

SHOPHERO GENERAL TERMS (“General Terms”)

2023v10.31

Please carefully read these General Terms together with its exhibits and schedules, which are incorporated herein by this reference. In the event of a conflict between these General Terms and the exhibits and schedules, these General Terms shall prevail. The Agreement governs Merchant-User’s access to the use of the Products and Services and constitutes a binding legal agreement between You and ShopHero.

YOU, THE MERCHANT-USER, ACKNOWLEDGES AND AGREES THAT, BY EXECUTING A SALES ORDER REFERENCING THESE GENERAL TERMS AND ACCESSING THE PRODUCTS AND SERVICES, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE GENERAL TERMS. IF YOU DO NOT AGREE TO THESE GENERAL TERMS, PLEASE CONTACT SHOPHERO AS SOON AS POSSIBLE AND DO NOT ACCESS OR USE THE PRODUCTS AND SERVICES.

1. INTRODUCTION.

1.1. Definitions. In these General Terms, the following terms shall have the following meanings:

- (A) **“ShopHero Acceptable Use Policy”** or **“AUP”** which can be found at www.shophero.com/legal is hereby incorporated herein by reference and made a part these General Terms by this reference. Notwithstanding anything herein to the contrary, ShopHero may from time to time amend the ShopHero Acceptable Use Policy by amending the version found at the above referenced webpage. The amended version will become effective on the date of such posting. You are obliged to visit such webpage frequently to review the current version of the AUP and to make yourself aware of any amendments to the AUP. Your use of any Product or Services after the webpage AUP has been amended shall be your acceptance of, and agreement to, such amended AUP.
- (B) **“Admin Console”** means the Administrative Console by means of which Merchant operates Merchant ‘s input and control features of a Merchant Site.
- (C) **“Administrators”** means those persons appointed by Merchant-User to hold Admin Accounts;
- (D) **“Admin Account”** means an account of an Administrator appointed by a Merchant-User to have access to an Admin Console.
- (E) **“Affiliate”** means for a Party, any other entity that controls, is controlled by or under common control with the Party. For the purposes of this definition, the term “control” means the direct or indirect power to direct

the affairs of the other entity through at least 50% of the shares, voting rights, participation, or economic interest in this entity.

- (F) **“Agreement”** means the applicable Sales Order together with these General Terms and those attachments, exhibits, and schedules attached to or specifically referenced by the Sales Order and by these General Terms.
- (G) **“Brand Features”** means a Party’s names, domain names, trademarks, service marks, logos, and other identifying and branding features.
- (H) **“Confidential Information”** has the meaning set forth in Section 7 (Confidentiality).
- (I) **“Data Protection Laws”** mean collectively all applicable data protection, privacy or similar laws applicable to the processing of personal data under or pursuant to this Agreement.
- (J) **“Effective Date”** means the effective date stated in the Sales Order.
- (K) **“End-User”** means a person or entity other than Merchant-User or ShopHero who visits or views a Merchant Site for any reason, including but not limited to, in order to view and contribute to a Merchant Site, and to view and order goods and services offered on a Merchant Site.
- (L) **“End-User Content”** means content contributed by End-Users.
- (M) **“Fulfillment Services”** means the picking and/or delivery of products by ShopHero or its Affiliate, if Fulfillment Services are included in the Sales Order.
- (N) **“General Terms”** means the terms and conditions set forth in this document, and its attached Exhibits and Schedules, which is or are made an integral part of these General Terms by this reference.
- (O) **“Implementation Plan”** means the plan, including time-line schedules, provided to the Merchant-User defining ShopHero and Merchant-User responsibilities for setup and implementation of the Products and Services, including the Merchant Site and financial accounts, facilities and point of sale reports and integrations required to provide the Products and Services.
- (P) **“Indemnified Party”** and **“Indemnifying Party”** have the meanings set forth in Section 10 (Indemnity).
- (Q) **“Infringement Claim”** has the meaning set forth in Section 10.1 (Infringement Indemnity).
- (R) **“Intellectual Property Rights”** has the meaning set forth in Section 13 (Intellectual Property Rights and Ownership).

- (S) **“Inventory and Pricing Updates”** has the meaning set forth in Section 5.4(A) (Inventory and Pricing Updates).
- (T) **“License Metric”** means the per-unit metric specified by a Sales Order concerning the licensed quantities in the Sales Order, to describe the scope of Merchant’s license to use the Products and Services.
- (U) **“License Term”** means the duration of the license for Products and Services, as stated in the Sales Order, or any shorter term arising from a termination of the Agreement.
- (V) **“Merchant-User”** or **“You,” “Your”** or **“Yours”** means the entity identified in the Sales Order as the “Merchant,” “Merchant-User” or “Customer.”
- (W) **“Merchant Content”** means material placed by a Merchant-User on its Merchant Site, such as copy related to the description of the Merchant-User and its policies, promotion of sales, specials and other promotional material, blog posts and other content provided by Merchant-User.
- (X) **“Merchant Data”** means Merchant Database, Merchant Content, and a Merchant’s Brand Features.
- (Y) **“Merchant Database”** means name, email address, and other contact information of End-Users of a Merchant Site collected by a Merchant Site incident to End-Users’ use of a Merchant Site.
- (Z) **“Merchant Site”** means Products and Services featuring the provision of a Merchant-User-branded website, application or mobile technology provided by ShopHero or modified with ShopHero Technology for the display of goods and their purchase by End-Users, as specified in the applicable Sales Order.
- (AA) **“NAI”** has the meaning set forth in Section 8.1 (Compliance with Data Protection Laws).
- (BB) **“NAI Code”** has the meaning set forth in Section 8.1(Compliance with Data Protection Laws).
- (CC) **“Personal Data”** means any data or information (i) that you or any End-User provides, or provides access, to ShopHero as part of the parties’ performance under, and in accordance with, this Agreement that: (a) directly or indirectly identifies an individual (or household in California only) or (b) can be used to identify an individual (or household in California only), in case of both subclauses (a) and (b), including Sensitive Personal Data as defined herein, **and** (ii) that is protected by any applicable Data Protection Law.

