



## MASTER SERVICE AGREEMENT

**IMPORTANT: PLEASE READ VERY CAREFULLY THESE TERMS AND CONDITIONS BEFORE USING THE SERVICES. SUCH TERMS AND CONDITIONS FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU, THE RECIPIENT AND PAYOR OF THE SERVICES (“YOU” OR “YOUR”), AND SHERWEB INC. (“PROVIDER”). EACH OF PROVIDER AND YOU MAY BE REFERRED TO AS A “PARTY” AND COLLECTIVELY AS “PARTIES” UNDER THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, DO NOT CHECK THE “I HAVE READ, UNDERSTAND AND ACCEPT THE TERMS AND CONDITIONS” BOX, CLOSE YOUR BROWSER AND DO NOT PROCEED WITH ORDERING OR USING THE SERVICES.**

By checking the “I have read, understand and accept the Terms and Conditions” box when completing the Account creation, by logging in on Provider administrative web Portal, or by placing an order for any Services, You expressly agree to be bound by: (i) all the terms and conditions of this Master Service Agreement with Provider (“MSA”); and (ii) by the following documents: (a) Provider’s Service Schedule(s) (as defined below) for all Services that may be sold hereunder; (b) Provider’s [Privacy Policy](#); (c) Provider’s [Acceptable Use Policy](#); (d) Provider’s [No-Spam Policy](#); and (e) 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/>.

Provider 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. Provider will notify You of any modifications to the MSA by email, on the Portal and by posting the new version on Provider’s website at <http://www.sherweb.com/legal> or at another location communicated to You by Provider. Such changes will take effect immediately, unless otherwise indicated by Provider. You can review the most current versions of the Agreement and any document forming part of the Agreement at any time on Provider’s website at <http://www.sherweb.com/legal> or at another location communicated to You by Provider. Your continued use of the Services after Provider notifies You of 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 Provider without Provider incurring any liability whatsoever.

**PLEASE NOTE THAT SERVICES ARE STRICTLY RESERVED AND PROVIDED TO BUSINESSES AND ARE NOT FOR CONSUMERS.** Only an authorized representative of Your company may execute this Agreement. If You are an individual entering into this Agreement on behalf of a legal entity, You represent and warrant that You have the authority to bind such entity to this Agreement. If You do not have such authority, neither You nor such entity may accept this Agreement or use the Services. If you are a consumer or are not buying the Services for business purposes, close your browser and do not proceed with ordering or using the Services.

### 1. Definitions.

**“Account”** means the account created with Provider in connection with the Agreement that relates to Your purchase of, subscription to or use of the Services.

**“Account Information”** means any information required in connection with or associated to 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 End-Users, and any other similar information.

**“Account User”** means any of Your employees, consultants or independent contractors to whom You grant administrative permission to access the Portal in accordance with Provider’s entitlements and procedures and the Agreement.

**“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.

**“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.

**“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.

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

**“Billing Cycle”** refers to a one-month period beginning upon the Effective Date and renewing monthly.

**“Business Day”** means any day other than a Saturday, Sunday or any statutory holiday in the Province of Quebec.

**“Claim” or “Claims”** means any claim, demand, action, suit, cause of action, assessment or reassessment, charge, judgment, debt, liability, expense, cost, damage or loss, whether direct or indirect, contingent or otherwise, including loss of value, reasonable professional fees, such as legal counsel fees on a lawyer-and-client basis, and all costs incurred in investigating or pursuing any of the foregoing or in any proceedings relating to any of the foregoing.

**“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, customer data, financial 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 any obligation to keep it confidential; (c) is lawfully disclosed to the Receiving Party by a third party without restrictions on disclosure; or (d) is independently developed by the Receiving Party. Your Confidential Information includes Your Service Data.

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

**“Data Protection Law”** means any Applicable Law that governs You or Provider, 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.

**“Effective Date”** means the date of Your account creation or acceptance of the Agreement, whichever occurs first.

**“End User”** means any individual end users who use the Services.

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

**“Feedback”** means any suggestions, enhancement requests, recommendations, or other feedback provided by You or Your End Users to Provider 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, 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 property, 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.

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

**“No-Spam Policy”** means Provider’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.

**“Personal Data”** means any information relating to an identified or identifiable natural person.

**“Portal”** means the administrative web portal of Provider located at <http://www.sherweb.com/customer-login/>, 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 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.

