



## MASTER SERVICE AGREEMENT

PLEASE READ VERY CAREFULLY THESE TERMS AND CONDITIONS BEFORE USING SHERWEB'S SERVICES. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE CLOSE YOUR BROWSER AND DO NOT PROCEED WITH ORDERING OR USING THE SERVICES.

PLEASE NOTE THAT SHERWEB SERVICES ARE STRICTLY RESERVED AND PROVIDED TO BUSINESSES AND ARE NOT FOR CONSUMERS. YOU REPRESENT AND WARRANT THAT YOU OR, IF APPLICABLE, THE PERSON THAT YOU ACT FOR FOR THE PURPOSES HEREOF AS DULY AUTHORIZED REPRESENTATIVE, ARE A BUSINESS OR A MERCHANT, AND THAT YOU ARE BUYING SHERWEB SERVICES FOR BUSINESS PURPOSES ONLY. IF YOU ARE A CONSUMER OR ARE NOT BUYING SHERWEB SERVICES FOR BUSINESS PURPOSES, PLEASE CLOSE YOUR BROWSER AND DO NOT PROCEED WITH ORDERING OR USING THE SERVICES.

BY CLICKING "I AGREE", ORDERING AND/OR USING SHERWEB'S SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS MASTER SERVICE AGREEMENT, THE ATTACHED APPENDIX A: MICROSOFT SOFTWARE USE-TERMS AND CONDITIONS, SHERWEB'S ACCEPTABLE USE POLICY, SHERWEB'S SERVICE LEVEL AGREEMENT (THE "SERVICE LEVEL AGREEMENT" OR "SLA"), SHERWEB'S PRIVACY POLICY AND SHERWEB'S NO-SPAM POLICY, EACH OF WHICH MAY BE FOUND AT [HTTP://WWW.SHERWEB.COM/LEGAL](http://www.sherweb.com/legal) (COLLECTIVELY, THE "AGREEMENT").

(For present purposes, "Person" means an individual, corporation, company, cooperative, partnership, trust, unincorporated association, entity with juridical personality or governmental authority or body, and pronouns that refer to a Person shall have a similarly extended meaning. "Includes" and "including", when used in this Agreement, mean "including (or includes) without limitation")

**THIS AGREEMENT** is by and between SHERWEB inc., with offices at 740 Galt West, Suite 10, Sherbrooke, QC, Canada J1H 1Z3 ("SherWeb"), and the recipient and payor of Services hereunder as identified as part of the subscription process for SherWeb Services ("You" and, where appropriate, "Your", "Yours" or "Yourself").

SherWeb and You agree as follows:

### 1. PROVISION OF SERVICES

SherWeb agrees to provide to You such Services as You order and pay for in accordance with and subject to your compliance with the Agreement. For present purposes, "Services" means such sharepoint, web hosting, virtual private server, exchange hosting, CRM, and other remotely provided services as SherWeb may offer from time to time.

### 2. LAWFUL USE OF THE SERVICES

You agree to use all Services provided to You hereunder only for Your lawful, appropriate, and permitted internal purposes hereunder. In no event may You resell the Services. In addition, You may not use the Services if You are a competitor of SherWeb (as determined by SherWeb in its sole discretion). In the event that your use of the Services violates any law, rule or regulation or this Agreement, SherWeb shall have the right to immediately terminate this Agreement and pursue any and all its other remedies.

### 3. TERM, TERMINATION, CANCELLATION POLICY

#### 3.1 Term

The Agreement's "Term" is comprised of the Initial Term and any Renewal Term (each, as defined below).