- (DD) **“Product Photographs and Descriptions”** means photographs and descriptions of consumer products held in ShopHero’s database of photographs and descriptions of products, including photographs and descriptions of products in a Merchant-User’s inventory.
- (EE) **“Products and Services”** (and all derivatives) means the Products and/or Services described in the Sales Order.
- (FF) **“Sales Order”** means the Sales Order providing for purchase of Products and Services by a Merchant-User, and which references and incorporates these General Terms.
- (GG) **“Sensitive Personal Data”** is Personal Data that is protected as “sensitive personal information,” “sensitive personal data” or any similar term under applicable Data Protection Laws.
- (HH) **“Service Level Agreement”** or **“SLA”** means ShopHero’s service level agreement which will be attached to Sales Order if applicable.
- (II) **“ShopHero”** means ShopHero, Inc., a Delaware corporation.
- (JJ) **“ShopHero Technology”** means intellectual property and technology owned by ShopHero or its Affiliates or licensed to ShopHero or its Affiliates by a third party, including the Products and Services, apps, software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects network designs, processes, know-how, methodologies, trade secrets, and any related intellectual property rights throughout the world, and suggestions made to ShopHero that are incorporated into any of the foregoing (which will be deemed assigned to ShopHero), as well as any of the derivatives, modifications, improvements, enhancements, or extensions of the above, whenever developed.
- (KK) **ShopHero** and **Merchant-User** may sometimes each be referred to as a “Party,” and together as the “Parties.”
- (LL) **“Unacceptable Use”** and **“Unacceptable Content”** have the meanings described in the ShopHero Acceptable Use Policy.
- 1.2. References to “Sections” and “Schedules” are references to the Sections and Schedules of these General Terms.
- 1.3. In the event and to the extent only of any conflict between the Sections and the Schedules, these General Terms shall prevail.
- 1.4. Where the context so admits or requires, words denoting the singular include the plural and vice versa.

- 1.5. References to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time (whether before or after the date of this Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions.
- 1.6. References to “including” and “include(s)” shall be deemed to mean respectively “including without limitation” and “include(s) without limitation”.
- 1.7. References to “content” means any kind of materials, including text, information, images, audio and video which can be incorporated in a Website for access by a visitor to that Website.

2. PAYMENT OF FEES.

- 2.1. **Payment.** At the end of each month, ShopHero will automatically issue an invoice to Merchant-User or bill Merchant-User’s credit card for the Products and Services. ShopHero in its sole discretion reserves the right:
 - (A) to bill Merchant-User in advance for any minimum monthly Fees as specified in the Sales Order and to bill Merchant-User at the end of each month for any Fees in excess of such minimum Fee; or
 - (B) to provide Merchant-User with a single invoice at the end of each month for all Fees with each invoice being due and payable on the invoice date; or
 - (C) to require Merchant-User to submit payment electronically by electronic checking account draft.
- 2.2. **Invoice Disputes.** If Merchant-User believes in good faith that Merchant-User’s invoice is incorrect, Merchant-User must contact ShopHero in writing within 10 days of the invoice date and describe (in reasonable detail) the amount of the disputed charges and the reason for Merchant-User’s good faith disagreement. Notwithstanding that Merchant-User disputes an invoice, Merchant-User is still obligated to pay all undisputed portions of the disputed invoice as and when the same are due.
- 2.3. **Failure to Pay.** If ShopHero has not received payment of invoiced and undisputed amounts within 10 days after the due date, interest shall accrue on the past due amounts at the rate of one and 1.5% per month, but in no event greater than the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by ShopHero. Merchant-User shall reimburse ShopHero for the reasonable costs of collection, including reasonable fees and expenses of attorneys. If Merchant-User’s account is 30 days or more overdue, in addition to any of its other rights or remedies, ShopHero reserves the right to suspend the Products and Services provided to

Merchant-User, without liability to Merchant-User, until such amounts are paid in full.

- 2.4. Creditworthiness.** Upon ShopHero's request, Merchant-User shall provide the financial documents requested by ShopHero that ShopHero deems necessary to ascertain the credit-worthiness of Merchant-User.
- 2.5. Accurate Billing Information.** Merchant-User agrees to provide ShopHero with complete and accurate billing and contact information in the Sales Order.
- 2.6. Taxes.** Fees are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (collectively, "Taxes"). Merchant-User shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on ShopHero's net income. ShopHero may invoice Merchant-User for any applicable taxes. Where applicable, Merchant-User shall provide a tax-exemption claim to ShopHero together with all deemed necessary by ShopHero before placing an order. If Merchant-User is required to withhold income taxes from its payment to ShopHero, Merchant-User agrees to send ShopHero an official tax receipt within 60 days of payment to ShopHero.
- 2.7. Confidential Pricing.** All pricing terms other than those publicly disclosed on ShopHero's website are confidential, and Merchant-User agrees not to disclose them to any third party.
- 2.8. Third Party Fees on Payments.** ShopHero shall not be responsible for, and will not pay, any fees Merchant-User's financial institution may impose upon Merchant-User in the payment of Merchant-User's invoice (including without limitation any wire or transfer fees). Merchant-User shall be responsible for and pay all such fees.

3. PRODUCTS AND SERVICES.

- 3.1. Provision of Services.** ShopHero shall provide the Products and Services identified in the Sales Order per the Agreement, with reasonable care and skill, in accordance with the SLA.
- 3.2. Admin Console.** ShopHero shall provide Merchant-User with an Admin Console to provide Merchant-User with notices from ShopHero and with input, administration and control features.
- 3.3. Modifications to the Agreement.** ShopHero may make modifications to the Agreement at any time and will provide notice of such modifications by email to Merchant-User. If Merchant-User does not elect to accept the modified Agreement, Merchant-User must provide written notice of such election within thirty (30) days of notice of said modifications. In such case, ShopHero may then elect to continue to provision the Products and Services under the terms of the unmodified Agreement or to terminate this Agreement. If Merchant-User does so

terminate the Agreement, Merchant-User shall remain liable for all fees through the date of such termination.