**“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.

**“Privacy Policy”** means Provider’s privacy policy located [here](#), including the Service Data Privacy Statement located [here](#). The Privacy Policy shall be deemed a part of and shall be incorporated by reference into the Agreement.

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

**“Representative”** shall have the meaning attributed thereto in Section 11.2.

**“Services”** means (i) any cloud and software services and products, as such services and products are offered from time to time by Provider and subscribed to, purchased by or used by You pursuant to the Agreement, and which may include Third-Party Services; (ii) Documentation related to the Services described in sub-section (i), if any; and (iii) any enhancement, update, upgrade, technical support services and professional services provided by Provider or any Third-

Party Supplier in association with the Services described in subsection (i).

**“Service Availability”** means, for a particular Service, the ability of any End User to access and use the Service.

**“Service Data”** means all data provided to Provider, placed on Provider’s servers, or used, posted, stored or otherwise transferred or transmitted to Provider 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, and which may include, without limitation, Personal Data.

**“Service Data Privacy Statement”** means Provider 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 Partner Privacy Policy. The Service Data Privacy Statement shall be deemed a part of and shall be incorporated by reference into the Agreement.

**“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.

**“Subscription”** means a right to use certain Services for a defined term.

**“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.

**“Service Schedule(s)”** means the Service-specific product terms located [here](#) that specifically describe the Services used by You or any End User 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.

**“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.

**“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 setup and configuration, access to the Services, and the resolution of other technical issues related to the Services.

**“Term”** shall have the meaning attributed thereto in Section 6.1.

**“Third-Party Service”** 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.

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

**“You” or “Your”** means the Entity on whose behalf the Agreement is accepted.

## 2. Services

2.1. **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.

- 2.2. Access to Services.** Subject to and in accordance with the terms of the Agreement, Provider grants You a non-exclusive, royalty bearing, non-sublicensable, non-transferable, non-assignable, revocable right, for the Term of the Agreement, to access and use the Services. Provider may, at its sole discretion, delegate and/or to subcontract all or part of the Service to its Third-Party Supplier.
- 2.3. 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 Provider 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 Provider with any documentation it reasonably requests to establish ownership and rights on Your Account and any related Service Data; and (ii) Provider 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.
- 2.4. Account Security.** You acknowledge and agree that You are solely responsible for (i) maintaining the confidentiality and security of Your password and other access information associated with Your Account; (ii) ensuring the security of any hardware on which or from which the Services are used or accessed; and (iii) all activities that occur in connection with Your Account, whether initiated by You, by your End Users, by others on Your behalf or by any other means. You will notify Provider immediately of any unauthorized use of Your Account, or any other actual or potential breach of security. You acknowledge and agree that Provider 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. Provider specifically disclaims all liability for any activity in Your Account, whether authorized by You or not.

### 3. Permitted Use of the Service

- 3.1. Permitted Use.** You shall only use the Services for Your own lawful, appropriate, permitted internal business, non-residential and non-personal use. You shall access and use the Services in compliance with: (i) the terms of Your Subscription Plan; (ii) the terms and conditions of the Agreement, including the AUP and the No-Spam Policy; (iii) any other applicable procedures, policies and Documentation of Provider or its Third-Party Suppliers that may be communicated to you in writing from time to time and that further define the provision and use of the Services; and (iv) any Applicable Law.
- 3.2. Data Compliance.** All Service Data You provide to Provider in connection with the Services shall (i) be server-ready, meaning that they shall be in a condition and form which requires no additional manipulation or verification on the part of Provider; (ii) comply with Applicable Law and the terms and conditions of the Agreement, including the AUP, the No-Spam Policy, and any other procedures, policies and Documentation of Provider or its Third-Party Suppliers that may be communicated to you in writing from time to time and that further define the provision and use of the Services; and (iii) be free of any and all malicious code, including disabling devices, drop-dead devices, time bombs, trap doors, Trojan horses, worms, computer viruses, and mechanisms that may disable or negatively impact the servers. Attempting to place or requesting placement of malicious code on Provider's servers shall be considered a material breach of the Agreement. You hereby represent and warrant that You own or have the necessary licenses, rights, consents and permissions to use, post, place and otherwise transfer or transmit, the Service Data in connection with the Services. Provider may reject or delete Service Data that You have placed, attempted to place, or have requested be placed on Provider's servers in breach of the Agreement. Provider shall notify You of its rejection and provide You with an opportunity to amend or modify such Service Data to meet the requirements of Provider.
- 3.3. Responsibility.** You are solely responsible: (i) for the access and use of the Services in compliance with the terms of the Agreement (together with all documents incorporated by reference), and with all applicable procedures,

