on the particular Service for which Service Availability was below the Service Availability Warranty, the fees applicable for such particular Service, and the percentage of overall End Users adversely affected. For example, if only two (2) End Users were adversely affected by the Service Outage out of two hundred (200) End Users, the Service Credit will be calculated as one percent (1%) multiplied by the monthly fee for the affected Service multiplied by the percentage of the Service Credit to which You are allowed for the reference month. A Service Credit will only be granted if Sherweb confirms that a Service Credit is available and it shall be Your sole remedy (and that of Your Customers) for any such failure or other issues with the Service. If granted, the Service Credit will be applied to the next invoice for the affected Service. You are not entitled to a Service Credit if You or Your Customers are in breach of the Agreement, including breach of payment obligations at the time of the occurrence of the event giving rise to the Service Credit, until such breach is cured. You are not entitled to a Service Credit if the event giving rise to the Service Credit would not have occurred but for the breach of the Agreement by You or Your Customer, or as a result of the fault or negligence of You or Your Customer. In any case Service Credit is granted for such loss of Service, the maximum aggregate cumulative amount of such Service Credit in any given month for any given Service, shall not exceed the total amount of fees otherwise payable by You for the Service during that month. SHERWEB SHALL HAVE NO LIABILITY OF ANY KIND WHATSOEVER FOR SERVICE OUTAGE OTHER THAN WHAT IS EXPRESSLY PROVIDED IN THE “SERVICE CREDIT” SECTION OR ANY OTHER SIMILAR SECTIONS OF THE AGREEMENT.

10. **Privacy and Data Protection**

10.1. **Processing.** Sherweb will Process Service Data in accordance with the terms of this Section 10 and the Service Data Privacy Statement and only: (i) to provide the Services and carry out the purposes of the Agreement; or (ii) as authorized by You or under Applicable Law. Sherweb will comply with the terms of its Privacy Policy and Data Protection Law when Processing Service Data under the Agreement. To the extent Service Data constitutes Personal Data, You and Sherweb hereby agree that: (i) Sherweb will be a data processor with respect to such Personal Data and You will be the data controller as those terms are understood under the Data Protection Law provided, however, that where Customer Data constitutes Personal Data: (i) Sherweb and Partner will each be a data processor with respect to such Personal Data and the relevant Customer will be the data controller.

10.2. **Privacy Policy.** Each Party is responsible for maintaining appropriate privacy policies as required in accordance with Data Protection Law.

10.3. **Subprocessors.** You acknowledge that Sherweb and third-party service providers that are engaged by Sherweb to assist in providing the Services shall have the right to Process Your Service Data to the extent necessary to provide the Services. Any third-party service providers engaged by Sherweb will only be given access to Your Service Data as reasonably necessary to provide the Services and will be subject to (a) confidentiality obligations which are commercially reasonable and substantially consistent with the standards described in this Agreement; and (b) their agreement to comply with Data Protection Law. Sherweb maintains an up-to-date list of the names and locations of all third-party sub-processors engaged in processing Personal Data, including a description of their processing activities. If, under Data Protection Law. Sherweb is under the obligation to provide You with the list of its subprocessors, such list will be available upon request by contacting privacy@sherweb.com.
10.4. **Partner Responsibilities.** You hereby agree with the terms of the Privacy Policy and agree to comply with Data Protection Law related to Your procurement and use of the Services and Your transfer of Service Data to Sherweb. You are responsible for Your own compliance with Data Protection Law. Without limiting the generality of the foregoing, You shall provide sufficient notice to and obtain adequate consent from Customer, as required by Data Protection Law to allow Sherweb, Third-Party Suppliers, and their respective Representatives to Process Personal Data as contemplated by the Agreement. Also, unless you are a Reseller, You shall provide sufficient notice to and obtain adequate consent from Customer, as required by Data Protection Law, to allow Sherweb, Third-Party Suppliers, and their respective Representatives to communicate directly with Customer for the following purposes: (i) to conduct customer service and satisfaction surveys; (ii) to the extent required for the operation or delivery of the Services or to provide options regarding continuity of the Services; and (iii) for purposes related to the provisioning of the Services, including in relation to any Updates or security incidents. If, under Data Protection Law, You are required to enter into a Data Processing Agreement (“DPA”) with Sherweb, You may send Your request to execute Sherweb’s DPA by emailing Your request at privacy@sherweb.com. You shall follow good industry practices for safeguarding and maintaining confidentiality of Customer Data and shall comply with Data Protection Law with respect to the protection of Customer Data. You shall not Process any Customer Data on any Customer’s behalf without first implementing appropriate terms in the applicable Customer Agreement for protection of such data. Unless otherwise agreed in an applicable Customer Agreement, You will do the following, at a minimum, with respect to all Personal Data that You Process on a Customer’s behalf: (a) comply with, and only act on, instructions from or on behalf of that Customer regarding the Processing of that Personal Data; (b) not Process that Personal Data for any purpose other than for the performance of Your obligations under this Agreement or the Customer Agreement; (c) ensure that appropriate technical and organisational measures are taken to avoid unauthorised or unlawful processing of that data and against loss or destruction of, or damage to, that Personal Data; (d) ensure the reliability of, and be responsible for, all of Partner’s Representatives and contractors who will have access to that Personal Data; (e) not, by any act or omission, place that Customer, Sherweb or any Third-Party Supplier in breach of Data Protection Law; (f) inform that Customer immediately of any suspected or confirmed data protection breaches or unauthorised or unlawful processing, loss, or destruction of, or damage to, that Personal Data; (g) ensure that any third party sub-contractor engaged by Partner to process that Personal Data on behalf of Customer only uses and accesses that data in accordance with the terms of this Agreement and is bound by written obligations requiring it to provide at least the level of data protection required under this Section 10.4; and (h) comply with any requirements under Data Protection Law with respect to cross-border transfer of Personal Data.