- 3.4. Modifications to the Products and Services.** ShopHero may make changes to the Products and Services from time to time. If ShopHero makes a modification it deems material to the Products and Services, ShopHero will inform Merchant-User of such modification. The terms of the Agreement shall continue to apply to the Products and Services as so modified. If any such material modification materially restricts the overall utility of the Products and Services and Merchant-User does not elect to continue to use the modified Products and Services, Merchant-User must provide written notice of such election within thirty (30) days of notice of said material modification. In such case, ShopHero may then elect to either provide the Products and Services to Merchant-User in an unmodified manner or to terminate this Agreement. If the Agreement is so terminated, Merchant-User shall remain liable for all fees through the date of such termination.
- 3.5. Storage and Processing of Data.** As part of providing the Products and Services, ShopHero may transfer, store and process Merchant Data in the United States or any other country in which ShopHero or its agents maintain facilities. By using the Products and Services, Merchant-User consents to this transfer, processing and storage of Merchant Data.
- 3.6. Advertising.** Merchant-User authorizes ShopHero to, and ShopHero will, offer and sell, directly or through the use of third parties, advertising space and to present advertising materials, content, feed data and technology related to products and services, including, but not limited to, ShopHero and/or third party products and services, within the Products and Services and the Merchant Site, including on or within Merchant Site or any mobile application provided by ShopHero or utilizing any of the Products and Services. Except as may otherwise agreed to by the parties in a Sales Order, as between ShopHero and the Merchant-User, all fees and other revenue generated by the sale, placement or serving of such advertising space and/or advertisements shall be retained by ShopHero. Merchant-User will obtain and maintain throughout the Term of this Agreement for the benefit and use of itself and ShopHero (and Merchant-User hereby grants to ShopHero) all rights and permissions reasonably necessary to offer or present the advertising as described herein within the Products and Services and the Merchant Site, to serve and store such advertising and all data arising from or generated thereby and to perform tracking of, and analytics related to, engagement with such advertising, which obligation includes providing, receiving and/or facilitating all notices, disclosures, consents, opt-ins and opt-outs required under applicable law, including, but not limited to, all Data Protection Laws related to such advertising and the collection and processing of Personal Data related to the such. ShopHero may include analytics code or technologies into the Products and Services or Merchant Site, including click and conversion tracking, to track and analyze engagement with any advertisements served on or through the Products and Services and/or Merchant Site. Merchant-User will not edit or delete any such analytics code or technologies at any time during the Term of this

Agreement without ShopHero's prior written consent. Notwithstanding anything herein to the contrary, as between ShopHero and Merchant-User, ShopHero own all right, title and interest in and to any and all data arising or generated from such advertising and such analytics codes or technologies. Merchant-User hereby agrees to cooperate with ShopHero in the implementation and execution of the advertising and data collection described in this Section.

- 3.7. Reservation of Rights.** ShopHero reserves all rights not expressly granted by the Agreement. ShopHero retains sole discretion as to the means, manner and method for providing the Products and Services, including those regarding the hosting, transmission, publication and/or display of any Merchant Site and any content (including the inclusion and presentation of any advertisements, the ranking or order of product searches or results, or the display of other commercial content with respect thereto).
- 3.8. Service Levels.** ShopHero shall provide the remedies listed in the SLA for any defect or failure of the Products and Services. Such remedies are Merchant-User's sole remedy for any defect or failure of the Products and Services, and Merchant-User recognizes and agrees that if the SLA does not list a remedy for a given defect or failure, it has no remedy. Credits issued pursuant to the SLA apply to outstanding or future invoices only and are forfeited upon termination of the Agreement. ShopHero is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation after termination of the Agreement.
- 3.9. Implementation Plan.** ShopHero shall provide a detailed implementation plan that includes time-line schedules for setup and implementation of the Products and Services including the Merchant Site.

4. LICENSE AND RESTRICTIONS.

- 4.1. License Grant for Products and Services.** Upon execution of a Sales Order for a subscription for Products and Services, subject to the terms and conditions of this Agreement, ShopHero grants Merchant-User, during the License Term, a non-transferable, non-exclusive, license to permit Merchant-User to utilize the Products and Services, subject to ShopHero's underlying intellectual property rights in the Products and Services and the ShopHero Technology.
- 4.2. License Restrictions.** Except as expressly permitted under the Agreement, Merchant-User shall not:
- (A) violate any terms of the ShopHero Acceptable Use Policy;
 - (B) copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, or sub-license the Products and Services;

- (C) offer, use, or permit the use of the Products and Services in a computer service business, third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, as part of a hosted service, or on behalf of any third party;
- (D) attempt to interact with the operating systems underlying Products and Services, or modify, create derivative works of, adapt, translate, reverse engineer, decompile, or otherwise attempt to discover or access the source code in any way of or in any ShopHero Technology. This restriction will not apply to the extent it limits any non-waivable right Merchant-User may enjoy under applicable law;
- (E) remove, obscure, or alter any proprietary notices associated with the Products and Services;
- (F) use any software components, modules, or other services that may be delivered with the Products and Services, but which are not licensed to Merchant-User and identified in the Sales Order; or,
- (G) unbundle any components of the Products and Services or the ShopHero Technology.

4.3. Third Party Providers. If Merchant-User uses the Products and Services in conjunction with third party data, products, services, and platforms (e.g. social media platforms, media partners, wireless carriers, or device operating systems), then Merchant-User is responsible for complying with the terms and conditions required by such third party providers and for any harm caused the Products and Services by such third party data, products, services and platforms.