policies and Documentation of Provider or its Third-Party Suppliers that may be communicated to You in writing from time to time and that further define the provision and use of the Services; (ii) for the content of the Service Data passing through Provider's network; and (iii) for ensuring that End Users comply at all times with the terms of the Agreement as it relates to their use of the Services. You acknowledge and agree that: (A) Provider may, but is not obligated to, exercise control over or monitor the content of the Service Data passing through Provider's network; and that (B) the actions of Your End Users in their use of the Services will be deemed to be actions by You and that any breach of the terms of the Agreement by Your End Users will be deemed to be a breach by You. You acknowledge and agree that any access or use of the Services or any portion of the Services in violation of this Section 3 will be a material breach of the Agreement.

**3.4. Trial License.** If You register for a free trial for any of the Services, Provider will make such Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service; (b) the start date of any subscription to such Service purchased by You for such Service; or (c) termination of the trial by Provider in our sole discretion. A free trial is intended for evaluation purposes (and not for commercial, professional or production use purposes), is not supported, and may be subject to additional terms that will be presented communicated to You by Provider or its Third-Party Suppliers. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. If the trial expires or is terminated by Provider, Services will immediately become unavailable to You and Your End Users, without any further notice. ANY SERVICE DATA YOU ENTER INTO A SERVICE, AND ANY CONFIGURATIONS OR CUSTOMIZATIONS MADE TO A SERVICE BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICE AS COVERED BY THE TRIAL, PURCHASE THE APPLICABLE SERVICE, OR EXPORT SUCH SERVICE DATA, BEFORE THE END OF THE TRIAL PERIOD. IN NO EVENT WILL PROVIDER AND ITS THIRD-PARTY SUPPLIERS BE LIABLE TO YOU OR YOUR END USERS FOR ANY CLAIM WHATSOEVER ARISING OUT OF OR RELATED TO A FREE TRIAL. THE PARTIES ACKNOWLEDGE THAT THIS IS INTENDED TO BE A COMPLETE LIMITATION OF ALL LIABILITY OF PROVIDER AND ITS THIRD-PARTY SUPPLIERS IN CONNECTION WITH SERVICES OFFERED ON A TRIAL BASIS AND THAT SUCH LIMITATION IS REASONABLE GIVEN THAT NO FEES ARE CHARGED IN CONSIDERATION FOR THE TRIAL.

#### 4. Ownership

**4.1. Property Assets.** You acknowledge and agree that Provider and/or its Third-Party Suppliers own all proprietary rights, including Intellectual Property Rights, in and to 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 any Service or Property Assets available to a third party, except as expressly permitted by the Agreement; (ii) make 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 Assets to a third party; (iv) alter, or permit the alteration of any Property Assets; ; (v) modify, reprogram, translate, disassemble, decompile, reverse engineer or otherwise attempt to derive source code from any Property Assets; (vi) remove, modify or obscure any copyright, Mark or other proprietary rights notices that appear on any Property Assets; (vii) acquire or seek to acquire any ownership interest in or to any Property Assets; (viii) knowingly take any action that jeopardizes Provider's or its Third-Party Suppliers' proprietary rights in 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 in or to the Services or Property Assets. You shall ensure that End Users comply at all times with the terms of this Section 4, and more generally this Agreement, and You shall prevent any unauthorized distribution, copying, use or pirating of the Property Assets. You are liable to Provider for any breach of this Agreement (including of this Section 4) by You or by any End User.

**4.2. Service Data.** As between the Parties, You retain all right, title and interest in and to the Service Data. You hereby grant Provider a non-exclusive, royalty-free, worldwide right to use (including to copy, reproduce and display) the Service Data: (i) as necessary for Provider to perform the Services; and (ii) otherwise in accordance with this



Agreement (including as described in Section 8 below and in Provider's Privacy Policy and Service Data Privacy Statement).

## 5. Fees and Payment Terms

5.1. **Fees.** In consideration for the Services provided under the Agreement, beginning on the Effective Date, You shall pay Provider the applicable Fees, together with any and all applicable Taxes related to the Services provided. In the event Taxes must be withheld from any payment to Provider, You will increase the payment to Provider so that the amount received by Provider is the same as it would have been if no Taxes were withheld.