10.5. **No Access to PHI.** You acknowledge and agree that: (i) Sherweb is not acting on Your behalf as a Business Associate for the purposes of the U.S. **Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)** as amended and supplemented; (ii) You shall not provide, transmit or otherwise disclose protected health information (“PHI”) to Sherweb; and (iii) the Services will not be used in any manner that would require Sherweb or the Services to be compliant with HIPAA, the U.S. **Health Information Technology for Economic and Clinical Health Act (“HITECH”)** as amended and supplemented, or their enabling regulations, or similar state laws or regulations. You are solely responsible to ensure that its use of the Services will not result in any of the foregoing clauses becoming inaccurate. In this paragraph, the terms, “Business Associate”, subcontractor, “protected health information”, and “PHI” shall have the meanings described in HIPAA, HITECH, their enabling regulations, or similar state laws or regulations.

11. **Third-Party Services**

11.1 **Third-Party Suppliers.** The Services may include, make available, display, run, access or otherwise interact, directly or indirectly, with Third-Party Services. Any subscription, purchase, enabling or engagement of a Third-Party Service is subject to the terms and conditions of the applicable Third-Party Supplier as such may be communicated to you from time to time. If you disagree with any of the terms and conditions set out by any Third-Party Supplier, your sole right and remedy is to terminate this Agreement and associated Services in accordance with Section 7.2 hereof.
11.2 Service Data. If You subscribe to, purchase, enable or engage Third-Party Services pursuant to the Agreement, You acknowledge and agree that Sherweb may provide Service Data to the applicable Third-Party Supplier(s) and that Sherweb is not responsible or liable for any disclosure, modification, deletion or other use of Service Data resulting from any such access and use by such Third-Party Supplier(s). Any exchange of Service Data between You and a Third-Party Supplier is subject to the terms and conditions of such Third-Party Supplier. You represent and warrant that Your use of any Third-Party Service constitutes Your express consent to the access and use of Service Data by the applicable Third-Party Supplier, and that such consent, use, and access is beyond Sherweb’s control. You hereby acknowledge and agree that Sherweb and Third-Party Suppliers may communicate directly with You for the following purposes: (i) to conduct customer service and satisfaction surveys; (ii) to the extent required to provide options regarding continuity of the Services; and (iii) for purposes related to the provisioning of the Services to Your Account, including in relation to any Updates or security incidents.

11.3 Third-Party Beneficiary. You acknowledge and agree that Third-Party Suppliers shall be deemed to be third-party beneficiaries of the Agreement. In the event of a default by You under the terms of the Agreement, any Third-Party Supplier shall be entitled to enforce the provisions of the Agreement and to verify Your compliance with the terms of the Agreement or Your Customer’s compliance with the applicable Customer Agreement.

