

The Leaseweb B2B Sales Contract Schedules, consisting of these Leaseweb's B2B Sales Terms and Conditions, Services Specifications, Service Level Agreement and the Policies, shall apply to all Quotations, Orders, Sales Contracts, Services, Tests, Trial Periods and any other contracts and/or legal relationships between Leaseweb and Customer. The applicable version of the binding Leaseweb B2B Sales Contract Schedules as part of any Sales Contract are available and can be downloaded from the Leaseweb's website at: <https://www.leaseweb.com/legal/sales-contract>.

## 1. DEFINITIONS

The Leaseweb B2B Sales Contract Schedules consisting of the Leaseweb B2B Sales Terms and Conditions, the Services Specifications, the Service Level Agreement, and the Policies as well as in Order, Quotation, Sales Contract and Contract Overview (together with the Leaseweb Sales Contract Schedules collectively, the "Contract"), the following words and expressions have the following meanings:

**Affiliate** means, with regard to any entity, any other entity that (directly or indirectly) Controls, is controlled by, or is under common Control with such entity.

**API** means the application programming interface (or similar technology), through which Customer can access or communicate with Leaseweb and/or Leaseweb's Equipment.

**Bandwidth** means the amount of data that is be carried from one point to another in a second, expressed in bits per second (bps).

**Basic Power** means the limit that has been set for Customer's use of electricity, on the basis of the Services Specifications, as specified in the Contract Overview, measured in amperes.

**Beta** means a production ready Service delivered by Leaseweb without any Service Levels and / or other liabilities, commitments being applicable. All Services provided in Beta are provided "as-is" and "as available" without any warranty of any kind. Such Test or Beta Test is offered and performed in order to verify and measure the proper performance of the Service to certain Customers at Leaseweb's sole discretion.

**Billing Cycle** means the frequency that Leaseweb sends the invoices to the Customer as part of the Sales Contract, deviations are subject to Leaseweb commercial conditions.

**Business Day** means Mondays to Fridays, with the exception of official public holidays in Quebec, Canada.

**Business Hours** means the period between 08:30 a.m. and 4:30p.m. on a Business Day.

**Cloud** means servers that are accessed over the internet, and the software and databases that run on those servers. As Leaseweb is an online intermediary IAAS cloud service provider it does not have access to any Customer data or Customer content in the Cloud in accordance with Clause 7 of the Sales Terms and Conditions. Therefore, Leaseweb shall not be held liable for any Customer content transmitted over the Network by using the Services and/or by providing any of its managed Services.

**Colocated Equipment** means Equipment owned by Customer that is from time to time installed by Customer at a Data Centre pursuant to the Sales Contract.

**Colocation Service** means a non-exclusive right to install and retain the Colocated Equipment in the Housing Space, granted by Leaseweb to Customer with effect from the Delivery Date for the duration of the Contract Term.

**Confidential Information** means all information not publicly known used in or otherwise relating to the Contract, the business or affairs of a Party or an Affiliate of such Party and disclosed (whether in writing, verbally or by any other means and whether

directly or indirectly) by the Disclosing Party to the Receiving Party whether before or after the Contract Start Date.

**Contract Overview** means an order confirmation notification from Leaseweb to Customer made via email, through the Customer Portal or otherwise, to notify Customer that Customer's Order, or Sales Contract modification request issued by the Customer under Clause 5.1 has been formally accepted by Leaseweb and is thereby formally a Contract. The Contract Overview, also referred to as a Sales Contract, shall set out the Services and/or Equipment Customer purchased or leased from Leaseweb and the relevant Sales Terms and Conditions.

**Contract Start Date** means the date on which the Sales Contract becomes effective, and the Contract Term commences as specified in Leaseweb's Contract Overview.

**Contract End Date** means the agreed last date of the Contract Term, including any renewals.

**Contract Extension Date** means the date on which the Sales Contract renews and a new Contract Term commences with an equivalent Contract Term, unless otherwise agreed in writing.

**Control** means the possession of power, directly or indirectly, to direct or cause the direction of the management and the policies of an entity, whether through ownership of voting rights, by contract or otherwise.

**CPI** means the Consumer Price Index, which is the official measure of inflation of consumer prices of Canada.

**Customer** means any business entity or an internet professional (therefore not meaning any private individual who is acting outside of trade, business, craft, profession qualified and regulated by law as consumer) providing its business details for the Customer Account, such as business registration number and/or VAT number for entering into any Sales Contract, Order, Quotation, Trial Period, Test, Beta, with respect to the provision of Services by Leaseweb.

**Customer Account** means registration for the use of the Leaseweb Customer Portal by separate and independent access to Leaseweb (by using switching functionality) in the Customer Portal.

**Customer Portal** means the online services available at [www.leaseweb.com](http://www.leaseweb.com) for the sole purpose of executing the Sales Contract entered into by and between the Customer and Leaseweb, and therefore solely binding by and between the Customer and Leaseweb Sales Entity upon the consent and acceptance granted by the Customer for such limited and restricted use under the Sales Contract.

The Customer Portal and the Leaseweb website are subject to the Terms of Use. Please be referred to Clause 16.6.

**Data Centre** means a data centre out of which or within which Leaseweb provides Services.

**Data Traffic** means the sum of data that is transmitted to and from Customer's infrastructure, measured in Bytes.

**Dedicated Equipment** means Equipment leased from time to time by Customer from Leaseweb pursuant to the Sales Contract.

**Delivery Date** means the date confirmed by Leaseweb in the Contract Overview, on which (i) Leaseweb enables Customer to use the Services for the first time, or (ii) in the case of a Colocation Services, Customer is entitled to install the Colocated Equipment at the Data Centre, or (iii) Leaseweb delivers the Equipment that is leased or sold by Leaseweb to Customer.

**Disclosing Party** means the Party that discloses Confidential Information to the Receiving Party, as referred to in Clause 24.

**Discount** means deduction of Fees for the percentage, amount and/or specific period during the Contract Term as specified by Leaseweb in the Contract Overview or the order confirmation. Leaseweb may grant Customer a Discount on the Service Fees, in case of pre-payment based on the Customer's chosen Billing Cycle.

**Dispute** means any claim, controversy, or dispute concerning questions of fact or law arising out of or relating to these Sales Terms and Conditions, Policies or the Sales Contract or the performance hereunder, or to the threatened, alleged or actual breach thereof including early termination of the Sales Contract ("Customer breach").

**Early Termination Fee** means the Fees Customer needs to pay in cases indicated in Clause 22.6 and 22.7 of the Sales Terms and Conditions. This covers (i) the entire amount of all outstanding Fees, and (ii) all the Fees Customer needs to pay from the termination date up to the originally agreed Contract End Date, also referred to as remaining total contract value.

**Electricity Supply** means the supply of electricity, which supplies will be charged by Leaseweb to Customer, measured in kWh.

**Emergency** means any situation which poses an immediate and material risk to: (i) a person or persons in connection with the Services; (ii) the Data Centre; (iii) the provision of one or more of the Services; (iv) the Equipment; and/or (v) the provision of Services by Leaseweb to other customers.

**End User** means any client of Customer or other user of Customer's services, as well as any other person or (legal) entity who obtains access to Services via Customer.

**Equipment** means any equipment, including but not limited to: computer hardware, telecommunications hardware, Interconnection Points, accessories, attachments, Hard Disks, SSD's, alterations of and spare parts for that equipment.

**Estimated Delivery Time** means the timeframe specified in the Order, which will vary from the Contract Start Date and/or Delivery Date subject to the confirmation of Leaseweb.

**Facility Agreement** means any lease, license and/or other agreement contract executed by and between Leaseweb and a third party, pursuant to which Leaseweb is entitled to use a Data Centre and to grant Customer a license to use the Housing Space within the Data Centre.

**Fees** means the surcharges, Services Fees, costs, prices and expenses payable under the Sales Contract by Customer to Leaseweb for the provision of Services and the same arising out of Customer's use of the Services, including recurring and non-recurring Fees, set out in the Services Specifications and the Contract Overview.

**Force Majeure** means any event outside the reasonable control of a Party affecting its ability to perform any of its obligations (other than the Customer's payment and financial obligations during the applicable Term) under the Sales Contract, including but not limited to: acts of God; acts of terrorists; acts of war; outbreak of hostilities; sabotage; civil disorder; riots; acts or

demands of any (local) government or government agency; strikes or other labour unrest; fires; floods; earthquakes; storms; lightning, any interruption in the supply of electrical energy to the Data Centre; restrictions related to an outbreak of disease (such as formally by local government and/or medical authorities established viruses; pandemics); epidemics; shortage of materials; unavailability or delay in delivery not resulting from the responsible Party's failure to timely place orders therefore; equipment failures; lack of or delay in transportation; failure of a third party to grant a required right-of-way permit, assessment or other required authorization; acts or omissions of vendors or suppliers; changes in law or government policy; and other unforeseeable circumstances, provided however that the Customer i) has no right to refer to Force Majeure for any event that: (i) the Customer could have reasonably known or been aware of prior to entering into a Sales Contract and could have been prevented by Customer's reasonable precautions or workarounds, or (ii), any labour problems or strikes relating to the workforce of Customer or its suppliers or subcontractors.

**Housing Space** means the racks, footprints, cages, cabinets, suites and/or other areas, designated as such by Leaseweb within the Data Centre or in such other places which Leaseweb may from time to time designate and specify in the Services Specifications or the Contract Overview.

**Intellectual Property Rights** means any patent, (software) copyright, trademark, trade name, business names and designations, service mark, moral right, database right, trade secret, knowhow and any and all other intellectual property rights whether registered or not or capable of registration and whether subsisting in the country of Leaseweb's principal place of business or any other part of the world together with any and all goodwill relating thereto.

**Interconnection Point** means a port on Leaseweb's switch and/or router and/or firewall and/or load balancer located in the Data Centre, at which point the responsibility of the data stream transport is transferred from Leaseweb to Customer.

**Leaseweb** in relation to Service(s) and/or Equipment provided to Customer it means Leaseweb Canada Inc., a Québec corporation, incorporated under the laws of Canada, with its registered office at 14 Place du Commerce, Suite 500, Nuns' Island, Montreal, Quebec, Canada under the Canada Federal Jurisdiction number 868471-5, a separate and independent IaaS cloud service provider also referred to as "Leaseweb Sales Entity and/or (Leaseweb) Sales Organization", executing its Sales Contract separately and independent from any other Leaseweb Sales Entity.