- a. Monthly Plan Agreement Term. For monthly plans, the “**Initial Term**” is defined as the period from the date of your initial payment or execution of this Agreement, whichever occurs earlier, until the thirtieth (30<sup>th</sup>) day thereafter. “**Renewal Terms**” for monthly plans, are defined as the thirty (30) day period beginning at the end of the Initial Term and each subsequent thirty (30) day period thereafter.
- b. Prepaid Yearly Plan Agreement Term. For prepaid yearly plans, the “**Initial Term**” is defined as the period from the date of your initial payment or execution of this Agreement, whichever occurs earlier, through the end of the twelve (12) calendar month period thereafter. “**Renewal Terms**” for prepaid yearly plans are defined as the twelve (12) month period beginning at the end of the Initial Term and each subsequent twelve (12) month period thereafter.
- c. Defined Term Plan Agreement Term. For defined term plan plans, the “**Initial Term**” is defined as the period from the date of your initial payment or execution of this Agreement, whichever occurs earlier, until such time as You agree to be bound by the terms of this Agreement in accordance with SherWeb’s registration process. “**Renewal Terms**” for defined term plan are defined as the twelve (12) month period beginning at the end of the Initial Term and each subsequent twelve (12) month period thereafter.
- d. Automatic Renewal. This Agreement shall renew automatically at the end of the Initial Term and each Renewal Term unless terminated in accordance with this Agreement either by You or by SherWeb.

### 3.2 Termination for convenience and cancellation policy

- a. Monthly Plan. You may terminate the Agreement for convenience at any time on fifteen (15) days advance written notice. The termination effective date will be fifteen (15) days after receipt of the written notice. If You terminate for convenience a monthly plan prior to the end of the then current Term, SherWeb shall not be required to refund You fees already paid and you will be charged the entire month in which the effective termination date occurs. For plans that are having a different billing cycle than monthly, such as a three (3) month or a six (6) month cycle, You shall be reimbursed for the unused month(s) after the termination effective date. In every case, only full months shall be reimbursed, no partial monthly fees shall be refunded.
- b. Prepaid Yearly Term.
  - 1) For all Services with a prepaid yearly term contract including the Starter Web Hosting Plan, you may terminate the Agreement for convenience with a thirty (30) days advance written notice before the end of the Term. However, if the written notice is received after this required thirty (30) days but before the end of the Term, SherWeb may charge You a fee of \$15.00 to proceed with the cancellation.
  - 2) If you terminate your account for convenience prior to the end of the Term, SherWeb will not reimburse any prepaid fees and/or if your account has automatically renewed and we did not receive your written notice on time, You will be charged for all the months remained unpaid.
- c. Defined Term Plan. You may terminate the Agreement for convenience at any time on ninety (90) days advance written notice. The termination effective date will be ninety (90) days after receipt of the written notice. If You terminate for convenience such plan prior to the end of the then current Term, SherWeb shall not be required to refund You fees already paid and You will be charged the entire ensuing ninety (90) day period before which the effective termination date occurs.

### 3.3 Termination by SherWeb without cause

SherWeb may terminate this Agreement without cause by providing written or electronic mail notice of termination to Your administrative email contact address not less than sixty (60) calendar days prior to the effective termination date.

- a. Monthly Plan. For monthly plans, if the effective termination date occurs prior to the end of the then current Term, SherWeb shall refund or not charge You the monthly fees for the month in which Services terminate.
- b. Prepaid Yearly Term. If SherWeb terminates a prepaid yearly term Agreement for convenience prior to the end of the then current Term without cause, a refund equal to the prepaid hosting fees attributable to the

remaining month(s) PLUS the fee for the month in which the contract is terminated LESS any unpaid fees shall be issued within thirty (30) calendar days of account termination to the credit card on record at time of termination. This refund shall be Your sole and exclusive remedy and SherWeb's entire aggregate liability for SherWeb's early termination of the Agreement without cause.

- c. Defined Term Plan. If SherWeb terminates a defined term plan Agreement for convenience prior to the end of the then current Term, SherWeb shall refund or not charge You the fees attributable to the remaining unused months of the current Term.

### **3.4 Termination for Cause**

- a. By You. To terminate Your account for SherWeb's material breach of the terms or conditions of this Agreement, You shall provide to SherWeb's legal department in writing, via email (legal@sherweb.com) or via certified mail, the details of SherWeb's material breach and allow SherWeb thirty (30) days to cure any such violation prior to termination of this Agreement. You may only terminate this Agreement if SherWeb fails to cure the alleged material breach within such thirty (30) day delay.
- b. SherWeb may terminate any or all Services immediately and without prior notice (termination for cause) for any of the following reasons: any material breach of this agreement, which includes any failure to make payment when due, violation of the SherWeb's Acceptable Use or No-Spam Policies; or any non-material breach of this Agreement which remains uncured beyond a reasonable time after breach notification; and failure to provide and keep current all administrative contact and billing information. In the event of termination for cause, SherWeb shall not refund any paid fees. Termination for cause will not cancel or waive any fees owed to SherWeb as per this Agreement.