12. Compliance Obligations

12.1 Applicable Law and Approvals. You agree to perform Your rights and obligations under the Agreement in compliance with Applicable Law and not attempt to cause a violation of Applicable Law. Without limiting the generality of the foregoing, You will maintain all licenses, permits, governmental approvals and other permissions of whatever nature required to: (i) enter into the Agreement; and (ii) perform Your obligations in accordance with the Agreement. You will ensure that by entering into the Agreement or performing any obligations hereunder, You are not breaching any Agreement to which You are a party violating any rights of any third parties arising from those agreements or any obligations pursuant to Applicable Law.

12.2 Anti-piracy. You must not engage in the manufacture, use, distribution or transfer of counterfeit, pirated or illegal software. You may not resell or distribute Services to any party that You know is engaged in these activities. You shall report to Sherweb any suspected counterfeiting, piracy or other Intellectual Property Rights infringement of computer programs, manuals, marketing materials, or other materials owned by Sherweb or Third-Party Suppliers (and/or their licensors) as soon as You become aware of it. You will cooperate with Sherweb or Third-Party Suppliers in the investigation of any party suspected of these activities.

12.3 Compliance with Anti-Corruption Laws. You agree to conduct your business ethically and competently and further agreed to comply with all applicable anti-corruption and anti-bribery laws, including the U.S. Foreign Corrupt Practices Act, the Canadian Criminal Code and Corruption of Foreign Public Officials Act, in connection with the performance of Your obligations hereunder. In carrying out Your responsibilities under the Agreement, neither You nor any of Your representatives shall, directly or indirectly, offer or pay anything of value (including gifts, travel, entertainment expenses, and charitable donations) to any official or employee of any government, government agency, political party, public international organization, or any candidate for political office, to (i) improperly influence any act or decision of such official, employee or candidate for purposes of promoting the business interests of the other party in any respect or (ii) otherwise improperly promote the business interests of the other party in any respect.

12.4 Anti–Money Laundering. Neither You nor any of Your representatives shall use its relationship with Sherweb to attempt to disguise the sources of illegally obtained funds.

12.5 No Retaliation. You shall not retaliate against anyone who has, in good faith, reported a possible violation of this section or refused to participate in activities that violate this section.
13. **Audit and Non-Conformity**

13.1. At any point during the Term and for a period of seven (7) years thereafter, Sherweb and Third-Party Suppliers shall have the right to audit You (including Your premises, infrastructure and processes), at Sherweb’s or Third-Party Suppliers’ expense, as applicable, in order to ensure that no breach of the Agreement has occurred, and You shall cooperate fully in any audit conducted by or on behalf of Sherweb or its Third-Party Suppliers. You must keep books, records, documents, papers and other materials relating to the Services resold or distributed under any agreement with Sherweb for minimum period of seven (7) years following the end of the Term. You shall establish and maintain a reasonable accounting system that enables Sherweb and its audit-related agents to identify Your assets, expenses, expenditures, costs of goods, margins, discounts, rebates or other payments and compensation received, and use of funds related to the Agreement. You shall maintain a system of internal controls to prevent the payment of bribes and provide reasonable assurance that financial statements and reporting are accurate. You shall not have undisclosed or unrecorded accounts for any purpose. False, misleading, incomplete, inaccurate or artificial entries in the books and records are prohibited.

13.2. To verify compliance, Sherweb or Third-Party Suppliers may, at their discretion, engage an independent accountant from an internationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not less than a thirty-(30)-day notice during normal business hours and in a manner that does not interfere unreasonably with Your operations. Sherweb, Third-Party Suppliers, and their respective auditors will use the information obtained in any compliance verification only to enforce Sherweb’s or Third-Party Suppliers’ rights and to determine whether You are in compliance with the terms of this Agreement.