**Leaseweb B2B Sales Contract Schedules** means the B2B Sales Terms and Conditions, Services Specifications, Service Level Agreement and the Policies, and any other schedules added upon mutual consent. For avoidance of doubt, Leaseweb does not offer B2C Services, hence B2C Sales Contract Schedules are not applicable.

**Maintenance** means maintenance, repairs, modifications or upgrades performed by Leaseweb from time to time on the Network.

**Maintenance Window** means the timeframe in which Leaseweb schedules the performance of Maintenance. Unless specifically agreed otherwise in writing by the Parties, the Maintenance Window is every day, between the hours of 20:00 until 08:00

CET, whereby Leaseweb will preferably schedule Maintenance during the weekend between the hours of 01:00 until 06:00 CET.

**Managed Service** means for any Managed Service that Leaseweb does not have any technical capability, control and/or duty to access, filter and/or monitor any Customer data, nor does it have any technical capability, control and/or duty to remove, delete any Customer content or the end-user(s) of its Customer. Clause 7 and Clause 16.2 of the Sales Terms and Conditions and Chapter B and Chapter C of the Leaseweb Policies remain fully applicable to Managed Services.

**Monthly Recurring Fee** means the fixed recurring Service Fee invoiced by Leaseweb to Customer on a monthly basis for the applicable Service (as set forth in the Contract Overview).

**Network** means the network, which is comprised of all infrastructure Equipment (i.e. Equipment that supports the flow and processing of information, including storage, servers and networking components) owned or leased by Leaseweb within each active Leaseweb POP or Leaseweb's Affiliates POP, all Leaseweb wiring within each active Leaseweb POP or Leaseweb's Affiliate's POP, power supplies owned or controlled by Leaseweb in each POP, and all circuits owned or leased by Leaseweb between active Leaseweb POPs and active POPs of Leaseweb's Affiliates. For the avoidance of doubt: the Network does not include Equipment owned, leased, or controlled by Customer, circuits or networks (including, without limitation, local access loops) between a Leaseweb POP and a Customer location or between Customer locations, interconnections between Customer's network and the Network, or any networks, network equipment, or circuits not owned or controlled by Leaseweb.

**Notice** means a message of one Party to the other Party in writing by registered post mail, email sent and received by a legally authorized representative of each of the Parties, or by courier or by regular post mail thereby taking into account that the Notice is deemed to have been delivered no earlier than five Business Days.

**Parties** means Leaseweb and Customer, each a "Party".

**Payment Services Provider** means a third party professional financial intermediary that facilitates payments from Customer to Leaseweb including credit card companies, banks and online platforms.

**Payment Term** means the invoices sent by Leaseweb to Customer are payable by Customer to Leaseweb within fourteen (14) days from the invoice date.

**Personal Information** means any information about an identifiable individual and any other information defined as "personal information" in the applicable Privacy Laws.

**Policies** means the Sales Contract Schedules applicable to the Sales Contract including policies and guidelines applied by Leaseweb in its relationship with Customer.

**POP** means a 'point of presence', i.e. an access point to the Internet.

**Pre-payment** means any Fees prepaid by Customer to Leaseweb in relation to a Sales Contract.

**Pro-rata Fees** means Fees that are pro-rated to reflect the period of time between the Delivery Date and the Contract Start Date, Pro-rata Fees shall also be applicable for Contract Modifications.

**Privacy Laws** means *The Personal Information Protection and Electronic Documents Act, Québec's Act respecting the protection of personal information in the private sector, and*

other applicable federal and provincial privacy laws relating to the protection of Personal Information.

**Pro-rata Fees** means Fees that are applicable for the period between the Delivery Date and the Contract Start Date, Pro-rata Fees shall also be applicable for Contract Modifications.

**Quotation** means the document, in standard Leaseweb layout, in which Leaseweb has listed which Services and/or Equipment will be offered by Leaseweb to Customer, including the Fees, the Estimated Delivery Time, and relevant Sales Contract Terms and Conditions including Billing Cycle, Contract Term, Payment Term, Contract Start Date, pre-payment, direct debit for acceptance by the Customer, and any prevailing Special Conditions if offered by Leaseweb.

**Receiving Party** means the Party that receives – or is granted access to Confidential Information by the Disclosing Party, as referred to in Clause 24.

**Sales Contract** means the Order, including the B2B Sales Terms and Conditions, the Policies, the Services Specifications, the Service Level Agreement and all other schedules thereto if any more, pursuant to which Leaseweb shall provide certain Services to Customer, which Services are indicated and confirmed on the Contract Overview.

**Sales Contract Modification Form** means the document, in standard Leaseweb layout, used by Leaseweb to respond to a Sales Contract Modification request, as referred to in Clause 5.

**Contract Term** means the period for which the Sales Contract has been entered into as specified in the Order and confirmed in the Contract Overview that shall be automatically renewed unless cancelled at the Contract Term (Clause 20), starting on the Sales Contract Start Date and ending on the Contract End Date.

**Sales Terms and Conditions** means these B2B Terms and Conditions, including the preamble preceding Clause 1.

**Service Credits** means a credit, calculated in accordance with the Service Level Agreement, applied to Customer's account, and to be used as credit against future invoices.

**Service Disruption** means an Incident in the provision of one or more Services by Leaseweb to Customer; provided that it is not the result of an Excluded Event (as defined in the Service Level Agreement)..

**Service Levels** means the performance metrics with respect to the Services, as set forth in the Contract Overview and the Service Level Agreement. Leaseweb Services do not qualify as any manufactured "products" under any regulation, and qualify as "intermediary services" under EU Regulation.

**Service(s)** means the services provided by Leaseweb to Customer, as agreed per Sales Contract and specified in the Contract Overview. Leaseweb Services do not qualify as any manufactured "products" under any regulation, and qualify as "intermediary services" under EU Regulation.

**Services Specifications** means the Sales Contract Schedule in which Leaseweb has set out and specified the services offered by Leaseweb, as well as the manner in which the services should be used, which document may be amended from time to time.

**Service Level Agreement** means the Sales Contract Schedule in which Leaseweb has specified the available Service Levels, which document may be amended from time to time.

**Test** means a trial or test performed in order to verify and ensure the proper performance of the Service thereof.

**Trial Period** means any free of charge (No Fees, 100% Discount) use of the Service for the limited duration as specified in the

Contract Overview or confirmed in the order confirmation, subject to Clause 4.5 including Customer verification. The free of charge use of the Service during Trial Period will automatically be converted into a Sales Contract based on the prior agreed Contract Term as requested by the Customer and Fees offered by Leaseweb, as confirmed in the Contract Overview or the order confirmation by Leaseweb. The Contract Term starts the day after the Trial Period. The Trial Period will expire at the end of the Trial Period in case the Customer cancels the Service during the Trial Period via the Customer Portal, taking into account the mandatory one (1) hour cancellation notice period before the end of the Trial Period. This means a cancellation notice submitted by Customer via the Customer Portal no later than 23.00 hours CET.

**Waiver Period Discount** means a specific Discount applied to the Fees which will be charged to the Customer during the Waiver Period, specified in the Quotation or in the order confirmation.

**Waiver Period** means a specified limited duration whereby the Waiver Period Discount that is applied during the Contract Term, as confirmed in the Contract Overview or the order confirmation. After the expiry of the Waiver Period, the Fees offered by Leaseweb without Waiver Period Discount will automatically apply to the Service for the remainder of the Contract Term (In case of a Sales Contract Modification Procedure, this is subject to Clause 5).

**Website** means the Leaseweb website [www.leaseweb.com](https://www.leaseweb.com), subject to the Website Terms of Use. Any Leaseweb B2B Sales Contract Schedules can be found under the header of Legal & Compliance – Sales Contract at <https://www.leaseweb.com/legal/sales-contract>.

## 2. DOCUMENT STRUCTURE

- 2.1 In general, the Leaseweb's Sales Contract will consist of the following Leaseweb B2B Sales Contract Schedules and documents, whereby in the event of any inconsistency or conflict between or among provisions of the following documents, the contents of the document first listed shall have precedence and shall prevail over the documents listed later, in descending Sales Contract:
  - a) The Sales Contract Modification Form (only in relation to the relevant Sales Contract that is modified);
  - b) The Sales Contract specified by Leaseweb in the Contract Overview, including any prevailing Special Conditions formally confirmed and agreed with Leaseweb;
  - c) The Sales Terms and Conditions;
  - d) The Policies;
  - e) The Services Specifications; and
  - f) The Service Level Agreement.
- 2.2 The Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as provided herein. The applicability of purchase terms or other terms and conditions of Customer or third parties is hereby expressly excluded.

- 2.3 Leaseweb is entitled to issue new versions and thereby amend any of the applicable Leaseweb B2B Sales Contract Schedules, including the Sales Terms and Conditions, the Services Specifications and the Service Level Agreement. Such amendment also applies to existing Sales Contracts for Services, unless Leaseweb states otherwise formally in writing. The amendments come into effect fourteen (14) days after the announcement or on a later date stated in the announcement. Any amendment to the Policies come into effect immediately upon being made available on Leaseweb's website. The announcement may be made on Leaseweb's website and/or through the Customer Portal. If Customer does not wish to accept an amendment that relates to an existing Sales Contract, the Customer has the right to terminate that Sales Contract with effect from the date on which the amendment comes into force solely by means of a written formal Notification for termination that must have been received by Leaseweb within fourteen (14) days after Leaseweb's announcement of a new version of any of the Sales Contract Schedule(s), unless (a) the amendments solely for the benefit of the Customer; (b) the amendments are required by law; or (c) the amendments do not materially and adversely affect Customer's use of the Services.