### **3.5 Following Termination**

TERMINATION OF YOUR ACCOUNT WILL NOT CANCEL OR WAIVE ANY FEES OWED TO SHERWEB AS PER THIS AGREEMENT. YOUR DATA AND ACCOUNT SETTINGS SHALL BE IRREVOCABLY DELETED 30 DAYS FROM THE DATE OF TERMINATION (OR AS OTHERWISE SET FORTH IN THE SLA) UNLESS YOU HAVE BY SUCH DATE PAID ALL AMOUNTS AND DAMAGES OWED TO SHERWEB, INCLUDING WEB SITE CONTENT, DATABASES, AND EMAIL MESSAGES. IT SHALL BE YOUR SOLELY AND EXCLUSIVE RESPONSIBILITY TO SECURE ALL NECESSARY DATA FROM YOUR ACCOUNT PRIOR TO TERMINATION.

## **4. FEES, BILLING, TAXES, CHARGES**

### **4.1 Fees**

The fees set forth in the order form created at the outset of Your account shall be effective for the Initial Term and each Renewal Term of this Agreement, provided that SherWeb shall have the right to increase these fees at any time upon thirty (30) days written notice to You. In the event that You do not agree with such fee increase, You shall have the right to terminate this Agreement upon thirty (30) days written notice, provided that such notice of termination must be received within thirty (30) days of date of notice of the fee increase.

### **4.2 Billing and Payment Arrangements**

SherWeb will bill You on a monthly basis for all recurring fees. One-time fees, including late payment fees, invoice processing fees, and returned check fees may occur at any time. All plan or feature changes may be billed within a seven (7) day period. No refunds 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 monthly term shall be issued. INVOICES/PAYMENTS ARE IRREVOCABLY DEEMED FINAL AND ACCEPTED BY YOU THIRTY (30) DAYS FROM THE LATER OF WHEN (I) YOUR INVOICE IS ISSUED AND (II) YOU MAKE PAYMENT THEREOF (INCLUDING THROUGH YOUR CREDIT CARD AS AUTHORIZED HEREUNDER). YOU SHALL AT ALL TIMES PROVIDE AND KEEP CURRENT AND UP-TO-DATE YOUR CONTACT, CREDIT CARD, IF APPLICABLE, AND BILLING INFORMATION ON THE ADMINISTRATIVE CONTROL PANEL.

#### **4.3 Payment by Credit Card**

- a. For payment by credit card, SherWeb shall not provide an invoice to You. You may view and print an invoice for Your account using the Account Manager. At the beginning of each term, SherWeb will apply the current monthly charges to Your credit card, the number of which You entered in the Account Manager.
- b. It is Your responsibility to keep Your credit card information up-to-date. In the event charges to Your credit card fail, SherWeb shall email a warning to Your account billing contact. If, after fifteen (15) days, SherWeb is unable to bill Your credit card, SherWeb may suspend Your access to or terminate any Services. During this suspension, existing data will not be affected. After thirty (30) days of non-payment from the date Your credit card was initially charged, SherWeb shall have the right to immediately terminate this Agreement and delete all your data as per the above.

#### **4.4 Payment by Check**

- a. For payment by check, SherWeb shall provide an electronic invoice to You each month in advance. You may view and print an invoice for Your account using the Account Manager. Payment by check must be received within thirty (30) days after the issuing of the invoice.
- c. Should Your check not be honored by the financial institution, a returned check fee in the amount of the lesser of \$50.00 (fifty dollars) or the maximum amount allowed by law, will be assessed.
- d. In the event You fail to make timely payment for any reason by the thirtieth (30th) calendar day following issuance of the invoice, Your access to the server will be immediately suspended. During such suspension, incoming and outgoing emails will not be available, but existing data will not be affected. After forty-five (45) days of non-payment from when the date payment is due, SherWeb shall have the right, without limitation, to immediately terminate this Agreement.
- d. In the event that SherWeb does not receive payment by the thirtieth (30th) calendar day following issuance of the invoice, SherWeb shall have the right to assess a late payment fee, equal to the greater of the amount of (1) interest calculated at the lesser of 18% per annum or the maximum rate permitted by law, or (2) \$25.00 (twenty-five dollars).
- e. In the event of a late or dishonored check, You may be required to pay via Cashier's Check or money order.