13.3. If verification reveals that You, Your Customers, Sub-Resellers or Sub-Distributors, as the case may be, have breached any of the representations, warranties or covenants of the Agreement, or any Customer Agreement, as the case may be: (i) Sherweb shall have the right to suspend or terminate the Agreement immediately upon written notice to You or require that You promptly remedy the situation, at Sherweb’s sole discretion; (ii) You must use Your best efforts at Your own expense to assist and collaborate with Sherweb and/or any Third-Party Supplier, as applicable, to investigate and enforce the terms of the Agreement or the Customer Agreement; (iii) You must reimburse Sherweb or Third-Party Supplier, as applicable, for the costs Sherweb or Third-Party Supplier have incurred in verification; and (iv) if material unlicensed use is found, You shall reimburse Sherweb or Third-Party Suppliers, as applicable, for the costs Sherweb or Third-Party Suppliers have incurred in conducting the audit and you shall acquire the necessary additional licences within thirty (30) days at one hundred twenty-five percent (125%) of the then-current price list. Sherweb will presume that such unreported use began upon commencement of each Customer relationship with You, unless You reasonably demonstrate a different scope and duration. In the event of a default by You under the terms of the Agreement, any Third-Party Supplier shall be entitled to enforce the provisions of the Agreement and to verify Your compliance with the terms of the Agreement. If You are an Entity that provides Services, including infrastructure services to other software service providers, Sherweb or Third-Party Suppliers may, in an effort to verify compliance with this Agreement, conduct a reasonable inspection of all servers that contain Products or Services licenced under this Agreement, during regular business hours, and with at least ten (10) business days’ prior notice. You agree that You will remove all copies of Products or Services on Your servers at the termination of this Agreement.

13.4. By invoking the rights and procedures described above, neither Sherweb nor any Third-Party Supplier waives its rights to enforce this agreement or to protect its Intellectual Property by any other means permitted by Applicable Law.

14. **Confidentiality**

14.1. Except as otherwise permitted by the Agreement or as mutually agreed in writing by the Parties, a Party receiving Confidential Information (the “**Receiving Party**”) shall maintain the confidentiality of all Confidential Information from the Party disclosing the Confidential Information (the “**Disclosing Party**”) and shall not release,
14.2. The Receiving Party will: (i) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and shall not disclose or use any Confidential Information of the Disclosing Party for any purposes outside the scope of the Agreement; (ii) notify the Disclosing Party promptly upon delivery of any unauthorized use or disclosure of Confidential Information; and (iii) cooperate with the Disclosing Party to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.

14.3. Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party’s Confidential Information to its employees, directors, officers, employees, consultants, contractors, and agents (collectively the “Representatives”) who are required to have the information in order to carry out the purposes of the Agreement, provided that it has ensured that such Representatives are required to protect the Confidential Information on written terms no less onerous than those of the Agreement and has accepted responsibility for each Representative’s use of Confidential Information. The Receiving Party is liable to the Disclosing Party of any use of Confidential Information by its Representatives.

14.4. You may disclose Confidential Information to the Customers solely to the extent necessary to carry out the purposes of the Agreement and provided that such Customers have entered into a Customer Agreement and are required to protect the Confidential Information on terms no less onerous than those of the Agreement.

14.5. The Receiving Party may disclose Confidential Information to the extent required by a court of competent jurisdiction or other governmental authority, or as otherwise required by Applicable Law. If the Receiving Party is required by Applicable Law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify the Disclosing Party of such requirements to afford the Disclosing Party the opportunity to seek, at the Disclosing Party’s sole cost and expense, a protective order or other remedy.

14.6. You acknowledge and agree that any Feedback shall not constitute Confidential Information for the purpose of the Agreement and may be used by Sherweb or its Third-Party Suppliers without obligation of any kind, except for the obligation not to disclose the source. Sherweb will have a royalty-free, worldwide, transferable, sublicensable, irrevocable, and perpetual license to use or incorporate into the Services any such Feedback.

14.7. The Parties acknowledge and agree that any breach of the terms of this Section 14 will cause irreparable harm and damage to the aggrieved Party. The Parties further agree that each Party shall be entitled to injunctive relief to prevent breaches of this Section 14 and to specifically enforce the terms and provisions of this Section 14, in addition to any other remedy to which such Party may be entitled, at law or in equity.