## 3. SCOPE OF SERVICES

- 3.1 The scope and nature of the Services offered by Leaseweb are set out in the following Sales Contract Schedule: Services Specifications. The scope and nature of the available Service Levels are set out in the following Sales Contract Schedule: Service Level Agreement.
- 3.2 The Services, as well as the Service Levels, purchased or leased by Customer from Leaseweb are listed in the Contract Overview.
- 3.3 Leaseweb may discontinue Equipment and Services, sales, support, delivery or offerings of Equipment and Services at any time for any end of life-cycle or alternative business reasons in causing such discontinuation of Services. Leaseweb will use commercially reasonable efforts to provide advance notice.
- 3.4 Customer acknowledges that Leaseweb will no longer provide security updates or technical support for the discontinued Equipment and Services. Customer is aware that any continued operation of such discontinued Equipment or Services undertaken at their own risk.
- 3.5 Leaseweb may contact the Customer to provide alternative similar Equipment and/or Services as ordered for substitution in the Quotations and/or has the right at Leaseweb's reasonable discretion to substitute and deliver such alternative similar Equipment and Services as part of the Sales Contract.
- 3.6 The "Leaseweb Customer AI Code of Conduct" is as follows (in Clauses 3.6-3.8), and (a) applies in addition to any obligations of the Customer for unlawful use of Artificial Intelligence and (b) does not displace any remedies available under law. The Customer must not upload, implement or use any: (a) Intellectual Property Rights (b) any Confidential Information of Leaseweb, (c) and any information or data contained on or in the Website, the Customer Portal, the Leaseweb Knowledge Base or in the

Leaseweb B2B Sales Contract Schedules and/or (d) personal information of Leaseweb employees (together, “Leaseweb Information”), in or to any artificial intelligence based program, computer system or software.

- 3.7 In the event Customer breaches the restriction in Clause 3.6, for the avoidance of doubt, the Customer does not obtain any Intellectual Property Rights in respect of the artificial intelligence generated content created by the use of the Leaseweb Information, and agrees that such Intellectual Property Rights are owned by Leaseweb from the moment of creation.
- 3.8 Customer shall indemnify and keep Leaseweb harmless from damages and costs suffered by Leaseweb in respect of Customer’s breach of these 3.6-3.7 Clauses. Leaseweb reserves the right to use and enforce any and all remedies available under the B2B Sales Terms and Conditions, as well as any other rights and remedies provided under applicable law.

#### **4. QUOTATION, ORDER AND CONTRACT OVERVIEW PROCEDURE**

- 4.1 In the event that a Customer wishes to purchase or use Services or Equipment from Leaseweb, Customer shall place a request with Leaseweb to that effect.
- 4.2 Any request shall be submitted (i) in writing by email to request Leaseweb to provide a Quotation; (ii) by submitting an Order in the Leaseweb webshop and completing the online Order process on Leaseweb’s website ([www.leaseweb.com](http://www.leaseweb.com)); or (iii) by means of or through the Customer Portal for existing Customers.
- 4.3 Leaseweb shall review the request for Services within a reasonable time after receipt thereof, and will perform Leaseweb’s internal Know Your Customer (“KYC”) Verification procedure. If Customer is successfully verified within maximum of five (5) Business Days, Leaseweb is willing to provide the requested Service(s) and/or Equipment, Leaseweb shall confirm such to Customer in writing, by sending (i) a Quotation to Customer or (ii) (in case of the online Order process on Leaseweb’s website) by sending an order receipt.
- 4.4 If Customer approves the Quotation, an authorized representative of Customer shall confirm such to Leaseweb by signing the approved Quotation received from the Leaseweb e-signature system, for its understanding and acceptance of the Leaseweb B2B Sales Contract Schedules including the Sales Terms and Conditions in the Quotation. A signed Quotation will be referred to and qualify as an Order.
- 4.5 Leaseweb reserves the right to reject the Order by giving written notice to Customer, within a reasonable time upon Leaseweb’s sole discretion at reasonable grounds, including but not limited to, in connection with: (i) Customer’s compliance with Leaseweb’s KYC requirements to be determined at its discretion in order to ensure Customer good standing of its business and/or related staff including export control regulations and sanctions as part of Leaseweb’s Acceptable Use Policy requirements (ii) or in case of (alleged) breach with the Policies, (iii) or if a Service and/or Equipment is not available, (iv) or the Estimated Delivery Time cannot be met, (v) or in case of an

incorrect offering or Fees or Leaseweb does not receive the pre-payment or deposit or financial security or fails a credit check, exceeds a credit limit, if applicable (vi) or in case of outstanding Fees of any overdue invoices and/or (vii) Payment Schedule Plan applies and at any other reasonable grounds at Leaseweb’s discretion.

- 4.6 In case the Order has been fully accepted by Leaseweb, it will become a Sales Contract as specified to Customer in the Contract Overview.
- 4.7 Cloud pay-as-you-go Service can be ordered via the Customer Portal, which shall contain activation options i.e. Services that are charged to Customer based on Customer’s actual usage of the Service, measured per day/minute/hour or other appropriate unitized measure. Customer may deactivate the Service at any time in the Customer Portal, unless the Customer Portal has indicated that the Service has a Contract Term, in which case the process for terminating the Service as set out in Clause 20 shall apply.

#### **5. SALES CONTRACT MODIFICATION PROCEDURE**

- 5.1 During the Term of the Sales Contract, Customer may submit a Sales Contract Modification request. Customer should submit its Sales Contract Modification request by the Customer Portal to Leaseweb.
- 5.2 Leaseweb shall be entitled to propose conditions for such Sales Contract Modification request, including but not limited to adjustment of the Service Fees and/or Contract Term, payment by Customer of a Fee for administrative activities and/or payment by Customer of any other non-recurring Fees applicable to such Sales Contract Modification request through the Customer Portal, or by means of Leaseweb’s Quotation for Customers acceptance in accordance with Clause 4.4.
- 5.3 In case of a Sales Contract Modification request relating to a Sales Contract that has a Contract Term of one (1) month, the Contract Term shall be automatically extended by one additional renewal month. In case of a Sales Contract Modification request, relating to a Sales Contract that has a Contract Term of more than one (1) month, the Contract Term may be extended by Leaseweb with a renewal Contract Term, as indicated by Leaseweb from the Contract Start Date in accordance with the Modification Quotation.
- 5.4 In case of a Sales Contract Modification request relating to a Sales Contract that has a Contract Term of six (6) months or longer, the Sales Contract Modification Request should be submitted by Customer to Leaseweb via email or Customer Portal at least one (1) month prior to the expiration of the Contract Term of that Sales Contract.
- 5.5 Every Sales Contract Modification request is subject to acceptance by Leaseweb, which may be granted or withheld at Leaseweb’s sole discretion as described in Clause 4.5.
- 5.6 Any request for Sales Contract Modification shall only be valid if fully accepted and confirmed by Leaseweb by means of a Contract Overview establishing the Modification Sales Contract.
- 5.7 In case of a Sales Contract Modification submitted by Customer during the Trial Period, the Trial Period will end immediately and will be converted into a Sales Contract after



acceptance of the Modification by Leaseweb and the Customer forfeits the Trial Period, the Contract Start Date of the Sales Contract will commence on the day the Modification has been accepted by Leaseweb, as confirmed in the Contract Overview or the order confirmation.

- 5.8 In case of a Sales Contract Modification submitted by Customer during the Waiver Period, the Waiver Period Discount will end immediately, and for the remainder of the Sales Contract the Fees offered by Leaseweb without Waiver Period Discount shall apply, as set out in the Contract Overview or otherwise notified by Leaseweb in writing.

## 6. DELIVERY OF EQUIPMENT AND SERVICES

- 6.1 Leaseweb shall use commercially reasonable efforts to ensure that:

- a) the Services will be ready for Customer's use on the Delivery Date; and
- b) any Equipment sold by Leaseweb to Customer will be delivered on the Delivery Date at the Data Centre, as specified in the Order.

In view of the foregoing, Customer acknowledges that the Delivery Date is a target date.

- 6.2 Leaseweb will confirm the actual Contract Start Date in the Contract Overview. Leaseweb may – at its sole discretion – unilaterally delay the Delivery Date and/or Sales Contract Start Date, by giving written notice to Customer, taking into account a notice period of at least five (5) days, provided that Customer shall be entitled to a credit equal to ten percent (10%) of the non-recurring Fees, referred to in Clause 10.4 (a), with respect to the affected Service if Leaseweb unilaterally delays the Delivery Date and/or Sales Contract Start Date by more than thirty (30) days after the Sales Contract Start Date or Delivery Date. Leaseweb's notice of delay shall state a new Contract Start Date and/or Estimated Delivery Time.
- 6.3 With effect from the Delivery Date, the Equipment shall be for the risk and benefit of Customer. However, title of ownership to the Equipment will only pass to Customer on the receipt by Leaseweb of payment - in full - of the Fees for such Equipment, as specified in the Contract Overview. For the avoidance of doubt: In the event that Customer leases Dedicated Equipment, such lease will be an operational lease and payment of Service Fees shall not constitute any transfer of ownership of such Dedicated Equipment to Customer.
- 6.4 In case Customer has a complaint with respect to:
- a) the Service, Customer shall provide written notice to Leaseweb, including in reasonable detail the grounds for its complaint, within two (2) days from the Delivery Date in the absence whereof Services shall be deemed to be approved by Customer;
  - b) any Equipment sold by Leaseweb to Customer, Customer shall provide written notice to Leaseweb, including in reasonable detail the grounds for its complaint, within five (5) days from the Delivery Date in the absence whereof such Equipment shall be deemed to be accepted and approved by Customer.
- 6.5 In the event that Customer has provided its written complaint in accordance with Clause 6.4, and such

complaint is found to be justified, Leaseweb shall take such action as necessary, and as expeditiously as reasonably practicable, to correct or cure such defect or failure. Leaseweb will subsequently notify Customer hereof once the Service or Equipment is functioning properly and the complaint periods specified in Clause 6.4 shall (re)commence on the date of such notice.