4.4. License Grant from Merchant-User.

- (A) During the License Term, Merchant-User grants ShopHero and its Affiliates a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, and display Merchant Brand Features and Content to the extent necessary to provide the Products and Services to Merchant-User, and to enforce its rights under the Agreement.
- (B) Merchant-User grants ShopHero and its Affiliates a non-exclusive, perpetual, worldwide, and royalty-free license to use, copy, transmit, sub-license, index, model, aggregate (including combination with similar data of other customers of ShopHero or its Affiliates), publish, display, and distribute any anonymous information and content derived from Merchant Data, such as, but not limited to, web browser, screen resolution, and mobile device-type information.

4.5. License of Product Photographs and Descriptions. The Parties acknowledge that Product Photographs and Descriptions will be used to implement the Products and Services for Merchant-User, that they may be used by ShopHero in the

provision of Products and Services to ShopHero's other clients and customers, and that Merchant-User retains no interest in or control over the Product Photographs and Descriptions.

5. MERCHANT-USER RESPONSIBILITIES.

- 5.1. Cooperation.** The Merchant-User agrees to give ShopHero personnel free access (A) to the Merchant-User's premises, and, (B) if deemed necessary by ShopHero, to Merchant Data and to Merchant-User's digital facilities and data in order to support the provision of the Products and Services, including the advertising described in Section 3.6 (Advertising) above, and to cooperate on the foregoing activities and generally in all reasonable ways to facilitate the accomplishment of the purposes of the Agreement.
- 5.2. Promotional Activities.** In addition to other obligations provided herein, the Merchant-User agrees to perform the following minimum promotional activities:
- (A) **Minimum Signage.** At or near the entrance to the Merchant-User's retail premise, the Merchant-User shall place a minimum of two signs, each no smaller than six square feet, advertising the availability of, and encouraging the use of, online ordering on the Merchant Site. Each of the signs shall be posted in a place conspicuous to persons entering or leaving the premise. ShopHero retains the option of providing the signage which shall be displayed by Merchant-User.
 - (B) **Print Media.** If the Merchant-User regularly publishes a printed circular or other printed promotional material, the Merchant-User shall prominently advertise the availability of, and encourage the use of, online ordering on the Merchant Site on each iteration or issue of Merchant-User's printed promotional materials. If Merchant-User publishes more than one page within a printed circular, Merchant-User shall promote online ordering via its Merchant Site on, at a minimum, the front page of the circular.
 - (C) **Social Media.** If the Merchant-User maintains one or more social media accounts, the Merchant-User shall create at least two posts per month on each of the Merchant-User's social media accounts advertising of the availability of, and encouraging the use of, online ordering on the Merchant Site.
 - (D) **Other Websites.** If the Merchant-User maintains one or more separate websites, other than its Merchant Site, the Merchant-User shall place a prominent link to the Merchant Site on the home page and/or appropriate landing pages of each such separate website.
- 5.3. Exclusivity.** During the License Term, the Merchant-User shall not utilize any online ordering service other than ShopHero.

- 5.4. Administrators.** Merchant-User shall specify one or more employees or agents as Administrator(s) who shall operate the Admin Console to perform the Merchant-User's input, maintenance, monitoring, updating and administrative responsibilities for the Merchant Site. Merchant-User shall provide and input up-to-date Inventory and Pricing.
- (A) **Inventory and Pricing Updates.** The Merchant-User shall utilize the Admin Console to publish updates regarding Merchant-User's Inventory and Pricing Updates. When reasonably possible Merchant-User shall automate this process by utilizing data from the Merchant-User's point-of-sale system. Merchant-User shall be responsible for all updates, and ensuring accuracy of inventory, products and pricing.
- (B) **Merchant Content.** The Merchant-User shall supply information and copy for inclusion on its Merchant Site by means of the Admin Console and as otherwise required by ShopHero, including copy related to: the description of the Merchant-User and its policies, promotion of sales, specials and other promotional material, blog posts and other content provided by Merchant-User. The Merchant-User agrees to keep all Merchant Content current, accurate, and in compliance with the ShopHero Acceptable Use Policy. **MERCHANT-USER AGREES THAT SHOPHERO WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGE OF ANY SORT INCURRED AS THE RESULT OF ANY MERCHANT CONTENT, OR ANY OF MERCHANT-USER'S DEALINGS OR INTERACTIONS WITH THIRD PARTIES OR AS THE RESULT OF THE PRESENCE OF SUCH THIRD PARTY'S CONTENT ON THE MERCHANT SITE.**
- (C) **End-User Content.** The Merchant-User agrees to monitor the End-User Content, such as End-User-submitted comments and product reviews, at least daily and shall remove any Unacceptable Content.
- (D) **Reporting.** Merchant-User shall promptly notify ShopHero if Merchant-User becomes aware of any possible violation of the ShopHero Acceptable Use Policy particularly in regards to Merchant Content or End-User Content.
- 5.5. Compliance with Implementation Plan.** Merchant-User shall be responsible for complying with the Implementation Plan including time-line schedules.
- 5.6. Merchant Project Manager.** Merchant-User shall appoint a project manager who shall provide professional and prompt communication with the project management personnel appointed by ShopHero. Merchant's project manager shall be one of Merchant-User's Administrators.
- 5.7. Project Meetings.** The Merchant's Project Manager shall meet with the personnel appointed by ShopHero at the times and in the manner designated from

time to time by ShopHero. ShopHero may provide minutes of these meetings to Merchant-User, which will be deemed to be an accurate record of such meetings if Merchant-User raises no objection to ShopHero within 7 days of receipt by Merchant-User.