#### **4.5 Excess use**

You shall monitor and maintain Your accounts within all plan-specified limits and in a manner that does not disrupt the activities of other SherWeb customers. In the event Your usage exceeds the limits for Your account or may disrupt the activities of other SherWeb customers, You agree SherWeb may, in its sole discretion, (i) charge You for such excess usage via Your credit card, or by invoice, (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 based solely upon SherWeb's collected usage information. Unused monthly allotments shall not accrue or carry over from one month to any other month. Upon any upgrade or increase on the limits of Your Account, You shall be responsible for the new costs and fees.

#### **4.6 Taxes**

You shall be liable for taxes, governmental fees and assessments to be paid related to fees and charges arising under this Agreement or in connection with the Services. You shall also pay all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of the Services.

### **5. MODIFICATION OF TERMS**

SherWeb may update, amend, modify or supplement the terms and conditions of this Agreement from time to time and will use reasonable efforts to notify you of this. You are responsible for regularly reviewing the most current version of this Agreement at any time at <http://www.sherweb.com/legal/>. If at any time you do not agree with any

amendment, modification or supplement to the terms and conditions of this Agreement, you may terminate this Agreement for convenience as per Section 3.2.

## **6. BETA PRODUCTS AND SERVICES**

### **6.1 Provided "As Is"**

This section applies only to customers with accounts created on experimental "Beta" plans and platforms. The Service Level Agreement does not apply to such "Beta" plans or platforms, and SherWeb has no liability whatsoever in relation to any such "Beta" plans or platforms or any related databases, web site content and email messages, whether direct or indirect or otherwise. Any use of "Beta" platforms or plans is at Your risk and peril, and you are strongly discouraged to use such accounts in production or in relation to sensitive data.

### **6.2 Upgrades**

SherWeb may upgrade software on "Beta" programs when and as SherWeb deems necessary in its sole discretion. Without limitation, SherWeb does not represent or warrant that new versions of the software installed on "Beta" programs will be compatible with the currently installed version or that loss of functionality or interruption of service will not occur as a result of such upgrades.

### **6.3 Termination**

SherWeb has the right to terminate any "Beta" program or plan at any time without cause or notice. SherWeb may convert the "Beta" servers to a SherWeb Services plan selected at SherWeb's sole discretion. To discontinue the account and avoid incurring increased charges under selected SherWeb Service plan, You must terminate the account in accordance with the termination provisions in Section 3 of this Agreement.

## **7. MATERIAL, DATA, SOFTWARE, OR PRODUCTS**

### **7.1 Server Ready**

Any material, data, software or products You provide to SherWeb in connection with SherWeb Services shall be server ready, meaning that they shall be in a condition and form, as determined solely by SherWeb, which requires no additional manipulation or verification on the part of SherWeb. Attempting to place or requesting placement of non-server-ready material, data, software or products on SherWeb's servers shall be a material breach of this Agreement.

### **7.2 Rejection**

SherWeb may, in its sole discretion, reject material, data, software or products that You have placed, attempted to place, or have requested be placed on SherWeb's servers. SherWeb shall notify You of its rejection and provide You with an opportunity to amend or modify such material, data, software or products to meet the requirements of SherWeb.

### **7.3 Malicious Code**

Any material, data, software or products placed on SherWeb's servers by or through You shall 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.