## 7. USE OF SERVICES AND EQUIPMENT

- 7.1 When using the Services, software or Equipment, the Customer must maintain due care in respect of keys and access thereto, all within scope of the relevant Sales Contract, applicable laws and the Policies. Customer's use of any information obtained via the Network is at Customer's own risk. Leaseweb expressly disclaims any responsibility for the accuracy or quality of information obtained through its Services.
- 7.2 Leaseweb is not responsible or liable for and makes no representation or warranty, express or implied, with respect to the accuracy, quality or completeness of the (content of) information and communications, in whatever form transmitted over the Network.
- 7.3 Customer acknowledges that, by offering or providing the Services, Leaseweb does not publish or otherwise provide Customer's content to any End Users. Customer agrees that Customer shall, at all times, be solely responsible for all the Customer's content including text, graphics, sound, video, data and any aspect of Customer's content.
- 7.4 Customer must not use Leaseweb Services for any cryptographic use applied to blockchains including cryptographic use for mining or to maintain a crypto currency system "Crypto Customer related activities", unless Customer complies with the Leaseweb's KYC requirements in accordance with Clause 4.5. Leaseweb has granted specific prior written approval upon Customer's request for such use of Services. In addition to Clause 10, the Customer will pay, on a back to back full pass through basis, any electricity rates and similar additional costs related to Customer's Crypto Customer related activities charged by an electricity provider to Leaseweb, being any additional electricity rates or costs incurred by Leaseweb in providing Services to Customer which exceed the average costs of providing the same Services to other customers who are not using Leaseweb Services for Crypto Customer related activities. Due to the specific risks associated with Crypto Customer related activities, including because such activities may materially degrade Leaseweb's Services or damage its hardware, in addition to and superseding Clauses 12, 20 and 21, Leaseweb is entitled to immediately suspend, and/or terminate for convenience any Services during the Contract Term, if the Customer's use of the Services for Crypto Customer related activities causes or is likely to cause (i) an Emergency (to be determined at Leaseweb's sole discretion), (ii) material degradation of Leaseweb's Services or damage its hardware, (iii) causes or is likely to cause Leaseweb to breach applicable law, (iv) or if such suspension is required by law. If the Customer has not confirmed within one (1) week following such suspension that it has ceased such use of the Services, Leaseweb may terminate the Sales

Contract. In case Leaseweb has notified the Customer for termination of the Services, Clause 22 shall apply.

should be sent to [privacy@ca.leaseweb.com](mailto:privacy@ca.leaseweb.com)

## 8. PERSONAL INFORMATION / DATA PROTECTION

- 8.1 For the delivery of the Services, Leaseweb and its Affiliates are considered by law to act as Data Processor. In the performance of Leaseweb's obligations under the Sales Contract, Leaseweb and its Affiliates shall process Personal Information for or on behalf of the Customer. Leaseweb does not control and never acts as Data Controller of any (personal) data and content of Customer transmitted over the Network. Parties acknowledge and agree that with regard to the processing of Personal Information on the Customer's behalf, the Customer is the Data Controller, and Leaseweb is the Data Processor.
- 8.2 Customer acknowledges that Leaseweb and its Affiliates in its role of IaaS Cloud provider, do not have access to Customer's content which may include any Personal Information, neither are Leaseweb and its Affiliates permitted or able to monitor such content stored on the Equipment operated by the Customer or such content transmitted over the Network in making use of the Services.
- 8.3 Leaseweb shall arrange for appropriate technical and organizational measures, to the extent such measures may be reasonably expected of Leaseweb, for more information about these measures and certifications, we refer you to <https://www.leaseweb.com/security-certifications>.
- 8.4 Leaseweb engages sub-contractors in the performance of the Sales Contract, if so requested, Leaseweb shall provide such sub-processors list.
- 8.5 In the circumstances where Leaseweb discovers a Personal Data breach concerning Customer Personal Information processed by Leaseweb in its role as Data Processor, Leaseweb will notify the Customer as soon as reasonably possible and no later than 72 hours after having become aware of the Customer Personal Information breach, to the extent relevant for the Services of the Customer and permitted by law. Where there is a legal requirement to report a Personal Information breach to any supervisory authority, it will be the Customer's responsibility as Data Controller to notify the relevant authority and/or the data subjects concerned, to the extent necessary at Customer's discretion and assessment.
- 8.6 Leaseweb may use Customer's Personal Information for the purpose of direct marketing (whether by messaging within our Service, by email or by other means) that offer or advertise similar services of Leaseweb. Customer shall have the option to unsubscribe from any direct marketing messages.
- 8.7 To the extent that Leaseweb processes Personal Information on behalf of Customer, Customer represents and warrants that Customer has obtained all necessary consents and provided all required notices as required by Privacy Laws to permit Leaseweb to process such Personal Information, and that Leaseweb's processing of such Personal Information will comply with all Privacy Laws.
- 8.8 Any requests, questions regarding applicable Privacy Laws,

## 9. KNOW YOUR CUSTOMER, CREDIT APPROVAL AND FINANCIAL SECURITY

- 9.1 The provision of Services or use of Equipment by Leaseweb to Customer is subject to Know Your Customer (KYC) verification requirements and any credit limit requirements during the Contract Term set by Leaseweb in its sole discretion as condition for the acceptance process of an Order set forth in Clause 4.5, which may impact the Estimated Delivery Time.
- 9.2 Leaseweb may, at any time, by notice impose a credit limit on Customer to an amount to be determined by Leaseweb applicable to the Order value. Any Orders for Services required by Customer in excess of any such credit limit will require Customer to prior deposit an amount equal to or greater than the amount by which Customer will exceed the credit limit.
- 9.3 In addition to Clause 9.1, Leaseweb may require Customer to provide a deposit or a financial security by means of a bank guarantee or a parent guarantee, to be solely determined by Leaseweb or other security satisfactory to Leaseweb as condition for the acceptance process set forth in Clause 4.5.
- 9.4 Any deposit or bank guarantee or parent guarantee shall be held by Leaseweb as security for the payment of the Fees and any other amounts due under the Sales Contract. Upon termination or cancellation of the Sales Contract, Leaseweb may apply a deposit or bank guarantee or parent guarantee to any amounts owed by Customer to Leaseweb. Any remaining credit balance of a deposit shall be refunded to Customer. Any deposit paid by Customer pursuant to this Clause will not carry any interest.

## 10. TERMS OF PAYMENT

- 10.1 For the use of the Services, Customer shall pay to Leaseweb the Fees specified in the Contract Overview. Unless specified otherwise, all Fees are in Canadian dollars and exclusive of VAT.
- 10.2 Leaseweb is entitled to increase any of the Fees for annual automatic price indexation, with a maximum increase of (a) five percent (5%); or – if higher – (b) the percentage increase in CPI for the previous year. The increase indexation leading to automatic adjustment of Fees will be implemented each year on the anniversary of Customer's Service's Contract Start Date,. In case of multiple Services with different Contract Start Dates, the Fees adjustment will automatically apply on each anniversary of the respective Service. Leaseweb may notify the price indexation by means of an announcement and or email stipulating the specific annual increase of such adjustment of Fees for sole clarification purposes, notwithstanding its right to apply the maximum increase to the invoices of such Services automatically for purpose of Fees adjustment based on annual price indexation.
- 10.3 In addition to and separate from the annual price indexation in Clause 10.2, Leaseweb is entitled at its sole discretion to automatically add on, pass on, pass through, embed, implement and surcharge to any Services Fees to

- the extent applicable (a) changes in any (license) fees, purchase tariffs or costs of any products, software, hardware, right to use, electricity, water, gas or other utility services, increased taxes, or any other expenses incurred as procured or leased by Leaseweb from third parties: (i) used by Leaseweb in the provision of Services to Customer; (ii) or licensed, provided or resold by Leaseweb to Customer; and or (b) any costs, surcharges incurred or fees payable for the use of any third party Payment Services Provider in connection with the payment method.
- 10.4 Unless specified otherwise in the Contract Overview, Leaseweb will invoice:
- a) setup Fees, Service activation Fees and any other non-recurring Fees, upon the Delivery Date or upon the Contract Start Date, whichever is earlier;
  - b) all recurring Service Fees, including Monthly Recurring Fees as from the Contract Start Date, monthly in advance,
  - c) Pro-rata Fees, in arrears in the first invoice after the Contract Start Date;
  - d) use of Services above the agreed levels of Service and/or additional Services e.g. with respect to the usage of Bandwidth and/or Data Traffic which will be invoiced monthly in arrears.
- 10.5 Notwithstanding Clause 10.4 (a), Leaseweb retains the right to require Customer to make a pre-payment to Leaseweb in relation to any Service or Equipment purchased by Customer from Leaseweb.
- 10.6 Leaseweb will send invoices to Customer by e-mail, in a portable document format (PDF) and make it available in the Customer Portal. At Customer's request, Leaseweb will – as an extra Service – provide Customer with a print out of the invoice, via regular mail. For such extra Service, Customer shall pay a Service Fee to Leaseweb, in relation to the additional (administrative) activities performed by Leaseweb and the costs of the mail service.
- 10.7 Unless specified otherwise in the Contract Overview, all invoices sent by Leaseweb to Customer are payable by Customer to Leaseweb within fourteen (14) days from the invoice date (applicable and binding **Payment Term**).
- 10.8 Leaseweb will make available to the Customer a free of charge bank transfer payment (SEPA) as standard default method of payment. If the Customer chooses a alternate payment method available in the Customer Portal, any costs charged by a Payment Services Provider will be presented to Customer and be passed on to Customer by way of invoice. The Customer agrees to pay such invoice including surcharges promptly upon receipt. Leaseweb has the right and Customer has the obligation if so instructed by Leaseweb in the Customer Portal, to make payments to another regional Leaseweb Payment Service Provider acting on behalf of Leaseweb under the Sales Contract.
- 10.9 The billing cycle is determined by Leaseweb in any Order and included in the Contract Terms.
- 10.10 Leaseweb will be entitled to charge an administrative Fee in addition to the invoice of up to five hundred Canadian dollars (CA\$ 500,00--) to Customer, if payment to Leaseweb has been reversed or denied.
- 10.11 In case Customer has a complaint with respect to an invoice, Customer shall dispute such complaint in writing to Leaseweb within the Payment Term, in the absence whereof invoices are deemed to be approved by Customer. A complaint with respect to an invoice shall only be taken into consideration in the event that the complaint specifies the dispute of relevant invoice(s) and provides evidence in support. In such case, the Parties will use commercially reasonable efforts to resolve the dispute amicably within twenty (20) days of Leaseweb's receipt of Customer's complaint, firstly at the level of each Party's senior management and – failing satisfactory resolution within fifteen (15) days – secondly at the Parties executive Managing Director level. In the event Parties fail to resolve the dispute amicably within twenty (20) days of Leaseweb's receipt of Customer's complaint, each Party shall be entitled to commence dispute resolution in accordance with Clause 28.2.
- 10.12 Customer shall not be entitled to any set-off, waiver or deduction of payment of an invoice. Customer's right to suspend payment of (or part of) an invoice is limited to the amount of the invoice that is disputed in good faith by Customer, in accordance with Clause 10.11. In the event Customer's complaint is found to be unjustified, Customer will immediately pay the outstanding amount, plus interest in accordance with Clause 10.13.
- 10.13 If Customer does not pay an invoice within the Payment Term, in the event that such invoice has not been disputed in accordance with Clause 10.11, or Customer does not pay the undisputed part of the invoice within the Payment Term, Leaseweb will be entitled to (i) charge Customer interest on such sum on a daily basis from the due date until the date of payment on the basis of the default interest rate plus two percent (2%) or otherwise the maximum interest rate permitted by law, if lower than this amount), without prejudice to Leaseweb's other rights and remedies.
- 10.14 If Customer does not pay an invoice within the Payment Term, in the event that such invoice has not been disputed in accordance with Clause 10.11, Leaseweb may hand it over to an external collection agency. Any collection costs and expenses incurred by Web shall be borne by Customer.
- ## 11. TAXES
- 11.1 Unless specified otherwise, all Fees are exclusive of any sales tax or similar tax. Customer shall be responsible for and shall pay all sales, use, excise, or similar consumption taxes arising out of the Sales Contracts, other than taxes levied on Leaseweb's income. The Parties agree the use or provision (as applicable) of the Colocation Service will not create a relationship of lessor/landlord and tenant between the Parties.
- 11.2 Taxes that must be withheld at source in the country where the client resides are for the account of the Customer. This means that the amount payable on the invoice is to be considered an amount after source taxes.
- ## 12. SUSPENSION OF SERVICES
- 12.1 Leaseweb shall be entitled to immediately suspend the provision of any of the Services and/or to suspend Customer's right to access or use the Customer Portal



and/or to suspend Customer's right to access to the Equipment, on giving notice to Customer, in the event that:

- a) Leaseweb receives an order or ruling or decision to that effect from a court, any law enforcement authority or any (other) governmental authority;
  - b) Customer is or can reasonably expected to be in breach of the Policies, and fails to take (timely) remedial action in accordance with the Abuse Policy (part of the Policies) after receipt of a notice from Leaseweb, provided always that Leaseweb may immediately suspend Services without providing a remedy period if the continued provision of Services is likely to cause at Leaseweb's discretion an Emergency and/or may place Leaseweb in violation of applicable law;
  - c) Customer's consumption of electricity exceeds Basic Power (specified in the Contract Overview) and Customer fails to reduce its electricity consumption to a level on or below Basic Power within three (3) days after having received notice thereon;
  - d) Customer's consumption of Data Traffic or Bandwidth exceeds the Committed Data Traffic or the Committed Bandwidth (specified in the Contract Overview), as the case may be, and Customer fails to reduce such consumption to a level on or below the Committed Data Traffic or the Committed Bandwidth, as the case may be, within three (3) days after having received notice thereon;
  - e) Customer has failed to maintain the licenses, permits, and authorizations required to use the Services and/or the Equipment and fails to remedy such failure within seven (7) days after having received notice thereon;
  - f) Customer does not effectively cooperate with any investigation of Customer's alleged improper or unlawful use of the Services, the Network or other networks accessed through Leaseweb;
  - g) Customer does not pay an invoice within the Payment Term and fails to pay such invoice, plus the interest referred to in clause 10.13, within a period of seven (7) days after having received the Final Reminder Before Suspension Notice thereon;
  - h) the Services, software, or Equipment are exported or used by a Customer or an End User, in violation of the restrictions referenced in Clause 16.9; and/or
  - i) Customer is in breach of any of the other provisions of the Sales Contract and Customer fails to remedy such breach within fourteen (14) days after having received written notice thereon, provided always that Leaseweb may immediately suspend Services without providing a remedy period if the continued provision of Services if this causes material breach under the Sales Contract and/or may subject Leaseweb to incur liability vis-à-vis third parties, may place Leaseweb in violation of applicable law may place Leaseweb in violation of an applicable law, and/or may cause an Emergency;
  - j) Leaseweb has good reasons to fear that Customer will materially breach its obligations under the Sales Contract, and Customer does not, upon written request, confirm to Leaseweb in writing that it will fully perform in conformity with its obligations under the Sales Contract.
- 12.2 Leaseweb shall be entitled to continue the suspension or limitation described in Clause 12.1 until: (i) the cause of the

suspension has been remedied and the Customer has paid the deactivation Fee specified in Clause 12.3; or (ii) the Sales Contract has been terminated by Leaseweb in accordance with Clause 21.

- 12.3 Following suspension of the provision of the Services and/or access to the Equipment which is caused by the Customer, Leaseweb may claim -and Customer shall pay upon demand- a deactivation Fee in the amount of seventy five Canadian dollars (CA\$ 75.--), in relation to the (administrative) activities performed in order to suspend and – if applicable – to recommence the provision of the Services and/or Customer's (right to) access to the Equipment.

### **13. SERVICE DISRUPTION**

- 13.1 On becoming aware of a Service Disruption, Customer shall notify Leaseweb by e-mail or by telephone of the Service Disruption and shall provide Leaseweb with the appropriate information in accordance with Chapter B of the Service Level Agreement.
- 13.2 Following notification by Customer in accordance with Clause 13.1, Leaseweb shall:
  - a) notify Customer of the estimated timescale for restoration of the affected Services, on Leaseweb's website and via e-mail;
  - b) use its best endeavors to end the Service Disruption and to restore the affected Services; and – as necessary -
  - c) provide Customer with information updates on its progress to end the Service Disruption.
- 13.3 Instead of restoring a Service, Leaseweb may elect to substitute such affected Service by a reasonably equivalent Service.
- 13.4 In the event of a Service Disruption, Customer may be entitled to compensation in the form of a Service Credit as specified in the Service Level Agreement.

### **14. MAINTENANCE AND TESTING**

- 14.1 Leaseweb reserves the right to suspend the Services and may suspend Customer's right to access to the Equipment in order to perform Maintenance.
- 14.2 Customer acknowledges that Leaseweb will from time to time have to perform Maintenance in order to ensure a proper performance of the Network, Data Centre and the Services and that such Maintenance may affect the provision of the Services to Customer.
- 14.3 If Leaseweb expects scheduled Maintenance, referred to in Clause 14.2, to affect the provision of the Services and/or access to the Equipment, Leaseweb shall:
  - a) - to the extent reasonably possible - provide at least three (3) days prior notice to Customer of the intended Maintenance;
  - b) - to the extent reasonably practicable - schedule such Maintenance and any related suspension of the Services and/or access to the Equipment within the Maintenance Window, so as to minimize any adverse effect of the Maintenance on Customer's use of the Services and/or access to the Equipment; and
  - c) endeavor to keep the duration of any interruption or suspension or degradation in the provision of the Services

and/or Customer's access to the Equipment as short as possible.

- 14.4 If Leaseweb does not expect scheduled Maintenance, referred to in Clause 14.2, to affect the provision of the Services and/or access to the Equipment, Leaseweb shall be entitled to perform such Maintenance at any time, without taking into account a notice period.
- 14.5 Customer acknowledges that Leaseweb may from time to time have to perform non-scheduled Maintenance, in order to resolve or prevent an Emergency. Leaseweb shall be entitled to perform such Maintenance at any time, without taking into account a notice period. Leaseweb shall in such case notify Customer of such Emergency and the need to perform Maintenance without undue delay.
- 14.6 Customer acknowledges that Leaseweb will from time to time perform Tests and that Tests may be performed at any time, without taking into account a notice period.

## 15. MIGRATION

- 15.1 Leaseweb's ability to provide Services at the Data Center, are subject to the provisions of – and continuance of – Leaseweb's Data Center Services Agreement with the third party Data Center Provider.
- 15.2 If Leaseweb is required to migrate the Housing Space, Leaseweb shall give prior notice to Customer of the intended migration, taking into account a notice period of at least thirty (30) days, unless such notice cannot be provided due to operation of law or circumstances outside Leaseweb's control in which case Leaseweb will provide as much notice as possible.
- 15.3 In the event that Leaseweb elects to relocate the Housing Space, Customer shall be required to relocate the Colocated Equipment to the new/alternative Housing Space designated by Leaseweb.
- 15.4 Leaseweb shall reimburse the Customer for costs incurred by Customer to relocate the Colocated Equipment, provided the costs are pre-approved by Leaseweb (such approval not to be unreasonably withheld), excluding the costs of any new interconnections that Customer may require or the procurement, delivery, and/or installation of any duplicate Colocated Equipment required to accomplish the relocation.
- 15.5 If relocation is initiated by Leaseweb for monthly Sales Contracts, Leaseweb may upon Customer's request decide to waive the Pro-rata Fee and/or the monthly Fee as a Waiver Period Discount, provided that the Contract Term shall automatically be extended by at least one (1) month.
- 15.6 Notwithstanding Clause 3, Leaseweb may – at its sole discretion – decide to relocate the Colocated Equipment for and on behalf of Customer, in which case Leaseweb shall notify Customer thereof simultaneously with its notification of the intended relocation of the Housing Space; and/or to the extent practicable, coordinate the relocation of the Colocated Equipment with Customer. In the event Customer does not confirm relocation within the specific term given in the Leaseweb's notification according to Clause 15.3, Leaseweb has the right without any consent from the Customer at the time and day subject to Leaseweb's discretion to relocate Colocated Equipment

for and on behalf of Customer, by giving written notice prior to intended relocation.