14.8. Sherweb will not use Your Confidential Information to solicit a direct or indirect relationship with Your Customers regarding the Services, but this restriction shall not prevent Sherweb from contacting or soliciting those Customers (a) with whom Sherweb already has a direct relationship; (b) who initiate contact with Sherweb; (c) without use of Your Confidential Information; or (d) as otherwise expressly permitted under this Agreement. Notwithstanding the foregoing, Sherweb shall have the right to use Your Confidential Information to solicit Customers during or after the Term of the Agreement if You become unreachable or if Sherweb terminates the Agreement pursuant to Section 7.3 or 7.4. In such latter case, Sherweb will be entitled to contact Your Customers to transition Your Customers directly to Sherweb or another partner, and You will work collaboratively with Sherweb to effect a smooth transition of Your Customers, including through the provision of a full accounting of all existing, pending and prospective Customers.
15. **DISCLAIMER OF WARRANTIES**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, SHERWEB AND ITS THIRD-PARTY SUPPLIERS PROVIDE THE SERVICES AND ANY RELATED PRODUCTS ON AN “AS IS” BASIS AND NO WARRANTY IS EXTENDED TO YOU UNDER THIS AGREEMENT. YOU EXPRESSLY AGREE THAT USE, RESALE OR DISTRIBUTION OF THE SERVICES IS AT YOUR SOLE RISK. SHERWEB EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE AGREEMENT OR THE SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A GENERAL OR PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY OR WARRANTIES THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. YOU ACKNOWLEDGE THAT PORTIONS OF THE SERVICES ARE PROVIDED BY THIRD-PARTY SUPPLIERS WHOSE PERFORMANCE IS NOT WARRANTED OR GUARANTEED BY SHERWEB OR SUCH THIRD-PARTY SUPPLIERS UNDER THE AGREEMENT. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY SHERWEB AND ITS AFFILIATES, THIRD-PARTY SUPPLIERS AND THEIR RESPECTIVE REPRESENTATIVES SHALL CREATE A WARRANTY, AND YOU SHALL NOT RELY ON ANY SUCH ADVICE OR INFORMATION. THIS DISCLAIMER OF WARRANTIES IS AN ESSENTIAL CONDITION OF THE AGREEMENT.

YOU SHALL NOT BE AUTHORIZED TO MAKE ANY WARRANTY, GUARANTEE, REPRESENTATION OR CONDITION, WHETHER WRITTEN OR ORAL, ON BEHALF OF SHERWEB OR ANY THIRD-PARTY SUPPLIER. YOU SHALL BE SOLELY RESPONSIBLE FOR ANY WARRANTIES FOR THE SERVICES PROVIDED BY YOU.

16. **Limitation of Liability**

EXCEPT FOR BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 14 AND LIABILITY FOR INDEMNIFICATION OBLIGATIONS UNDER SECTION 17, IN NO EVENT SHALL SHERWEB AND ANY THIRD-PARTY SUPPLIER OR THEIR AFFILIATES AND RESPECTIVE REPRESENTATIVES BE LIABLE FOR (I) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR AGGRAVATED DAMAGES, TO THE EXTENT THAT SUCH CATEGORIES OF DAMAGES ARE RECOGNIZED AND CAN BE CLAIMED UNDER APPLICABLE LAW; AND (II) OR FOR DAMAGES FOR LOSS OF PROFITS, SAVINGS OR REVENUES, LOSS OF SERVICE DATA, BUSINESS INFORMATION OR BUSINESS INTERRUPTION, DIMINUTION IN VALUE OR OTHER SIMILAR PECUNIARY LOSSES; IN ALL CASES ARISING UNDER OR IN CONNECTION WITH THE SERVICES OR MORE GENERALLY THIS AGREEMENT, REGARDLESS OF: (A) WHETHER THE DAMAGES CAN BE CONSIDERED DIRECT OR INDIRECT; (B) WHETHER OR NOT SHERWEB OR ITS THIRD-PARTY SUPPLIER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE; (C) THE LEGAL OR EQUITABLE THEORY (CONTRACTUAL LIABILITY, EXTRA-CONTRACTUAL LIABILITY, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED; AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY IN ITS ESSENTIAL PURPOSE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL SHERWEB BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING OUT OF OR CAUSED BY: (1) ANY THIRD PARTY, (2) YOU OR YOUR END USERS; (3) SHERWEB’S ACCESS TO YOUR OR YOUR END USERS’ COMPUTER EQUIPMENT OR NETWORK(S); OR (4) ANY OTHER EVENTS BEYOND THE REASONABLE CONTROL OF SHERWEB.