5.2. **Billing and Payment Arrangements.** Provider will invoice You at the beginning of each Billing Cycle in accordance with Your Subscription Plan. You will be able to view and print Your invoice from Your Account using the Provider's Portal. No refund or adjustment shall be issued for one-time fees. For recurring fees, no refund or adjustment for plan downgrades or elimination of plan features within the current Term shall be issued. Provider reserves the right to invoice for Services for a period of up to twelve (12) months after the Services were provided to You, 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 in advance.
- 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 Fees associated to Your Subscription Plan. 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.

5.3. **Payment Method.** Except as otherwise agreed to in writing by Provider, 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, Provider is still unable to charge Your credit card, Provider may, at its discretion (i) immediately suspend access to the Services; during such suspension, existing Service Data will not be destroyed; and (ii) terminate the Agreement and delete all Your Service Data pursuant to Sections 6.3 and 6.9 of the Agreement.

5.4. **Late Payment.** If You fail to make payment of any amounts invoiced in strict compliance with the above requirements, Provider 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, Provider reserves the right to suspend access to the Services and, during such suspension, existing Service Data will not be destroyed.

5.5. **Excess use.** You shall monitor and maintain Your Account within all usage limits specified in Your Subscription Plan and in a manner that does not disrupt the activities of other customers of the Provider. In the event Your usage exceeds the limits of Subscription Plan or Provider has reasons to believe that Your usage will disrupt the activities of other customers of the Provider, You agree that Provider may, in its sole discretion, (i) charge You for such excess usage, (ii) upgrade You to a plan or increase the limits on Your Account to address this excess usage, and/or (iii) suspend or terminate Your Account for cause. Usage and associated charges for excess usage shall be determined solely on the basis of Provider's collected usage information. Unused monthly allotments shall not accrue or carry over from one month to another. Upon any upgrade or increase of the limits of Your Account, You shall be responsible for the new costs and fees.

**5.6. Tax Exemption.** If You provide written documentation of Your tax-exempt status in a form reasonably acceptable, Provider 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 Provider is not obligated to consider any retroactive request for tax exemption.

**5.7. Amendments.** Provider reserves the right to increase the Fees upon fourteen (14) days' prior notice to You. Your continued use of the Services after the effective date of such increase will be deemed to be acceptance by You of the updated Fees. If You do not agree with such increase, You may terminate the affected Services by providing written notice to Provider, provided, however, that such notice must be received within fourteen (14) days after Provider's notification and that such termination will be deemed a termination for convenience by You for the purpose of the Agreement. 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 Consumption Subscription may change during the Billing Cycle.

**5.8. Billing Dispute.** In the event You dispute in good faith any portion of a Provider's invoice, You shall pay the undisputed portion of the invoice and submit a written claim for the disputed amount, documenting the basis of its claim. All claims must be submitted to Provider 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. Term

**6.1. Effective Date.** The Agreement shall be effective upon the Effective Date and shall remain in effect until it is terminated by either Party in accordance with the terms of the Agreement ("**Term**").

**6.2. 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.

**6.3. Immediate Suspension or Termination.** Provider 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, Provider reserves the right, while the Event of Default remains uncured, to elect not to provide any further Technical Support pursuant to Section 7 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 6.3, each of the following event 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 Sub-distributors, 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-day (30) notice to You (or fifteen (15) days if the breach is a failure by You to make any payment to Provider 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 Provider 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 Provider or its Third-Party Suppliers, in connection with the Services; (ii) Sections 3 or 4 of the MSA; (iii) any Property Asset or any Intellectual Property Right of Provider, its Third-Party Suppliers or any third party; (iv) Your confidentiality obligations under the Agreement; or (v) Your non-solicitation obligation under the Agreement; or
- (e) If Your use of the Services results in, or is the subject of, actual or potential legal action or threatened legal action against Provider 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.

**6.4. 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.

**6.5. Third-Party Supplier Termination.** In the event a Third-Party Supplier of one or more Third-Party Services terminates the applicable agreement with Provider, in whole or in part, including with respect to individual Services or with respect to a particular Customer, Provider 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.