- 5.8. Implementation Delays.** ShopHero shall not be liable for any delays in implementing the Products and Services resulting from the Merchant-User's failure to fulfill any of its obligations set forth in the Agreement.
- 5.9. End-User Payment Processing Account.** Merchant-User shall establish a merchant account capable of authorizing and processing electronic payment card transactions in Merchant-User's name, as directed by ShopHero, in order to allow clearing of online transactions for purchase of goods and fulfillment in connection with its Merchant Site. Merchant-User shall be wholly responsible for payment of all fees payable to the merchant account provider that are associated with the establishment and operation of such account, including, but not limited to, monthly fees, discount fees, chargeback and payment dispute fees. Merchant-User shall use reasonable best efforts to cooperate with ShopHero in facilitating and expediting the application for and establishment of such an account in the manner and within the timeframe established by ShopHero.
- 5.10. Merchant Brand Features.** The Merchant-User shall provide ShopHero with the necessary code, images and other information to implement the Merchant Brand Features on the Merchant Site.
- 5.11. Publicity.** All Merchant-User media releases, public announcements and public disclosures regarding the subject matter of the Agreement are subject to ShopHero review and approval.
- 5.12. Compliance with Acceptable Use Policy.** Merchant-User will use, and will cause its Affiliates, End Users and all other third parties acting for or on its behalf to use (subject to Section 6 (Third Party Access) below), the Products and Services in accordance with ShopHero Acceptable Use Policy.

6. THIRD-PARTY ACCESS.

- 6.1. Use by Affiliates.** Merchant-User may allow its Affiliates to use and access the Merchant Site and Admin Console only if provisions for such use are included and specified in, the Sales Order and only if Merchant-User is fully responsible to ShopHero for such Affiliates compliance with the terms and conditions this Agreement as provided in Section 6.3 (Merchant-User Responsibility) below. Such permission may be revoked by ShopHero at its sole election.
- 6.2. Outsourcing and Third-Party Access.** Merchant-User may allow a third-party contractor to operate, use or access the Products and Services solely on Merchant-User's behalf, but only if: (A) upon ShopHero's request, Merchant-User provides ShopHero with the identity of the contractor and the purpose for the contractor's use or access to the Products and Services; (B) the

use or access by the contractor is only for Merchant-User's internal operations; (C) the contractor agrees in writing to be contractually bound to comply with all of the Merchant-User's covenants and obligations under the terms of the Agreement regarding the Products and Services; and (D) only if Merchant-User is fully responsible to ShopHero for such contractor's compliance with the terms and conditions of this Agreement as provided in Section 6.3 (Merchant-User Responsibility) below.

- 6.3. Merchant-User Responsibility.** If Merchant-User allows any person or entity to operate, use or access the Products and Services, including under Sections 6.1 (Use by Affiliates) or 6.2 (Outsourcing and Third-Party Access), Merchant-User is responsible for ensuring that such person or entity complies with the terms of the Agreement. Merchant-User will not, and will use commercially reasonable efforts to make sure a third party does not violate the limitations set forth in Section 4.2 (License Restrictions), or which would violate those terms and limitations by a third party were such acts and omissions committed by Merchant-User.
- 6.4. No Additional Rights.** For clarity, the rights granted under this Section 6 (Third-Party Access) do not modify the License Metric or increase the number of licenses granted under this Agreement.

7. CONFIDENTIALITY.

- 7.1. No Use or Disclosure.** The receiving Party will only use the disclosing Party's Confidential Information for the purposes of (i) its performance under this Agreement, (ii) access and use of the Products and Services provided hereunder, (iii) exercise of the rights and licenses granted to such receiving Party hereunder or (iv) enforcement of any of the provisions of this Agreement or any other rights or remedies of such receiving Party. Except as authorized herein, no receiving Party will reproduce, disseminate, or disclose any disclosing Party's Confidential Information to any person, except to its employees and representatives (i.e., temporary employees, consultants, and contractors) who need to know the Confidential Information for one of the purposes delineated in the preceding sentence and are bound by confidentiality obligations at least as restrictive as those in this Section 7 (Confidentiality). The receiving Party will treat all Confidential Information with at least the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care.
- 7.2. Required Disclosure.** The receiving Party may disclose Confidential Information: (A) as approved in a writing signed by the disclosing Party; (B) as necessary to comply with any law or valid order of a court or other governmental body; or (C) as necessary to establish the rights of either Party, but in the case of (B) and (C), only if the receiving Party promptly notifies the disclosing Party of the details of the required disclosure and gives the disclosing Party all assistance reasonably required by the disclosing Party to enable the disclosing Party to take

available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.

- 7.3. Responsibility for Representatives and Affiliates.** For the purpose of this Section 7 (Confidentiality) and the definition of “Confidential Information”, a reference to a Party means a Party and its Affiliates. The receiving Party is responsible for ensuring that its employees, representatives and Affiliates fully comply with the obligations of the receiving Party under this Section 7.
- 7.4. Retention of Rights.** This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The disclosing Party will retain all right, title, and interest in and to all of its Confidential Information.
- 7.5. Exception & Immunity.** Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Merchant-User is on notice and acknowledges that, notwithstanding the foregoing or any other provision of the Agreement,
- (a) **Immunity.** An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that-(A) is made-(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
 - (b) **Use of Trade Secret Information in Anti-Retaliation Lawsuit.** An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual-
 - (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

8. PRIVACY AND SECURITY MEASURES

- 8.1. Compliance with Data Protection Laws.** ShopHero will comply with applicable Data Protection Laws regarding the collection, processing and use of Personal Data, including Sensitive Personal Data, in connection with its role as described in the Agreement. Merchant-User shall comply with all applicable Data Protection Laws in its access and use of the Products and Services, including, without limitation, providing all required notices and disclosures to End-Users and other individuals and obtaining all necessary or desirable consents, opt-ins and opt-outs, including, without limitation, all such notices, disclosures, consents opt-ins and opt-outs required by any applicable Data Protection Laws, especially those required to serve and post the advertisements that may be made available, posted or served in the Products and Services or Merchant Site (and collect and process the arising or generated data) as described in Section 3.6 (Advertising)

above. Merchant-User further agrees to comply with, and ensure its privacy practices and disclosures comply with, the standards for notice to users set by the Network Advertising Initiative (“NAI”) in the NAI Code of Conduct and associated guidance, including as relevant to the circumstances, the guidance on Viewed Content Advertising, Cross-Device, Non-Cookie Technologies, and any superseding, additional, or supplementary guidance (“NAI Code”).