## **8. LIMITED WARRANTY, LIMITATION OF DAMAGES.**

**8.1** SHERWEB PROVIDES SERVICES ON AN "AS IS", "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTIES, CONDITIONS OR REPRESENTATIONS ALL OF WHICH ARE DISCLAIMED, WAIVED AND EXCLUDED. YOU EXPRESSLY AGREE THAT ANY AND ALL USE OF SERVICES IS AT YOUR RISK AND PERIL. ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR LEGAL, WHETHER ARISING BY LAW, CONTRACT, STATUTE, USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR WHETHER ARISING AS RESULT OF THE NATURE OF THIS AGREEMENT OR IN CONFORMITY WITH USAGE, EQUITY OR LAW, OR OTHERWISE, INCLUDING ANY AND ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF TITLE, OWNERSHIP (INCLUDING BUT NOT LIMITED TO THE WARRANTY THAT THE RELEVANT PROPERTY IS FREE OF ANY OTHER RIGHTS OR CHARGES), NON-

INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, QUALITY AND WORKMANSHIP, ARE HEREBY DISCLAIMED, WAIVED AND EXCLUDED.

- 8.2** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING CONTRARY IN THIS AGREEMENT, YOU AGREE THAT SHERWEB'S (AND THAT OF ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS) TOTAL MAXIMUM AGGREGATE CUMULATIVE LIABILITY, FOR ALL PAST, PRESENT OR FUTURE CLAIMS, DEMANDS, FINES, PENALTIES, ACTIONS, CAUSES OF ACTIONS, REQUESTS, LAWSUITS, JUDGMENTS, DAMAGES, LIABILITIES COSTS, EXPENSES, PREJUDICES OR LOSSES, INCLUDING REASONABLE ATTORNEYS FEES ("**CLAIMS**") ARISING AS A RESULT OF OR IN RELATION TO THIS AGREEMENT, SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES AND SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED, IN THE AGGREGATE FOR ALL CLAIMS BY ANY AND ALL PERSONS, 50% OF ALL FEES ACTUALLY PAID TO SHERWEB BY YOU UNDER THIS AGREEMENT.
- 8.3** SHERWEB AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES FOR LOST PROFITS, GAINS OR OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE, REGARDLESS OF WHETHER SHERWEB HAS BEEN ADVISED OF SUCH DAMAGES OR THEIR POSSIBILITY.
- 8.4** You agree that Your recourses and remedies and SherWeb's (and its SUBSIDIARIES', AFFILIATES', OFFICERS', EMPLOYEES', AGENTS', PARTNERS', MANDATARIES', VENDORS' AND LICENSORS') liability hereunder may be further limited by the Service Level Agreement.
- 8.5** You are fully responsible for the content of the information and data passing through SherWeb's network or using the Services and for all activities that You conduct with the assistance of the Services.

## **9. PATENTS, COPYRIGHTS, TRADEMARKS, AND OTHER INTELLECTUAL AND PROPRIETARY RIGHTS**

- 9.1** Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any product or service provided to You is solely the property of SherWeb and its vendors and licensors. These products and services are only for Your use in connection with the Services.
- 9.2** You hereby represent and warrant to SherWeb that You have the right to use any patented, copyrighted, trademarked or proprietary material which You use, post, or otherwise transfer to or by way of SherWeb servers.

## **10. HARDWARE, EQUIPMENT, AND SOFTWARE**

You are responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access the Services. SherWeb makes no representations, warranties, or assurances that Your equipment will be compatible with SherWeb services.

## **11. INDEMNIFICATION**

You shall indemnify, defend and hold harmless SherWeb (and its subsidiaries, affiliates, officers, employees, agents, partners, mandataries, vendors and licensors) of any and all Claims (including third party Claims) arising as a result of or in relation to any breach of this Agreement or fault by You, or in relation to any activities conducted by You through the Services, or otherwise in relation to Your products or services.

## **12. MISCELLANEOUS**

### **12.1 Governing Law, Jurisdiction, Forum, Attorneys' Fees**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec, Canada without regard to its conflicts of laws or its principles. The courts of the province of Quebec or the

federal courts of Canada situated therein, as applicable, shall have sole and exclusive jurisdiction over any action, claim, demand, proceeding or lawsuit whatsoever arising under or in relation to this Agreement or its subject matter. The parties irrevocably agree, consent and submit themselves to the subject matter and personal jurisdiction of the courts of the Province of Quebec and of the federal courts of Canada situated therein for such purposes. 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.