**6.6. Effects of Termination.** Except as otherwise expressly set forth herein, termination of the Agreement will not cancel or waive any Fees owed to Provider as per the Agreement and Provider shall not be required to reimburse any prepaid fees. Upon termination of the Agreement or the Services, in whole or in part: (i) Provider will close Your Account; (ii) Provider may charge any unpaid balance to Your credit card on file or otherwise invoice You for such unpaid balance; (iii) You shall promptly stop all use of the Services and, if applicable, uninstall and remove all copies of any software provided by Provider, or any Third-Party Supplier from Your devices (and those of your End-Users), or otherwise render such Services permanently unusable by You and Your End-Users, and You shall return or destroy all copies of any such software; and (iv) Provider may irrevocably delete Your Service Data upon the effective termination date, unless otherwise set forth in the applicable Service Schedule. You will be solely responsible for securing all necessary Service Data from Your Account prior to termination. Provider will not be responsible for any loss of Your Service Data, or any damages arising from the deletion of Your Service Data following termination of the Agreement.

**6.7. 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.

## 7. Service Orders and Subscription Plans

7.1. **Service Orders for Customer.** When You purchase Services from Provider, You must electronically submit an order via the Portal, or by such other reasonable means as Provider 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, Fees, payment schedule and other terms and conditions with respect to such purchase.

7.2. **Subscription Term.** Except for a Consumption Subscription, the term of each Subscription Plan (“**Subscription Term**”) shall be an initial term with a specific duration as agreed to by You (e.g., one (1) month, one (1) year or some other mutually agreed-upon period) (a “**Subscription Initial Term**”), followed by renewal periods (each 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.

(f) 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.

(g) 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.

7.3. 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, Provider (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 Subscription Cancellation by Provider. If a Fixed-Term Subscription is cancelled by Provider or a Third-Party Supplier prior to the end of the then current Subscription Term, (i) notwithstanding Section 6.6 above, 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, and (ii) Provider will not invoice You for any future scheduled billings for that Subscription. Any refund of prepaid Fees by Provider shall constitute the maximum extent of Provider’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 invoice date.

## 8. Support

8.1. **Technical Support.** Except as otherwise set forth in the Agreement, Provider will provide You 24/7/365 Technical Support for the Services, 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 Provider’s Technical

Support services (“**Designated Technical Users**”). No support to End Users will be provided by Provider. Any and all documentation distributed by You shall clearly state that End Users can only call your Designated Technical Users for technical support requests. In the event any End User contacts Provider directly for any support, Provider shall refer such End User to your Designated Technical Users for support.

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

Account name:

Issue involved:

Date and time that 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 Provider, Provider reserves the right not to respond to the request for Technical Support until complete information has been provided and, in any event, Provider shall have no liability for delays in responding to an incomplete request for Technical Support.

8.3. **Maintenance.** Provider or its Third-Party Suppliers may be required to perform routine maintenance from time to time in connection with the Services. Routine Maintenance 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 Provider will use commercially reasonable efforts to notify You at least forty-eight (48) hours prior to such maintenance. Provider or its Third-Party Suppliers may also be required to perform emergency maintenance. Emergency maintenance may happen without notice; in case of emergency maintenance, Provider 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.

8.4. **Equipment.** Unless purchased directly from Provider, You are responsible for and must provide all phones, phone services, computers, software, hardware, and any other devices necessary to access and use the Services (“**Equipment**”). Provider makes no representations, warranties, or assurances that Your Equipment will be compatible with the Services. To access and use the Portal, you must provide, without limitation, (i) an internet connection with sufficient bandwidth and quality, (ii) a fully functional Internet browser, (iii) tools to develop and publish content, if suitable and necessary in your opinion, and (iv) tools to access database servers, if applicable.

8.5. **Error Correction.** 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 for the End Users. An End User may report any suspected Error to your Designated Technical Users. In such a case, You shall obtain from the End User and provide to Provider a detailed, written description and documentation of the suspected Error. You and your End Users must cooperate with all investigations conducted by Provider or its Third-Party Suppliers in relation to the Error. The only responsibility of Provider 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 Provider and its Third-Party Suppliers. Should Provider 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 7.3 of the MSA shall apply, except that Provider 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 Provider’s liability for failure to correct an Error.