## 16. WARRANTIES

- 16.1 Each Party warrants, represents and undertakes that it:
  - a) has obtained and that it will - at least for the duration of the Sales Contract - maintain all of the necessary licenses, permits, and authorizations to use or provide (as appropriate) the Services and the Equipment;
  - b) shall comply with all relevant laws in providing or using (as appropriate) the Services;
  - c) shall use or provide (as appropriate) the Services with all due skill, care and diligence, at least in accordance with good industry practice;
  - d) shall not to use the Services for any military or warfare purposes.
- 16.2 Without limiting the generality of Clause 16.1, Customer warrants, represents and undertakes that (i) it shall pay all due local access- or telecommunications Fees applicable to transmitting data beyond the Network and/or through other public and private networks, as necessary and related to Customer's use of the Services; and (ii) it owns or has the right to use and offer the content stored on the Leaseweb infrastructure and/or transmitted by Customer over the Network.
- 16.3 To the extent that Leaseweb processes Personal Information on behalf of Customer, Customer represents and warrants that Customer has obtained all necessary consents and provided all required notices as required by Privacy Laws to permit Leaseweb to process such Personal Information, and that Leaseweb's processing of such Personal Information will comply with all Privacy Laws.
- 16.4 With respect to software licensed or resold or otherwise given into use under a Sales Contract by Leaseweb to Customer, Customer warrants, represents and undertakes that it shall comply with all provisions and compliance requirements including but not limited to audits of any End user license automatically applicable related to such software.
- 16.5 With respect to the Equipment sold by Leaseweb to Customer, Leaseweb will provide a hardware warranty to Customer that is equivalent or equal to the warranty granted to Leaseweb by the manufacturer / supplier of such Equipment. To the extent possible, Customer hereby agrees that:
  - a) Leaseweb will transfer to Customer the warranty that Leaseweb has received from the manufacturer / supplier of the Equipment; or
  - b) Leaseweb will arrange that the manufacturer / supplier of the Equipment grants such warranty directly to Customer. In the events referred to under a) and b) of this clause, Customer will not have any recourse against Leaseweb with respect to such Equipment sold by Leaseweb to Customer, but instead may seek recourse directly from the manufacturer / supplier of such Equipment.
- 16.6 With respect to software licensed or sublicensed or otherwise given in to use or provided to Customer by Leaseweb, Leaseweb will provide a (software) warranty that is equivalent or equal to the warranty granted to

Leaseweb by the manufacturer / supplier / licensor of such software provided that, to the extent possible:

- a) Leaseweb will transfer to Customer and Customer will accept the warranty that Leaseweb has received from the manufacturer / supplier of the software; or
  - b) Leaseweb will arrange that the manufacturer / supplier of the software grants such warranty directly to Customer.
- In the events referred to under sub a) and b) of this clause, Customer will not have any recourse against Leaseweb, and Leaseweb will not have any liability to Customer with respect to such software, and Customer instead should seek recourse directly from the manufacturer / supplier of such software.
- 16.7 Without limiting Clause 16.6, the Customer Portal (including the use thereof, and the related services) is provided 'as is'; and otherwise Leaseweb hereby disclaims any and all warranties of any kind, whether express or implied, relating to the Customer Portal and the API, the software used therein or as part thereof, and any data accessed there from, including any implied warranties of title, satisfactory quality, accuracy, fitness for a particular purpose and non-infringement. It is the Customer's sole responsibility to provide Leaseweb with accurate Customer information, contact details, and any other relevant (segmentation) information added in the webshop Order, the Quotation and the Customer Portal, failure to provide such accurate verifiable Customer information, contact details and any other relevant information and/or in case of wrongful Customer information and contact details provided by the Customer, the Customer incurs all liability for any costs, expenses and damages arising for the Customer's risk and account while indemnifying and keeping Leaseweb harmless for any consequences thereof.
- 16.8 Notwithstanding Clause 16.6 and Clause 16.7 to the maximum extent permitted by law, Leaseweb does not warrant that the Customer Portal, the software used therein or as part thereof, or the related services, or the Customer's use thereof, are or will be error free or will operate without interruption. This Clause 16.9 is subject to applicable laws in the relevant jurisdiction.
- 16.9 The Services, software and Equipment may be subject to international (including EU and US) rules that govern the export of Products and Services, software and Equipment. Customer warrants that it shall comply with all End user, end-use, or destination restrictions issued by national governments, EU, US or similar bodies, and restrictions on embargoed nationals and nations and export control.
- 16.10 The warranties expressly set forth in the Sales Contract constitute the only warranties of Leaseweb regarding the Services and the Equipment and such warranties are in lieu of all other warranties, express, implied, written, oral or statutory, by operation of law or in fact, including but not limited to warranties of merchantability, availability, uptime, non-infringement or fitness for a particular purpose. Without limiting the generality of the foregoing, Leaseweb does not warrant that the Services, or the Customer's use thereof, are or will be error free or will operate without interruption.

- 16.11 Customer shall at all times, (i) act in a professional manner, (ii) exhibit business acceptable conduct and communication towards Leaseweb employees, and (iii) interact and work towards Leaseweb with competent contact persons demonstrating business acceptable behavior towards Leaseweb employees.
- 16.12 While using Leaseweb's Services, Customer shall at all times remain responsible for making any backups of its Customer data, including Customer End User data.

## 17. INDEMNIFICATION

- 17.1 Without limiting any other legal remedy available to Leaseweb, Customer shall indemnify and hold harmless Leaseweb against all actions, losses, costs, damages, awards, expenses, fines, fees (including legal fees - including attorney and collection agency fees - incurred and/or awarded against Leaseweb), proceedings, claims or demands brought or threatened against Leaseweb by a third party: (i) related to content stored or transmitted through the Services; (ii) arising out of the use by Customer or any of its subcontractors of the Services, (iii) related to any willful or negligent act or omission of Customer or any of its subcontractors.
- 17.2 In respect of the indemnification under clause 17.1, Customer shall at its sole expense (a) provide Leaseweb with full authority, information and assistance as is reasonably necessary for the defence, compromise or settlement of the third party claims; and (b) at the request of Leaseweb, take those steps that are reasonably required to put Leaseweb in the financial position it would have been in if said third party claim did not occur.

## 18. LIMITATION OF LIABILITY

- 18.1 Neither Party shall be liable to the other Party in respect of any breach of an obligation, warranty or guarantee under the Sales Contract for loss of profits, loss of revenue, loss of anticipated savings, loss of any plant or facility, loss of opportunity, loss of goodwill, special or punitive damages, loss of contract, loss or damage as a result of an Incident or any action brought by a third party or any type of indirect or consequential loss and such liability is excluded whether it is foreseeable, known, foreseen or otherwise.
- 18.2 Leaseweb shall not be liable for:
  - a) any harm or personal injury to Customer or Customer's employees, clients, representatives or agents, except when such harm or personal injury is the direct result of gross negligence or willful misconduct on the part of Leaseweb or when liability cannot otherwise be excluded under applicable law;
  - b) any transaction, which Customer may enter into with a third party using the Services;
  - c) the contents of any information and/or communications transmitted via the Equipment and/or Services or for any information or content on the Internet;
  - d) the contents of any information and communication, in whatever form, transmitted by Customer over the Network;
  - e) the accuracy or quality of information obtained through the Services;

- f) damage to or loss of any of Customer's or its data subjects' data including any Personal Information or loss of technology, except when such damage or loss is the direct result of gross negligence or willful misconduct on the part of Leaseweb;
  - g) damage to or loss or destruction of Colocated Equipment, except when such damage or loss is the direct result of gross negligence or willful misconduct on the part of Leaseweb;
  - h) damage that is the direct or indirect result of the actions of Customer contrary to (one of) its obligations under the Sales Contract;
  - i) damage that is the direct or indirect result of an inaccuracy of the information provided by or on behalf of Customer;
  - j) damage that is the direct or indirect result of the suspension of Services by Leaseweb, as referred to in Clause 12 and Clause 14;
  - k) damage that is the direct or indirect result of the Customer Portal being (temporarily) offline or otherwise unavailable;
  - l) damage that is the direct or indirect result of the Customer's use of the Customer Portal;
  - m) damage that is the direct or indirect result of an Incident in case of any Excluded Events, including but not limited to, as Denial-of-Service (DDoS) attack, or other attack that results in a peak in data traffic, or any damage resulting from successful or unsuccessful hack attempts or any intrusion regardless whether protected by an SSL certificate or (hardware) firewall provided by or through Leaseweb as in addition set forth in the Leaseweb Service Level Agreement;
  - n) damage in case Leaseweb has not been notified of such damage in writing within eight (8) days after Customer has come to know of the damaging event, or should reasonably have known of it; or
  - o) any damage in case and insofar as such damage is covered by any insurance effected by or for the benefit of Customer.
- 18.3 Notwithstanding any other provision of the Sales Contract, Leaseweb shall not be liable to Customer, if changes in any of its facilities, procedures, or Service: (i) render obsolete Colocated Equipment in conjunction with its use of the Service; (ii) require modification, alteration or relocation of such Colocated Equipment; or (iii) otherwise affect the performance of such Colocated Equipment.
- 18.4 The legal remedies outlined in Clauses 6.2 and 21.4a) constitute all legal remedies available to Customer in relation to a delay of the Delivery Date or Contract Start Date by Leaseweb. Leaseweb shall have no other liability to Customer if the Service is not ready for Customer's use on or after the Delivery Date or any delay thereof; or - if the installation is to be performed by Leaseweb - the installation is not completed by the Delivery Date, or any delay thereof.
- 18.5 The legal remedies outlined in Clause 13.4 and Clause 21.4b) constitute all legal remedies available to Customer in relation to any Incident and/or Service Disruption and any failure by Leaseweb to meet the agreed Service Levels.
- 18.6 Should Leaseweb be liable despite of the provisions set out above in this Sales Contract or the Services Specifications,

this liability shall in no case exceed the amount of Service Fees paid by Customer to Leaseweb with respect to the twelve (12) month period prior to the event or events giving rise to such liability, or this liability is limited to the lower amount that is in the relevant case paid out by the general liability insurance of Leaseweb. All Customer's claims for compensation end in any case twelve (12) months after the damaging event has taken place, unless: (i) Customer and Leaseweb have come to a written arrangement; or (ii) Customer has commenced legal action in accordance with Clause 28.

- 18.7 Nothing in the Sales Contract shall exclude or limit the liability of Customer to: (i) pay the Service Fees; or (ii) repair (or if repair is not practicable, replace) any tangible physical property intentionally or negligently damaged by Customer or its representatives or employees.
- 18.8 Nothing in this Sales Contract shall operate to exclude or limit a Party's liability resulting from (i) death (ii) willful or fraudulent misrepresentation; or (iii) willful misconduct; or (iv) gross negligence; or any other statutory liability not capable of limitation.
- 18.9 Each Party has a duty to mitigate damages for which the other Party may be responsible.