8.2. Security Measures. ShopHero has established and implemented commercially reasonable information security practices regarding the protection of Merchant Data, including administrative, technical and physical security processes.

8.3. Security Claims. ShopHero will, at its expense, defend or settle any third-party claim against Merchant-User caused by ShopHero’s failure to comply with Section 8.2 (Security Measures) to the extent such failure results in a confirmed, unauthorized acquisition by a third-party of Merchant Data provided by Merchant-User to ShopHero in connection with the Agreement (“Security Claim”). In addition, ShopHero will pay: (A) any ShopHero–negotiated settlement amounts (to the extent ShopHero is permitted to settle); and (B) any damages finally awarded by a court, to the extent directly attributable to ShopHero’s non-compliance.

8.4. Conditions. ShopHero will have no liability for any Security Claim to the extent such security claim arises from any of the following:

(A) Security Claim that arises from any:

- (1) use of the Products and Services in violation of the Agreement;
- (2) modification of the Products and Services by anyone other than ShopHero;
- (3) failure by Merchant-User to install the latest updated version of the Products and Services as requested by ShopHero; or
- (4) third-party products, services, hardware, software, or other materials, or combination of these with the Products and Services;

(B) any failure of the Merchant-User

- (1) to promptly notify ShopHero in writing of any Security Claim;
- (2) to cooperate with ShopHero in the defense of the Security Claim;
- (3) to grant ShopHero sole control of the defense or settlement of the Security Claim; or
- (4) to refrain from making any admissions about the Security Claim.

- 8.5. Sole and Exclusive Remedy.** The remedies in Section 8.3 (Security Claims) are Merchant-User's sole and exclusive remedies and ShopHero's sole liability regarding the subject matter giving rise to any Security Claim.
- 8.6. Privacy Policy.** ShopHero will display a privacy policy or other notice, accessible on the Merchant Site that complies with applicable Data Protection Laws and describes ShopHero's collection and processing Personal Data by and through the Merchant Site directly and not as a processor or service provider of the Merchant-User. Merchant-User will need to provide its own privacy policy or other notice with regard to Merchant-User's collection and processing Personal Data on the Merchant Site as well. .

ShopHero reserves the right to require Merchant-User to modify Merchant-User's privacy practices and disclosures to employ best practices and to address updates or changes to applicable law, including Data Protection Laws, industry self-regulation, including, without limitation, the NAI Code or best practices, and Merchant-User agrees to undertake a good faith effort to address such requirements and promptly implement all such modifications.

- 8.7. Sensitive Personal Data.** Merchant-User agrees not to use the Merchant Site or Products and Technology to collect, process, or store any Sensitive Personal Data of its employees, customers, partners, or any third party, in any quantity or manner in excess of that which is necessary for the provision and operation of the Products and Services.

9. TERM AND TERMINATION.

- 9.1. Term.** The Agreement applies to each of the Products and Services from the Effective Date until the expiration of the applicable License Term, unless terminated earlier under the Agreement (such period being the "Term of this Agreement").

9.2. Termination for Cause.

- (A) **Material Breach by Either Party.** If either Party commits a material breach of the Agreement, the non-breaching Party may give written notice describing the nature and basis of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate the Agreement, in whole or in part by giving written notice to the other Party.
- (B) **Breach of Confidentiality Provisions.** If a Party is in breach of any confidentiality provisions of the Agreement, the non-breaching Party may terminate the Agreement, in whole or in part, immediately by giving the breaching Party written notice of the breach.
- (C) **Other Breaches.** ShopHero may terminate the Agreement, in whole or in part, immediately upon written notice to Merchant-User, if required by

law; or if Merchant-User breaches Section 4.2(License Restrictions) of these General Terms. Either Party may terminate the Agreement upon the other Party's filing or institution of bankruptcy, reorganization, liquidation or receivership proceedings, or upon an assignment of a substantial portion of the assets for the benefit of creditors by the other Party.

9.3. Effects of Termination or Expiration.

- (A) Upon termination or expiration of the Agreement or any License Term for the Products and Services:
- (1) The license and associated rights for, and all access and use of, the Products and Services will immediately terminate; and
 - (2) Merchant-User shall, at its expense: (a) remove and delete all copies of any software provided by ShopHero or incorporating ShopHero Technology; and (b) remove all references and links to ShopHero on any Merchant-User-owned or Merchant-User-controlled websites or applications. Some or all of the Products and Services may cease to operate without prior notice upon expiration or termination of the License Term; and
 - (3) Merchant Data and Merchant Content stored within the Merchant Site will be available to Merchant-User for 90 days after the termination or expiration in the same format then available within the Products and Services reporting interface(s), upon payment by Merchant-User of all amounts due ShopHero. After such 90 days, ShopHero is free to immediately and permanently delete or destroy all such Merchant Data and Merchant Content and ShopHero will have no liability to Merchant-User for such deletion or destruction.
- (B) Any continued use or retention of the Products and Services by Merchant-User or any of its Affiliates or contractors granted use pursuant to Section 6 (Third Party Access), after termination or expiration of the Agreement constitutes a breach of the Agreement and an infringement of ShopHero's Intellectual Property Rights. In addition to other rights, recoveries and remedies that may be available to ShopHero, Merchant-User will be liable for any fees for any Products and Services that remain active after the termination or expiration and for ShopHero's costs of retrieval of such Products and Services and enforcement of its rights and remedies with regard thereto, including any and all associated attorney fees, collection costs and legal and other court costs, including, without limitation, filing, document and expert witness fees.
- (C) If ShopHero reasonably determines that Merchant-User's deployment of the Products and Services contains a material risk to any ShopHero Technology, ShopHero's Confidential Information, the security or business

operations of ShopHero or its Affiliate, any customer of ShopHero, or to the continued normal operation of other ShopHero customers, then ShopHero may, at any time, immediately terminate or suspend Merchant-User's access to or use of, in whole or in part, the Products and Services, until such risk is resolved. ShopHero will use best efforts to provide Merchant-User with written notice of such termination or suspension as soon as practicable, which Merchant-User acknowledges and agree may be after the effectiveness of such termination or suspension if the facts and circumstance of the situation warrant such as determined by ShopHero in its sole discretion. ShopHero will use commercially reasonable efforts to mitigate any such security or operational risk prior to suspension or termination and only will look to such efforts as a final option to avoid such risks.