- 8.6. **Updates.** Provider reserves the right to change or upgrade any equipment or software that it uses to provide the Services without notice to You. Provider 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. Provider cannot foresee nor be responsible or liable for service disruption or changes in functionality or performance due to Updates. Provider is not responsible or liable for issues that may arise from incompatibilities between the Service Data and the Services, including any Updates.
- 8.7. **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 Provider 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.
- 8.8. **New Releases and Replacement.** You acknowledge and agree that Provider 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 may 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 Provider 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 Provider under the Agreement, provided that if you believe that such modification or replacement substantially decreases the Service offering, Your sole remedy shall be to terminate the Service immediately, in which case the provisions of Section 7.3 of the MSA shall apply, except that Provider 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 Provider’s liability for any modification to or replacement of the Service.
- 8.9. **End of Life.** Provider 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; and/or (iii) maintenance services (“**End of Life**”). For any Service being planned for the End of Life, Provider will notify you at least ninety (90) days prior to the End of Life effective date, and Provider’s only liability in connection with the End of Life shall be to use commercially reasonable efforts to assist you for appropriate planning and suggest alternative services with substantially equivalent functionalities.
- 8.10. **Service Availability Warranty.** Provider 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 Provider’s reasonable control, including but not limited to a failure or error in a device or hardware not provided by Provider, denial of service or similar attacks, mail bombs, DNS resolution, domain name expiration, hardware failure, Internet unavailability, power failure, Your act or omission or those of your End Users, Your portion of the network or that of your End Users, IP transit provider issues, SYN attacks or any other Force Majeure event; (ii) any unavailability related to the replacement or repair of customer premises or Equipment; (iii) any issues related to a Third-Party Supplier; or (iv) 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.
- 8.11. **Service Credit.** Subject to the Service Outage Exclusions, and unless otherwise stated in the applicable Service Schedule, in the event Provider 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 8.12 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.

**8.12. Service Credit Request and Calculation.** To request a Service Credit, You must send a Service Credit request within fifteen (15) days of the Service Outage to [feedback@sherweb.com](mailto: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 End Users) was adversely affected, and the Service Credit requested. Before processing a request for Service Credit, Provider will review the information submitted in the Service Credit request. Provider calculates Service Availability based on both the monitoring system and the incident report from Provider’s engineering team. Provider 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 Provider confirms that a Service Credit is available and it shall be Your sole remedy (and that of Your End Users) 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 End Users) are in breach of the Agreement (including breach of payment obligations) at the time of the occurrence of the event giving rise to the 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 End Users, or as a result of the fault or negligence of You or Your End Users. In any case where Services Credits are granted for such loss of Service, the maximum aggregate cumulative amount of such Service Credits, in any given month for any given Service, shall not exceed to total amount of fees otherwise payable by you for this Service during that month. PROVIDER 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.

## 9. Privacy and Data Protection

**9.1. Processing.** Provider will Process Service Data in accordance with the terms of this Section 9 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. Provider 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 Provider hereby agree that: (i) Provider 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.

**9.2. Customer responsibilities.** You hereby agree with the terms of the Privacy Policy and agree to comply with Data Protection Law as it relates to Your procurement and use of the Services and Your transfer of Service Data to Provider. You are responsible for Your own compliance with Data Protection Law as a data controller. Without limiting the generality of the foregoing, You are responsible for obtaining necessary consents from Your End Users and for notifying Your End Users of the transfer of their Personal Data to Provider and the Processing of their Personal Data by Provider as contemplated by the Agreement. If, under Data Protection Law, You are required to enter into a Data Processing Agreement (“DPA”) with Provider, You may send Your request to execute Provider’s DPA by emailing Your request at [privacy@sherweb.com](mailto:privacy@sherweb.com).

**9.3. Subprocessors.** You acknowledge that Provider and third-party service providers that are engaged by Provider



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 Provider 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. Provider maintains an up-to-date list of the names and locations of all third-party subprocessors engaged in processing Personal Data, including a description of their processing activities. If, under Data Protection Law, Provider is under the obligation to provide You with the list of its subprocessors, such list will be made available upon request by contacting [privacy@sherweb.com](mailto:privacy@sherweb.com).

**9.4. Third-Party Suppliers.** If You subscribe to, purchase, enable or engage Third-Party Services pursuant to the Agreement, You acknowledge and agree that Provider may provide Service Data to the applicable Third-Party Supplier(s) and that Provider 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 Provider's control. You hereby acknowledge and agree that Provider 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.

**9.5. No Access to PHI.** You acknowledge and agree that: (i) Provider 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 Provider; and (iii) the Services will not be used in any manner that would require Provider 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.

## 10. Third-Party Services

**10.1. Third-Party Suppliers.** You acknowledge and agree that the Services may include, make available, display, run, access or otherwise interact, directly or indirectly, with Third-Party Services. Any subscription, purchase, enabling or use of Third-Party Services is subject to the terms and conditions of such 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, You shall not subscribe, purchase, enable or use such Third-Party Services. Your subscription, purchase, enabling or use of Third-Party Services shall be deemed a confirmation of your consent to the terms and conditions set out by the Third-Party Supplier in relation thereto.