#### **12.2 Severability**

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

#### **12.3 Waiver**

No waiver by SherWeb of any breach by You of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver shall be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing. No modification of this Agreement shall be effective unless it is in writing and signed by SherWeb, and then only to the extent set forth in such writing. We may modify or amend this Agreement, including the Service Level Agreement and the rates and fees, from time to time. Unless otherwise provided in this Agreement, all such modifications or amendments shall be effective immediately upon posting on the Website. You may request a copy of the revised Agreement by emailing us at [legal@sherweb.com](mailto:legal@sherweb.com). YOUR CONTINUED USE OF YOUR ACCOUNT AND/OR THE SERVICES AFTER THE NOTICE PERIOD WILL BE CONCLUSIVELY DEEMED TO BE ACCEPTANCE BY YOU OF ANY SUCH MODIFICATIONS OR AMENDMENTS.

#### **12.4 Assignment**

Neither party may assign or transfer this Agreement or any rights or obligations hereunder, in whole or in part, except with the prior written consent of the other party, which shall not be unreasonably withheld; provided that SherWeb may assign or transfer this Agreement, or any rights or obligations hereunder, in whole or in part: (i) to an affiliate of SherWeb, (ii) in connection with a merger, amalgamation or sale of all or a substantial part of the business of SherWeb, or (iii) for financing, securitization or other similar purposes, which assignments and/or transfers shall operate *novation* and discharge SherWeb hereunder. A change of control of You shall be deemed to be an assignment and transfer hereunder and shall be governed by the requirements of this provision.

#### **12.5 Excused Performance**

Except for monetary obligations, this Agreement and Your obligations hereunder shall not be affected or impaired because SherWeb is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of circumstances beyond SherWeb's control (including any and all labour disputes, strikes and lockouts, third parties, and failures of the Internet) and SherWeb's obligations under this Agreement shall be suspended and excused by any such events or circumstances.

#### **12.6 Survival**

Sections 8, 9, 11 and this Section 12 of this Agreement shall survive termination.

#### **12.7 Entire Agreement**

This Agreement constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and SherWeb with respect to the Services. You understand and agree that SherWeb and You intend to include, as the sole third party beneficiaries of this Agreement, SherWeb's software vendors, with all rights and remedies available as if such vendors were a party to this Agreement



## Microsoft | Volume Licensing

### END USER LICENSE TERMS

#### TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Licensed Products") provided by SherWeb Inc. (hereinafter referred to as "Customer"). Customer does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Customer must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with Customer, and to your understanding of, compliance with, and consent to the following terms and conditions, which Customer does not have authority to vary, alter, or amend.

#### 1. DEFINITIONS.

"Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or other electronic device.

"Server Software" means software that provides services or functionality on a computer acting as a server.

"Software Documentation" means any end user document included with server software.

"Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

#### 2. OWNERSHIP OF LICENSED PRODUCTS.

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

#### 3. USE OF CLIENT SOFTWARE.

You may use the Client Software installed on your Devices by Customer only in accordance with the instructions, and only in connection with the services, provided to you by Customer. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

#### 4. USE OF REDISTRIBUTION SOFTWARE.

In connection with the services provided to you by Customer, you may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO CUSTOMER, WHICH TERMS MUST BE PROVIDED TO YOU BY CUSTOMER.** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Customer.

#### 5. COPIES.

You may not make any copies of the Licensed Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Customer; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of

your agreement with Customer, upon notice from Customer or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Products.

#### 6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILED AND DISASSEMBLY.

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

#### 7. NO RENTAL.

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Customer.

#### 8. TERMINATION.

Without prejudice to any other rights, Customer may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Customer or Customer's agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.

#### 9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY CUSTOMER AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.

#### 10. PRODUCT SUPPORT.

Any support for the Licensed Products is provided to you by Customer and is not provided by Microsoft, its affiliates or subsidiaries.

#### 11. NOT FAULT TOLERANT.

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

#### 12. EXPORT RESTRICTIONS.

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

#### 13. LIABILITY FOR BREACH.

In addition to any liability you may have to Customer, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.