## 19. INSURANCE

- 19.1 Customer shall obtain and - at least for the duration of the Sales Contract - maintain the following insurances with a reputable insurance company, which (at minimum) covers:
  - a) third party liability;
  - b) Customer's liability towards Leaseweb; and
  - c) Customer's liability as an employer towards Customer's employees; in each case up to an amount per event of - at least - three (3) times Customer's total annual Service Fees, with a minimum of one million Canadian dollars (CA\$ 1,000,000. --).
- 19.2 Without prejudice to Clause 18.2g), the Colocated Equipment shall at all times be at Customer's risk. Therefore, during the continuance of the Sales Contract, it shall be Customer's responsibility to insure at its own expense, and keep insured the Colocated Equipment, with a reputable insurance company against loss, theft, damage or destruction howsoever arising at an amount not less than the full replacement value of the Colocated Equipment in a valid and applicable Property Damage insurance policy. Under no circumstances shall Leaseweb be obligated to provide insurance coverage for any of the Colocated Equipment or other Customer property installed within the POP and/or the Data Centre.
- 19.3 Customer shall provide Leaseweb with documentation evidencing Customer's compliance with the provisions set out above in this Clause 19, within ten (10) days of Leaseweb's request to that effect. In general, Leaseweb considers a written statement by Customer's insurance company, confirming Customer's compliance, to be sufficient evidence.

## **20. CONTRACT TERM /CANCELLATION**

- 20.1 The Contract Term commences on the Contract Start Date and has full effect during the Contract Term.
- 20.2 The Sales Contract shall be renewed automatically from the Contract Extension Date for successive Contract Terms which are equivalent to the previous Contract Term, unless cancelled by either Leaseweb (Clause 20.3) or the Customer (Clause 20.4).
- 20.3 In case Leaseweb does not agree to such renewal of the Contract Term and wishes to cancel the Service at the Contract End Date Leaseweb has the right to cancel and notify the Customer from the Customer Portal or otherwise, taking into account a termination notice period of at least:
  - a) one (1) hour, in the event of a Contract Term of one (1) month;
  - b) two (2) months, in the event of a Contract Term of three (3) months or longer
- 20.4 In case the Customer does not agree to such renewal of the Contract Term and wishes to cancel the Service at the Contract End Date, the Customer has the right to cancel and is required to make a cancellation notice by using the cancellation option in the Customer Portal taking into account a cancellation notice period of at least:
  - a) one (1) hour, in the event of a Contract Term of up to and including three (3) months, provided that such notice is submitted by means of the Customer Portal;
  - b) one (1) month, in the event of a Contract Term of six (6) months or longer.
- 20.5 The Trial Period will automatically be converted into a Sales Contract based on the prior agreed Contract Term as requested by the Customer and Fees offered by Leaseweb, unless the Customer cancels the Service during the Trial Period via the Customer Portal, taking into account the mandatory one (1) hour cancellation notice period before the end of the Trial Period. This means a cancellation notice submitted by Customer via the Customer Portal no later than 23.00 hours CET/CEST.

## **21. EARLY TERMINATION**

- 21.1 A Party is entitled to terminate the Sales Contract during the Contract Term prior to the Contract End Date by giving written Notice by separate email or post mail to the legally authorized representative of other Party, without an obligation to take into account a notice period, if:
  - a) the other Party has ceased to exist or has been dissolved;
  - b) the other Party has been declared bankrupt, or it has been granted suspension of payments or entered into voluntary liquidation;
  - c) the other Party's business has been discontinued;
  - d) the other Party is in breach of any of the terms of the Sales Contract and –if and to the extent such breach can be remedied- fails to remedy such breach within a period of thirty (30) days after having received notice with respect to the breach; and/or
  - e) the other Party is unable to perform its obligations due to an event of Force Majeure, provided that the event of Force Majeure has lasted more than sixty (60) days and the Parties are unable to reach a temporary solution for

the Force Majeure period in spite of having negotiated in good faith with respect to such temporary solution.

- 21.2 Leaseweb is entitled to terminate the Sales Contract with immediate effect, by giving written notice to Customer, without an obligation to take into account a notice period, in the event:
  - a) the provision of the Services and/or access to the Equipment has been suspended in according with Clause 12.1 for seven (7) or more consecutive days; and/or
  - b) the continued provision of the Services under the Sales Contract cannot reasonably be expected from Leaseweb, e.g. if (i) Customer or its End User has – according to Leaseweb's findings- repeatedly breached the Acceptable Use Policy or there is reasonable doubt of breach of the Policies; and/or (ii) the continued provision of the Services may subject Leaseweb to a third-party claim; and/or
  - c) Customer does not pay an invoice within the Payment Term and fails to pay such invoice, plus the interest referred to in Clause 10.13 within a period of fourteen (14) days after having received notice thereof; and/or
  - d) of a change of ownership or Control of Customer if – in Leaseweb's view – (i) the resources, administrative organization or financial condition of the party that acquires ownership or Control of Customer may be inadequate to perform the Customer's obligations under the Sales Contract; and/or (ii) Customer's credit position is adversely affected by such change of ownership or Control; and/or
  - e) a court has ruled or decided, or Leaseweb reasonably expects that a court will rule or decide, that the provision of any Service infringes upon the Intellectual Property Rights of a third party; and/or
  - f) Leaseweb has good reasons to fear that Customer will materially breach its obligations under the Sales Contract, and Customer does not, within three (3) Business Days upon written request, confirm to Leaseweb in writing that it will fully perform in conformity with its obligations under the Sales Contract; and/or
  - g) Leaseweb has reasonable doubts of Customer good standing of its business and/or related staff and/or Leaseweb's KYC requirements and/or is subject to any export control restriction globally in according with Clause 2.4 of the Leaseweb Policies; and/or
  - h) there is any end of life-cycle discontinuation of Services and / or Equipment, support and other business reasons causing for discontinuation of Services and/or Equipment also taking into account clauses 3.3-3.5 of these Sales Terms and Conditions.
- 21.3 Leaseweb is entitled to terminate the Sales Contract by giving written notice to Customer, taking into account a notice period of at least thirty (30) days, in the event that:
  - a) Leaseweb has received notification from its lessor or landlord with respect to termination or expiration of the Facility Contract where the Housing Space - that has been licensed to Customer - is located; and
  - b) Leaseweb will, for any reason, not be able to arrange for an alternative and suitable location for the Housing Space within a period of thirty (30) days after having received notification from its lessor or landlord, such to be determined at Leaseweb's sole discretion.



- 21.4 Customer shall be entitled to terminate the relevant Sales Contract with immediate effect, by giving written Notice to Leaseweb, without an obligation to take into account a notice period, if:
- a) Leaseweb unilaterally delays Contract Start Date, and such delay lasts for thirty (30) days after having received a prior Notification of Customer's intention to terminate; and/or
  - b) Leaseweb fails to remedy a Service Disruption that results in the Service provided under the Sales Contract being fully unavailable or unusable, within thirty (30) days after having received a prior Notification of Customer's intention to terminate.
- 21.5 A Party may only terminate the Sales Contract in accordance with the termination rights explicitly granted to such Party in the Sales Contract.

## **22. EFFECTS OF CANCELLATION/TERMINATION**

- 22.1 Termination or cancellation of the Sales Contract shall be without prejudice to any rights or remedies available to, or obligations or liabilities accrued to the Parties, as at the date of termination or expiration.
- 22.2 Upon termination or cancellation of the Sales Contract:
- a) Leaseweb shall cease to provide all Services;
  - b) Leaseweb shall directly from the notified termination date be entitled to erase and delete any and all data of Customer -and any and all data of Customer's End Users- from Leaseweb's Equipment, including from the Dedicated Equipment. From the date of the notice for termination sent by Leaseweb to the Customer, the Customer shall use this notice period for its data back-up. In case of an immediate termination by Leaseweb, Customer shall be granted a Customer data back-up period of a maximum of five (5) Business Days from date of termination. All of the above set out in this Clause 22.2 b) is deemed a reasonable period for any Customer data back-up, at its own initiative, cost and account including any Customer End Users backup. Such data back-up period does not apply if at Leaseweb's discretion it is determined that Customer is in breach of any of its obligations under the Sales Terms and Conditions, Policies, the Service Level Agreement. The Customer's use of such data back-up period shall be Customer's sole responsibility as data processing activity and can only be executed by Customer as Data Controller and as contracting party;
  - c) Leaseweb shall be entitled to make the Dedicated Equipment available for use by other Customers;
  - d) Subject to Clauses 22.6 and 22.7, all sums due to Leaseweb up to the date of termination and originally agreed Contract End Date shall become due and payable in full immediately;
  - e) Customer shall, subject to Clause 22.5, within 2 (two) weeks from the Contract End Date remove from the Housing Space all of the Colocated Equipment from the Data Centre and shall return the Housing Space to Leaseweb in the same condition it was in prior to Customer's use thereof; and

- f) Customer shall ensure that all (Internet) domains which have been registered through Leaseweb are transferred to another registrar.
- 22.3 If Customer does not timely remove the Colocated Equipment in accordance with Clause 22.2e) Leaseweb may - at Customer's expense - remove, take out and dispose of such Customer Colocated Equipment. At Leaseweb's sole discretion Leaseweb can decide, at Customer's expense, to store such Collocated Equipment, or return such Collocated Equipment to the Customer without Leaseweb incurring any liability for any related damages. If Customer does not timely remove the Colocated Equipment in accordance with Clause 22.2e) Customer shall be liable to pay to Leaseweb from the Contract End Date a compensation equal to one month Service Fees for the terminated Colocation Services for each month, or part of a month, that Customer has failed to remove the Colocated Equipment.
- 22.4 If Customer has not transferred the (Internet) domains to another registrar ultimately within five (5) Business Days of the date of expiration or termination of the Sales Contract, in accordance with Clause 22.2f), Leaseweb shall be entitled to deregister or cancel the registration of such (Internet) domains, without any obligation to provide Customer prior notice thereof.
- 22.5 Leaseweb will have the right to retain any Colocated Equipment until it has received payment in full of all sums due and/or payable by Customer to Leaseweb. If Leaseweb has not received such sums within fourteen (14) days after termination or expiration of the Sales Contract, such to be determined by Leaseweb, Leaseweb shall be entitled to sell any Colocated Equipment, necessary to recoup all sums due and/or payable, at such price as Leaseweb is able to obtain in the open market.
- 22.6 In the event that Leaseweb terminates the Sales Contract in accordance with Clause 20.3, 21.1, 21.2a), 21.2b), 21.2c), 21.2d), or 21.2f), Customer has the obligation to pay to Leaseweb – without prejudice to any other rights or remedies that Leaseweb may have – within five (5) Business Days after the effective date of termination as notified by Leaseweb the Early Termination Fee.
- 22.7 Termination for convenience is not allowed under the Sales Contract. In the event that Customer terminates the Sales Contract prior to the Contract End Date, which means that Customer is in breach of the Sales Contract, Customer has the obligation to pay Leaseweb for such early termination of the Contract Term the Early Termination Fee. Such Early Termination Fee shall be paid by the Customer – without prejudice to any other rights or remedies that Leaseweb may have – within five (5) Business Days after the effective date of termination.
- 22.8 In the event that Leaseweb terminates the Sales Contract or an affected Service in accordance with Clause 21.2e), Leaseweb shall refund to Customer:
- a) any non-recurring initial Fees or setup Fees that have been paid by Customer to Leaseweb in respect of the Service so terminated, in the event that the Sales Contract or affected Service is terminated prior to the Delivery Date; and

- b) a pro rata portion of any recurring Service Fees that have been prepaid by Customer to Leaseweb in respect of the Service so terminated, if and to the extent that such prepayment exceeds the Fees that will accrue until the date of termination of the affected Service.