**10.2. Service Data.** If You subscribe to, purchase, enable or engage Third-Party Services pursuant to the Agreement, You acknowledge and agree that Provider may provide Service Data to the applicable Third-Party Supplier(s) and that Provider 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 Provider's control. You hereby acknowledge and agree that Provider 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.

10.3. **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 will be entitled to enforce the provisions of the Agreement and to verify Your compliance with the terms of the Agreement.

## 11. Confidentiality

11.1. **Confidentiality Obligations.** Except as otherwise permitted by the Agreement or as mutually agreed to 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, disclose, divulge, sell or distribute any Confidential Information, without the prior written consent of the Disclosing Party. The Receiving Party may only use the Disclosing Party’s Confidential Information as necessary to carry out its activities contemplated by the Agreement and for no other purpose. The Receiving Party shall (i) use the same degree of care that it uses to protect the confidentiality of its own similar confidential information but in no event less than reasonable care (ii) not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement, (iii) notify the other Party promptly upon delivery of any unauthorized use or disclosure of Confidential Information, and (iv) cooperate with the other Party to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.

11.2. **Need to Know.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party’s Confidential Information to its employees, directors, officers, 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 according to written terms consistent with 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 Representative.

11.3. **End Users.** You may disclose Confidential Information to the End Users solely to the extent necessary to carry out the intent of the Agreement and provided that such End Users are contractually bound to maintain the confidentiality of such Confidential Information on terms at least as restrictive as those of this Agreement.

11.4. **Order.** The Receiving Party may disclose Confidential Information to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as 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.

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

11.6. **Relief.** The Parties acknowledge and agree that any breach of the terms of this Section 11 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 11 and to specifically enforce the terms and provisions of this Section 11, in addition to any other remedy to which such Party may be entitled, at law or in equity.

## 12. DISCLAIMER OF WARRANTIES

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, PROVIDER AND ITS THIRD-PARTY SUPPLIERS PROVIDE THE SERVICES ON AN "AS IS" BASIS AND NO WARRANTY IS EXTENDED TO YOU UNDER THIS AGREEMENT. YOU EXPRESSLY AGREE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK. PROVIDER 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, 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 PROVIDER OR SUCH THIRD-PARTY SUPPLIERS UNDER THE AGREEMENT. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY PROVIDER 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.

## 13. Limitation of Liability

IN NO EVENT SHALL PROVIDER 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 PROVIDER 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 PROVIDER BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING OUT OF OR CAUSED BY (1) ANY THIRD PARTY OR THE ACT OR OMISSION OF A THIRD-PARTY SUPPLIER, (2) YOU OR YOUR END USERS, (3) PROVIDER'S ACCESS TO YOUR OR YOUR END USERS' COMPUTER EQUIPMENT(S) OR NETWORK(S) OR (4) ANY OTHER EVENTS BEYOND THE REASONABLE CONTROL OF PROVIDER.

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

## 14. Indemnification

- 14.1. Provider 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 made available by Provider for a fee and used within the scope of the license granted to You under the Agreement. You shall promptly notify Provider of such Claim in writing and give Provider sole control over Your defense or settlement. Provider shall defend, at its own expense, any action arising from the infringement Claim, and You shall cooperate in such defense as reasonably requested by Provider, at Provider's expense. Provider shall pay all adverse final judgments and settlements that it has consented to resulting from such Claims, and any award received by Provider in such an action shall belong solely to Provider. Provider'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; (iii) specifications provided by You to Provider for the Services; (iv) code or materials provided by You as a part of the Services; (v) Your use of the Services after Provider 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 Provider'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 Provider) 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.

14.2. If a Service becomes or is likely to become the subject of an indemnity Claim under Section 14.1, Provider may at its sole discretion, (i) procure, at no cost to You, or where applicable, the right to continue using the Service, (ii) replace or modify the Services so that they become non-infringing or (iii) withdraw the infringing Service and terminate any affected Subscription Plan, 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 14.2 states the entire and exclusive obligation of Provider for any Claim or breach of Section 14.1 and Provider shall have no further liability to You or Customer in connection with Section 14.1, except only to refund to You any prepaid fees for Services.