IN NO EVENT SHALL SHERWEB’S LIABILITY UNDER THE AGREEMENT EXCEED THE AMOUNT PAID UNDER THE AGREEMENT BY YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

17. **Indemnification**

17.1. Sherweb shall defend, indemnify and hold harmless You and Your Representatives from and against any and all Claims brought by a third party arising out of or in connection with infringement or alleged infringement of the Intellectual Property Rights of such third party by the Services resold or distributed pursuant to the Agreement. You shall promptly notify Sherweb of such Claim in writing and give Sherweb sole control over Your defense or settlement. Sherweb shall defend, at its own expense, any action arising from the infringement Claim, and You shall cooperate in such defense as reasonably requested by Sherweb, at Sherweb’s expense. Sherweb shall pay
all adverse final judgments and settlements that it has consented to resulting from such Claims, and any award received by Sherweb in such an action shall belong solely to Sherweb. Sherweb’s obligation to defend, indemnify and hold You harmless shall not apply to the extent that the Claim is based on, arises out of, directly or indirectly: (i) a Third-Party Service; (ii) Your use of the Services in violation of this Agreement including outside the scope of the grant of rights pursuant to Section 2; (iii) specifications provided by You to Sherweb for the Services; (iv) code or materials provided by You as a part of the Services; (v) Your use of the Services after Sherweb notifies You to discontinue that use due to a third party Claim; (vi) Your use of the Service in combination with a product, service, data or business process that is not licenced, resold or distributed through the Agreement; (vii) damages attributable to the value of the use of a product, service, data or a business process that is not licenced, resold or distributed through the Agreement; (viii) modifications You make or that You have caused to be made to the Services; (ix) Your redistribution of the Services to, or Your use for the benefit of, any unaffiliated third party; (x) Your use of the Sherweb’s or its Third-Party Suppliers’ Marks without express written consent to do so; or (xi) any trade secret or undisclosed information claim, where You acquire the trade secret or undisclosed information (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than Sherweb) who owed to the party asserting the Claim a duty to maintain the secrecy or limit the use of the trade secret or undisclosed information.

17.2. If a Service becomes or is likely to become the subject of an indemnity Claim under Section 17.1, Sherweb may at its sole discretion, (i) procure, at no cost to You, or where applicable, the right to continue reselling and delivering the Service, (ii) replace or modify the Services so that they become non-infringing or (iii) withdraw the infringing Service and terminate any Customer Agreement, in whole or in part, including with respect to any individual Service or any software component of a Service, without further obligation. For clarity, this Section 17.2 states the entire and exclusive obligation of Sherweb for any Claim or breach of Section 17.1 and Sherweb shall have no further liability to You or Customer in connection with Section 17.1, except only to refund to You any prepaid fees for Services.

17.3. Except for matters subject to the indemnity referred to in Section 17.1, You shall defend, indemnify, and hold harmless Sherweb, Third-Party Suppliers and their respective employees, officers, directors, and agents from and against any and all Claims brought by a third party arising out of or resulting, directly or indirectly, from Your resale or distribution of the Services hereunder or from the use of the Services by Your Customers. This includes any of the following events: (i) Your improper installation of the Services; (ii) any software virus introduced by You or by Your Customers; (iii) Your violation of the terms of the Agreement or any violation of the Customer Agreement by an Customer; and (iv) unauthorized installation, use, access, copying, reproduction, and/or distribution of any portion of the Services by an Customer.

17.4. SECTION 17 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF THE INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR EACH INDEMNIFIED PARTY FOR ANY COST OR OTHER LOSS COVERED BY THIS SECTION.

18. Amendment of Terms

Sherweb may, from time to time and at its sole discretion, by giving You notice, update the Agreement or any document forming part of the Agreement. Sherweb will notify You of any amendments to the Agreement by email or by posting the new version on Sherweb’s website at http://www.sherweb.com/legal, or at another location communicated to You by Sherweb. Such changes will take effect immediately, unless otherwise indicated by Sherweb. You can always review the most current version of the Agreement and any document forming part of the Agreement on Sherweb’s website at http://www.sherweb.com/legal, or at another location communicated to You by Sherweb. Your continued participation in the Program after Sherweb posts a new version of the Agreement, or any document forming part of the Agreement, will constitute Your acceptance of the updated Agreement. If You do not wish to accept the updated Agreement, You may terminate the Agreement by giving written notice to Sherweb without Sherweb incurring any liability whatsoever. Except as expressly provided herein, no other changes shall be binding on the Parties unless in writing and signed by an authorized representatives of both Parties.
19. **Miscellaneous**

19.1. **Solicitation.** During the Term of the Agreement and for a period of one (1) year after its termination, You shall not hire, offer to hire, divert, entice away, solicit or in any other manner persuade, or attempt to do any of the foregoing, directly or indirectly, for employment or for other services, any persons or entities employed or engaged by Sherweb during such period without Sherweb’s prior written approval.