- 9.4. Survival.** The termination or expiration of the Agreement will not affect any provisions of the Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, previously-accrued payment obligations, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, privacy, indemnity, content monitoring, and the "General Provisions" Section in these General Terms .

10. INDEMNITY.

- 10.1. Infringement Indemnity.** ShopHero will indemnify and defend at its expense, and hold Merchant-User harmless from any and all liabilities, damages and/or costs (including, but not limited to, reasonable attorneys' fees) incurred in connection with or related to any claim alleging that the Products and Services, as provided by ShopHero to Merchant-User under this Agreement and used within the scope of this Agreement, infringe any patent, copyright, trademark, or other intellectual property right or misappropriate any trade secret of any third party (each, an "Infringement Claim"), except to the extent that such infringement or misappropriation arises from (i) Merchant-User's modification of the Products or Services or use thereof in a manner not contemplated by this Agreement, (ii) the failure of Merchant-User to use any corrections or modifications made available by ShopHero, (iii) information, materials, instructions or specifications provided by or on behalf of Merchant-User, or (iv) the use of the Products or Services in combination with any product or data not provided, required or recommended by ShopHero. If the Products or Services are found by final, non-appealable order of a court of competent jurisdiction to be such an infringement or misappropriation, ShopHero, at its option and expense, shall have the right to (x) procure for Merchant-User the continued use of such Products and Services, (y) replace such Products and Services with non-infringing/non-misappropriating services, or (z) modify such Products and Services so it becomes non-infringing/non-misappropriating; provided that, if (y) or (z) is the option chosen by ShopHero, the replacement or modified Products or Services are capable of performing substantially the same functions as the original Products

and Services. The indemnification obligations set forth in this Section are ShopHero's sole and exclusive obligations, and Merchant-User's sole and exclusive remedies, with respect to infringement or misappropriation of intellectual property rights of any kind.

10.2. Indemnity By Merchant-User. Merchant-User agrees to defend, indemnify and hold ShopHero and its Affiliates harmless from any Claim, demand, damages, costs and expenses (including reasonable attorneys' fees), arising from any third party claim against ShopHero or its Affiliates due to or arising out of: (i) any claim or allegation of infringement of any patent, copyright, trademark, or other intellectual property right, or misappropriation of any trade secret of, any third party by any Merchant Data or any Merchant Content, (ii) any breach of this Agreement by Merchant-User, its Affiliate or any contractor granted use of any Product or Service pursuant to Section 6 (Third Party Access); or (iii) any negligence or more culpable act or omission, including, but not limited to its fraud or other willful misconduct, committed by Merchant-User, its Affiliate or any contractor granted use of any Product or Service pursuant to Section 6 (Third Party Access).

10.3. Obligation to Indemnify. Each Party ("Indemnifying Party") agrees to promptly respond to and act upon any notice of an indemnifiable claim as described in Section 10.1 (Infringement Indemnity) or Section 10.2 (Indemnity by Merchant-User) above, as the case may be, made by any person to be indemnified by such Indemnifying Party as provided in such sections (each an "Indemnified Party").

(A) **Proportionality.** An Indemnifying Party's obligation to indemnify an Indemnified Party shall be proportional to the adjudicated respective fault of the Parties with regard to the acts or omissions that gave rise to the indemnitable claims.

(B) **Conditions.** The Indemnifying Party's obligations under this Section 10 (Indemnity) are conditioned upon the Indemnified Party (to the extent permitted by applicable law):

(1) promptly notifying the Indemnifying Party of any Claim in writing;

(2) cooperating with the Indemnifying Party in the defense of the Claim at the Indemnifying Party's sole expense;

(3) granting the Indemnifying Party sole control of the defense or settlement of the Claim except to the extent any such defense or settlement involves any finding of fault upon or the payment of any amounts by an Indemnified Party, in which case, the Indemnifying Party shall obtain the Indemnified Party's prior written consent to such defense or settlement prior to the Indemnifying Party pursuing the same; and

(4) refraining from making any admissions about the Claim.

11. INSURANCE. During the term of the Agreement, each Party shall procure and maintain insurance policies with coverage limits as follows:

11.1. Each Party shall maintain General Liability insurance with minimum limits of \$1,000,000 per occurrence and \$1,000,000 in the aggregate;

11.2. Each Party shall maintain Worker's Compensation as required by law;

12. LIMITATION OF LIABILITY.

12.1. Limitation of Damages.

12.1.1 WAIVER OF DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, MORAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, LOSS OF PROFITS OR REVENUES, LOSS OF REPUTATION, USE, OR REVENUE; LOSS OR CORRUPTION OF DATA; OR INTERRUPTION OF BUSINESS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE, EVEN IF ADVISED OF SUCH POSSIBILITY BY THE OTHER PARTY, AND EVEN IF DIRECT DAMAGES DO NOT PROVIDE A SUFFICIENT REMEDY.

12.1.2 LIABILITY CAP. THE MAXIMUM AGGREGATE LIABILITY OF EACH PARTY FOR EACH AND ALL CLAIMS (INDIVIDUALLY AND TOGETHER) UNDER OR RELATING TO THE AGREEMENT OR ITS SUBJECT MATTER IS LIMITED TO AN AMOUNT EQUAL TO THE AGGREGATE OF THE FEES THAT SHALL BE PAID BY MERCHANT-USER UNDER THE AGREEMENT DURING THE 12 MONTHS BEFORE THE INITIAL CLAIM.