14.3. You shall defend, indemnify and hold harmless Provider, its Third-Party Suppliers and their respective Representatives from and against any and all Claims brought by a third party arising out of or resulting, directly or indirectly, from Your use or Your End Users' use of the Services, Your breach of the Agreement or Your negligence or willful misconduct. This includes any of the following acts or omissions by You or any of Your End Users: (i) unauthorized or improper installation, use, access, copying, reproduction, and/or distribution of any portion of the Services; (ii) introduction of a software virus in Provider's or any Third-Party Supplier's network; or (iii) violation of the Agreement.

## 15. Amendment of Terms.

Provider 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, or modify or supplement the Services. Provider will notify You of any amendments to the Agreement by email, on the Portal and by posting the new version on Provider's website at <http://www.sherweb.com/legal>, or at another location communicated to You by Provider. Such changes will take effect immediately, unless otherwise indicated by Provider. You can always review the most current version of the Agreement and any document forming part of the Agreement on Provider's website at <http://www.sherweb.com/legal>, or at another location communicated to You by Provider. Your continued use of the Services after Provider 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 Provider without Provider incurring any liability whatsoever. Except as expressly provided herein, no other change shall be binding on the Parties unless in writing and signed by an authorized representatives of both Parties.

## 16. Miscellaneous

16.1. **Computation of Deadlines.** In computing any deadlines under this Agreement, the first day of the deadline is not included, but the last day is; in addition, any day that is not a Business Day is counted. However, if the last day of the deadline is a day that is not a Business Day, the deadline is extended to the next succeeding day which is a Business Day.

16.2. **Solicitation.** During the Term and for 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

("Solicit"), for employment or other services, any persons or entities employed or engaged by Provider during such period without Provider's prior written approval.

- 16.3. **Digital Signature.** By ordering Services and registering for an Account, or by clicking to accept the terms of the Agreement when prompted on Provider's website, You are deemed to have executed the Agreement and the other terms of service electronically, effective on the date You create Your Account or click to accept the terms of the Agreement. Your Account registration constitutes an acknowledgement that You are able to electronically receive, download, and print the Agreement and any amendments thereto.
- 16.4. **Regulatory Changes.** If a federal, state, provincial or 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 of canceling, changing or superseding any material term or provision of the Agreement (collectively "**Regulatory Requirement**"), then the Agreement shall be deemed modified in such a way as 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 not be able to agree on amendments needed 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 the portion of the Agreement affected by the Regulatory Requirement.
- 16.5. **Interpretation.** 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, attachments 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.
- 16.6. **Entire Agreement.** 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.
- 16.7. **Applicable Law and Venue.** The Agreement shall be governed and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable in Quebec, 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 Quebec, 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.
- 16.8. **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 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.

16.9. **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, insurrection, epidemic, quarantine, 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 16.9, either Party may thereafter terminate this Agreement on a five (5) Business Days’ notice.

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

16.11. **Survival.** All obligations imposed on Provider and You which expressly or by their nature survive the expiration or termination of the Agreement, including Sections 4, 6, 11, 12, 13, 14 and 16 of this MSA, 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.

16.12. **Notice.** You accept that communications from Provider may be electronic. As such, Provider may notify You by email (to any email address registered with Provider) or provide You with information by posting notices on Provider’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 Provider provides to 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 Provider to You, upon online posting on Provider’s website, Portal or Your Account. Notices to Provider that are not expressly authorized by the Portal shall be mailed to Provider at the following address:

SHERWEB INC.  
Attn: Legal  
95 South Jacques-Cartier Blvd, Suite 400 Sherbrooke (QC) Canada  
J1J 2Z3  
Email: legal@sherweb.com

16.13. **Cumulative Rights.** The rights of each Party hereunder are cumulative and the exercise or enforcement by a Party of any right or remedy hereunder shall not 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.

- 16.14. **Additional Remedies.** You acknowledge that any act in violation of **Provider's** rights in the Services may cause irreparable damage to **Provider**, for which monetary damages may not be an adequate remedy. Accordingly, if You act, fail to act, or attempt to act in violation of **Provider's** rights in the Services, then in addition to all **Provider's** other rights and remedies under the Agreement, **Provider** shall have the right to seek to prevent such action or failure to act by applying for interlocutory or permanent injunctive relief.
- 16.15. **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.
- 16.16. **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 are null and void.
- 16.17. **Export.** Provider'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.
- 16.18. **Language.** You have chosen that the Agreement be drafted in English. *Le client a choisi que cette entente soit rédigée en anglais.*