19.2. **Media Releases.** Except for any announcement intended solely for internal distribution by either Party or any disclosure required by legal, accounting, or regulatory requirements, all media releases, public announcements or public disclosures, including promotional or marketing material, by either Party or its employees or agents, which includes references to the other Party or the Marks of the other Party, shall be coordinated with and approved in writing by the other Party prior to the release thereof. Notwithstanding the foregoing, Sherweb may display Your name in its list of partners published and maintained on its website.

19.3. **Regulatory Changes.** If a federal, state, provincial, a foreign regulatory body or a court of competent jurisdiction issues a rule, regulation, law or order which has the effect of materially increasing the cost of providing the Services hereunder or canceling, changing, or superseding any material term or provision of the Agreement (collectively “Regulatory Requirement”), then the Agreement shall be deemed amended in a way the Parties mutually agree in writing is consistent with the form, intent and purpose of the Agreement and is necessary to comply with such Regulatory Requirement. Should the Parties be unable to agree on amendments necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement becomes effective, then, upon written notice, either Party may, to the extent practicable, terminate that portion of the Agreement affected by the Regulatory Requirement.

19.4. **Independent Contractors.** The Parties are independent contractors under the Agreement and nothing in the Agreement shall be construed as creating any partnership, joint venture, employment or agency relationship whatsoever between You and Sherweb. Neither Party shall, by reason of any provision herein contained, be deemed to be the partner, agent or legal representative of the other Party, nor to have the ability, right or authority to assume or create, in writing or otherwise, any obligation of any kind, express or implied, in the name of or on behalf of the other Party.

19.5. For purposes of the Agreement: (a) the words “include”, “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein”, “hereof,” “hereby”, “hereto” and “hereunder” refer to the Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa; and (e) words denoting any gender include all genders. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules and appendices referred to herein are an integral part of the Agreement to the same extent as if they were set out verbatim herein. Except as otherwise expressly provided in the Agreement, all dollar amounts referred to in the Agreement are stated in the currency selected by You upon creation of Your Account. The headings in the Agreement are for reference only and do not affect the interpretation of the Agreement.

19.6. **Entire Agreement.** The Agreement (and all documents forming part of the Agreement) and the schedules attached hereto collectively constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, representations, conditions, warranties, negotiations and discussions with respect to the subject matter hereof, whether oral or written. This Agreement cannot be modified otherwise than by a written amendment duly signed by the parties.

19.7. **Applicable Law and Venue.** The Agreement shall be governed and construed in accordance with the laws of the Province of Québec and the laws of Canada applicable therein. The Parties intend and agree that the law of the province of Québec and Canada shall apply despite any choice-of-law statute, rule, or precedent that would
apply the law of any other jurisdiction. To the extent it may be applicable, the parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement. The Parties hereby attorn to the non-exclusive jurisdiction of the federal and provincial courts in the judicial district of Saint-François, Province of Québec, Canada. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation, infringement or misappropriation of intellectual property rights or confidentiality obligations in any jurisdiction.

19.8. **Non-Waiver.** No waiver of any of the provisions of the Agreement is binding unless it is in writing and signed by the Party entitled to grant the waiver. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. The failure of either Party to exercise any right, power or option given hereunder or to insist upon the strict compliance with the terms and conditions hereof by the other Party shall not constitute a waiver of the terms and conditions of the Agreement with respect to that breach or any other or subsequent breach thereof, nor a waiver by either Party of its rights at any time thereafter to require strict compliance with all terms and conditions hereof, including the terms or conditions with respect to which the other Party has failed to exercise such right, power or option.