22.9 The following Clauses shall survive termination or cancellation of the Sales Contract and continue in full force and effect, in addition to those Clauses the survival of which is necessary for the interpretation or enforcement of the Sales Contract: Data Protection/ Personal Information (Clause 8), Indemnification (Clause 17), Limitation of Liability (Clause 18), Confidentiality (Clause 24), Notices (Clause 26), Miscellaneous (Clause 27), Governing Law and Jurisdiction (Clause 28).

## **23. FORCE MAJEURE**

23.1 A Party shall not be deemed in breach of any of its obligations, guarantees or warranties under the Sales Contract if, and to the extent that, performance is prevented or delayed by an event of Force Majeure, - taking into account that Force Majeure shall not apply and Customer remains fully obligated to perform all of its obligations of the Sales Contract if Leaseweb was requested for an order or quotation and/or entering in to a Sales Contract after an event that the Customer could have reasonably known or been aware of -, provided that the Party that is effected by the event of Force Majeure has:

- a) promptly notified the other Party thereof in writing, as soon as reasonably possible and no later than five (5) Business Days after the first occurrence of the Force Majeure event which shall be notified by Leaseweb on its website and/or Customer Portal or otherwise and shall be notified done by Customer by Notification to Leaseweb; and
- b) provided the other Party with all information on the event of Force Majeure and the (expected) cessation or termination of said event.

23.2 The Party that is affected by an event of Force Majeure shall use all reasonable endeavors to avoid or minimize the effects of an event of Force Majeure on its performance of its obligations under the Sales Contract.

23.3 Upon the occurrence of an event of Force Majeure, the time for performance shall be extended for the period of delay or inability to perform due to such occurrence, but if an Event of Force Majeure continues for a continuous period of more than sixty (60) days the other Party shall be entitled to terminate the Sales Contract by means of Notification.

23.4 During an Event of Force Majeure, Customer shall remain liable for payment of all Fees due under the Sales Contract and Customer shall not be entitled to a refund for any Fees paid by Customer to Leaseweb for such suspended period.

## **24. CONFIDENTIALITY**

24.1 A Receiving Party, meaning either the Customer or Leaseweb and its Affiliates shall: (i) keep all Confidential Information confidential, (ii) not disclose any Confidential Information to any other party than the Party and its

Affiliates without the prior written consent of the Disclosing Party, and (iii) only use and reproduce the Confidential Information for the performance of its obligations under the Sales Contract and related marketing activities. A Receiving Party shall ensure and procure its employees, contractors and other related staff to comply with the Confidentiality Clause and will only receive Confidential Information on reasonable need to know basis.

24.2 The obligations contained in Clause 24.1 shall not apply to any Confidential Information which: (i) at the date of the Sales Contract is, or at any time after the date of the Sales Contract becomes, public knowledge other than through breach of the Sales Contract by the Receiving Party; (ii) can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known to the Receiving Party prior to it being disclosed by the Disclosing Party to the Receiving Party; or (iii) is required to be disclosed or used by law.

24.3 The Receiving Party agrees that any and all notes, diagrams, descriptions, memoranda and other writings or electronic information obtained from the Disclosing Party and any copies, notes or excerpts thereof containing Confidential Information shall remain the property of the Disclosing Party and that said documents shall, upon request of the Disclosing Party and at the Disclosing Party's option, be promptly returned to the Disclosing Party or destroyed upon any termination of consideration of the possible business arrangement.

## **25. TRANSFER OF RIGHTS AND OBLIGATIONS**

25.1 Leaseweb shall be entitled to assign any of its rights or obligations under the Sales Contract to an Affiliate (or its or their successors, through merger or acquisition of substantially all of their or its assets), upon giving written announcement to Customer which shall be announced on the website, Customer Portal, email or otherwise.

25.2 Leaseweb shall be entitled to sub-contract any or all of its obligations under the Sales Contract to a third party without given notice or information thereof to the Customer, provided that Leaseweb shall remain liable to Customer for the performance of those obligations.

25.3 Without prejudice to Clause 25.1 and 25.2, neither Party shall be entitled to assign or transfer, or purport to assign or transfer, any rights or obligations under the Sales Contract to a third party (other than Leaseweb's Affiliates) without the prior written consent of the other Party, which consent may not be unreasonably withheld.

25.4 In case Customer wishes to assign or transfer, or purport to assign or transfer, any rights or obligations under the Sales Contract to a third party, Leaseweb's consent is subject to agreement per the Sales Contract Transfer Request Form, whereby Leaseweb shall consider if the third party is capable of performing the obligations under the Sales Contract, if the third party meets the KYC Customer verification requirements and/or credit position is adversely affected by such assignment or transfer to a third party.

25.5 Nothing in the Sales Contract shall exclude or limit Leaseweb's rights to grant or create a right of pledge or

other security right - for the benefit of a bank or other financial institution or other third party – on or over any or all (cash) receivables that Customer owes or comes to owe to Leaseweb.

## 26. NOTICES

- 26.1 Unless specified otherwise herein or in the Sales Contract, any Notice including a demand, claim or other communication under or in connection with the Sales Contract shall be in writing and shall be delivered personally or sent by registered mail or by prepaid recorded courier delivery or by e-mail, to the authorized representative of the Party due to receive the Notice at its address set out below or such other address as any Party may specify by Notice in writing to the other:

If to Leaseweb 14 Place du Commerce, Suite 500,  
Nuns' Island, Montreal, Quebec,  
Canada;  
with a copy directed for the attention  
of the Legal Department, by e-mail  
to: [legal@ca.leaseweb.com](mailto:legal@ca.leaseweb.com).

If to Customer to the person and at the address as  
specified in the Customer Portal.

- 26.2 In the absence of evidence of earlier receipt, any such Notice, including a demand, claim or other communication shall be deemed to have been received:
- a) if delivered by hand, at the time of delivery;
  - b) if posted, on the expiration of five (5) Business Days after the notice has been provided to the courier company; or
  - c) if sent by e-mail, the moment the e-mail has been received on or by a mail server or mail exchanger used or operated by the legally authorized representative of the receiving Party.
- 26.3 For the purpose of Clause 26.2c) any failure to deliver -and any impossibility to receive or access- a notice, demand, claim or other communication shall be for the risk and account of the receiving Party, if -and to the extent that- such failure or impossibility is related to -or the result of- an act or omission of the receiving Party, a failure of the mail server or mail exchanger used or operated by the receiving Party, or a failure or interruption in the services of a third party that manages or hosts of the mail server or mail exchanger used or operated by the receiving Party.

## 27. MISCELLANEOUS

- 27.1 No waiver of any of the terms of the Sales Contract or of any breach of those terms shall be effective unless such waiver is in writing and signed by the waiving Party. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach.
- 27.2 Other than Leaseweb's sub-contractors who shall have the benefit of the Sales Contract, nothing in the Sales Contract shall confer upon any third party any right, benefit or remedy of any nature under the Sales Contract.
- 27.3 Should any or several of the provisions of the Sales Contract be invalid or null and void, this shall not affect the remaining provisions thereof. In such event, the relevant provision shall be replaced by a valid provision that reflects

– to the extent possible – the purpose and the intended effect of the original provision.

- 27.4 Nothing in the Sales Contract shall result in the transfer of a Party's Intellectual Property Rights (of whatever nature) to the other Party. Other than the licenses expressly granted to Customer in the Sales Contract, Leaseweb reserves all right, title and interest in all Leaseweb Intellectual Property Rights.
- 27.5 Leaseweb shall - without Customer's approval - be entitled to inform third parties that Leaseweb provides Services to Customer, e.g. as a Customer case during sales activities, third party events, in marketing & sales communication and on Leaseweb's website. Other than the above, neither Party shall be authorized to (i) make press or public announcements relating to this Sales Contract, without the prior written approval of the other Party, or to (ii) use the other Party's Intellectual Property Rights in any advertising, sales, promotions, or other publicity materials.
- 27.6 Customer is responsible for its employees, contractors and third parties engaging with Leaseweb as Customer's authorized representatives. In addition, in case Customer is represented by any person in any or all events, Leaseweb has the right to rely on and assume the apparent authority of such Customer representatives and Customer shall be held responsible and liable for any acts and omissions by such person.

## 28. GOVERNING LAW AND JURISDICTION

- 28.1 These Sales Terms and Conditions, the Sales Contract and all matters arising there from or connected therewith are governed by the laws of the province of Québec and the laws of Canada applicable therein, without regard to conflict of law principles and to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods.
- 28.2 Subject to Clause 28.3, the competent courts of Québec courts, judicial district of Montréal shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Sales Contract or other Sales Contracts or other legal relationships resulting there from or in connection therewith.
- 28.3 Notwithstanding the terms of Clause 28.1 and 28.2, nothing herein shall prevent Leaseweb from pursuing action in any other jurisdiction as may be appropriate for the purpose of seeking urgent and/or interim and/or interlocutory injunctive or other relief against Customer.
- 28.4 Notwithstanding the terms of Clause 28.1 and 28.2, nothing herein shall prevent Leaseweb from pursuing action in any other jurisdiction as may be appropriate for the purpose of seeking urgent and/or interim and/or interlocutory injunctive or other relief against Customer.

## 29. LANGUAGE

- 29.1 The parties have expressly required and mutually agree that the Contract and all related documents, including notices and other communications, be written exclusively in English. Les parties ont expressément exigé et

conviennent mutuellement que la Contrat ainsi que tous les documents qui s'y rattachent, incluant les avis et autres communications, soient rédigés exclusivement en anglais.

*Une version française du contrat est disponible ici.*

A French version of the Contract is available here.