19.9. **Force Majeure Event.** Except for monetary obligations, neither Party (the “Impacted Party”) shall be in default or otherwise liable to the other for failure or delay in the performance of a required obligation hereunder if such inability or delay results from any cause which is unforeseeable, irresistible and beyond such party’s reasonable control or anticipation, including, without limitation, acts of war, acts of God, terrorism, earthquake, hurricanes, flood, fire or other casualty, embargo, riot, sabotage, labor shortage or dispute, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, acts of third parties, failure of the internet, or other reason that is beyond a party’s reasonable control or anticipation (each a “Force Majeure Event”). The Impacted Party shall give notice within five (5) business days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Impacted Party’s failure or delay remains uncured for a period of ninety (90) business days following notice given by it under this Section 19.9, either Party may thereafter terminate this Agreement on a five (5) business days’ notice.

19.10. **Successors and Assigns.** You may not assign the Agreement without the prior written consent of Sherweb, which consent shall not be unreasonably withheld. Sherweb may assign this Agreement without the need for prior consent. The Agreement shall enure to Your benefit and that of Sherweb and shall be binding upon both You and Sherweb and both your respective legal successors and permitted assigns.

19.11. **Survival.** All obligations imposed on Sherweb and You which expressly or by their nature survive the expiration or termination of the Agreement shall continue in full force and effect subsequent to and notwithstanding such expiration or termination, and until they are satisfied or by their nature expire, including Sections 5, 7, 14, 15, 16, 17 and 19.

19.12. **Notice.** You accept that communications from Sherweb may be electronic. As such, Sherweb may notify You by email (to any email address registered with Sherweb) or provide You with information by posting notices on Sherweb’s website, Portal or to Your Account. You agree to this electronic means of communication and You acknowledge that all contracts, notices, information, and other communications that Sherweb provides You electronically are acceptable and effective as notice. Subject to the foregoing and except as otherwise specified in the Agreement, all notices, requests, consents, claims, demands and waivers hereunder shall be in writing and shall be deemed to have been given (i) immediately upon personal delivery, (ii) the second (2nd) business day after mailing, (iii) the second (2nd) business day after sending by confirmed facsimile, or (iv) the first (1st) business day after sending by email or, if from Sherweb to You, upon online posting on Sherweb’s website, Portal or Your Account. Notices to Sherweb that are not expressly authorized by the administrative control panel under the Agreement shall be mailed to Sherweb at the following address:
19.13. **Cumulative Rights.** The rights of each Party hereunder are cumulative and no exercise or enforcement by a Party of any right or remedy hereunder shall preclude the exercise or enforcement by such Party of any other right or remedy hereunder or which such Party is otherwise entitled by law to enforce.

19.14. **Additional Remedies.** You acknowledge that any act in violation of Sherweb’s rights in the Services may cause irreparable damage to Sherweb, for which monetary damages may not be an adequate remedy. Accordingly, if You act, fail to act, or attempt to act in violation of Sherweb’s rights in the Services, then, in addition to all Sherweb’s other rights and remedies under the Agreement, Sherweb shall have the right to seek to prevent such action or failure to act by applying for interlocutory or permanent injunctive relief.

19.15. **Further Assurances.** The Parties agree to do or cause to be done all acts or things necessary to implement and carry out the Agreement to its full extent.

19.16. **Severability.** If in any jurisdiction, any provision of the Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability, without invalidating the remaining provisions thereof and without affecting the validity or enforceability of such provision in any other jurisdiction or its application to other Parties or circumstances.

19.17. **No Other Terms.** The terms and conditions of this Agreement govern all transactions contemplated by this Agreement including all sales orders, statements of work or similar documents. Any proposed variation from or addition to these terms and conditions appearing on any document submitted by You or Your Customer are null and void.

19.18. **Digital Signature.** By participating in the Program and registering for an Account, or by clicking to accept the terms of the Agreement when prompted on Sherweb’s website, You are deemed to have executed the Agreement and the other terms of service electronically. Your Account registration constitutes an acknowledgement that You are able to electronically receive, download, and print the Agreement and any amendments.

19.19. **Export.** Sherweb’s obligation to fulfill its commitments under this Agreement may be subject to restrictions arising out of Applicable Law related to national or international export controls, including embargoes or any other sanctions. The Parties further acknowledge that the Services may be subject to export and re-export restrictions under Applicable Law related to export control and thus may only be exported or re-exported in compliance with such Applicable Law.

19.20. **Language.** You have chosen that the Agreement be drafted in English. *Le client a choisi que cette entente soit rédigée en anglais.*

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