12.1.3 APPLICABILITY. SECTIONS 12.1.1 (WAIVER OF DAMAGES) AND 12.1.2 (LIABILITY CAP) OF THESE GENERAL TERMS APPLY REGARDLESS OF THE FORM OR SOURCE OF CLAIM OR LOSS, WHETHER THE CLAIM OR LOSS WAS FORESEEABLE, AND WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE CLAIM OR LOSS.

12.1.4 ENFORCEABILITY. THESE LIMITATIONS OF LIABILITY APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF A PARTY ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY PROVIDED IN THE AGREEMENT .

12.2. Exceptions to Limitations. THESE LIMITATIONS DO NOT APPLY TO BREACHES OF CONFIDENTIALITY OBLIGATIONS, VIOLATIONS OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS BY THE OTHER PARTY, OR INDEMNIFICATION OBLIGATIONS.

13. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP.

- 13.1. As used in these General Terms, the term “**Intellectual Property Rights**” means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names, trademarks, service marks, business names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing-off or infringement.
- 13.2. ShopHero owns and retains all ownership and Intellectual Property Rights in ShopHero’s Brand Features, the design, look and feel of the Merchant Site(s), in the Products and Services and in the ShopHero Technology.
- 13.3. SHOPHERO’S PRODUCTS AND SERVICES, INCLUDING THE MERCHANT SITE(S), APPS PROVIDED BY SHOPHERO AND THE SHOPHERO TECHNOLOGY ARE NOT WORKS FOR HIRE AND WILL NOT UNDER ANY CIRCUMSTANCES BE DEEMED AS SUCH.
- 13.4. The Merchant-User retains all Intellectual Property Rights in the Merchant’s Brand Features, and Merchant Content, and warrants that they do not infringe any applicable laws, regulations or the Intellectual Property Rights of any third party.
- 13.5. **Display of Brand Features.** The Merchant-User grants ShopHero a license to use the Merchant Brand Features and Merchant Content to perform its obligations pursuant to the Agreement. ShopHero may display ShopHero’s Brand Features on the Merchant Site(s) along with appropriate language to indicate that ShopHero provides the Products and Services. ShopHero may display or mention Merchant’s Brand Features in its own media to indicate that Merchant-User is a client of ShopHero. Neither Party may display or use the other Party’s Brand Features beyond what is allowed in the Agreement without the other Party’s prior written consent. This Section 13.5 (Display of Brand Features) is subject to Section 13.6 (Brand Features Limitation).
- 13.6. **Brand Features Limitation.** Any use of a Party’s Brand Features will inure to the benefit of the Party holding Intellectual Property Rights in those Brand Features.
- 13.7. **Merchant Database.** Merchant shall retain all rights to the Merchant Database.
- 13.8. **End-User Content.** ShopHero shall retain all rights to End-User Content, minus End-User contact information.
- 13.9. **Feedback.** ShopHero has not agreed to and does not agree to treat as confidential any Feedback (defined as any suggestion or idea for improving or otherwise modifying any of ShopHero’s products or services) Merchant-User or End-Users provide to ShopHero, and nothing in the Agreement or in the parties’ dealings arising out of or related to the Agreement will restrict ShopHero’s right to use,

profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Merchant-User or other party in question.

14. WARRANTIES.

14.1. Limited Warranty and Remedy for Products and Services. ShopHero guarantees that the Products and Services delivered to Merchant-User will function as intended throughout the License Term. In the event that Merchant-User encounters an issue covered by this warranty, they should promptly inform ShopHero. Subject to applicable legal provisions, the exclusive remedy available to Merchant-User and the sole liability of ShopHero under this warranty is the re-performance of the Products and Services.

14.2. Implied Warranties. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT FOR THE EXPRESS WARRANTIES IN THE AGREEMENT, SHOPHERO PROVIDES THE PRODUCTS AND SERVICES ON AN “AS-IS” BASIS. EXCEPT FOR THE EXPRESS WARRANTIES IN THE AGREEMENT, SHOPHERO, ITS AFFILIATES, AND THIRD-PARTY PROVIDERS DISCLAIM AND MAKE NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING REPRESENTATIONS, GUARANTEES OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, OR ACCURACY.

MERCHANT-USER ACKNOWLEDGES THAT:

- (A) NEITHER SHOPHERO, ITS AFFILIATES NOR ITS THIRD PARTY PROVIDERS CONTROLS MERCHANT-USER EQUIPMENT OR THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES (INCLUDING THE INTERNET) AND WILL NOT HAVE ANY LIABILITY FOR ANY FAILURE OF, OR DAMAGE TO, ANY MERCHANT-USER EQUIPMENT OR ANY DATA TRANSFERRED OVER SUCH COMMUNICATION FACILITIES;
- (B) THE PRODUCTS AND SERVICES MAY BE SUBJECT TO LIMITATIONS, INTERRUPTIONS, DELAYS, CANCELLATIONS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE COMMUNICATIONS FACILITIES (INCLUDING SEARCH ENGINES AND SOCIAL MEDIA CHANNELS) AND SHOPHERO WILL HAVE NO LIABILITY FOR SUCH;
- (C) MERCHANT-USER IS FULLY RESPONSIBLE TO INSTALL APPROPRIATE SECURITY UPDATES AND PATCHES, AND SHOPHERO, ITS AFFILIATES, AND ITS THIRD PARTY PROVIDERS ARE NOT RESPONSIBLE FOR ANY INTERRUPTIONS, DELAYS, CANCELLATIONS, DELIVERY FAILURES, DATA LOSS, CONTENT CORRUPTION, PACKET LOSS, OR OTHER DAMAGE RESULTING FROM THESE PROBLEMS;

(D) THE SLA, IF INCLUDED IN SALES ORDER, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, SECTION 12 (LIMITATION OF LIABILITY) AND THIS SECTION 14 (WARRANTIES) CONSTITUTES THE SOLE REMEDY AVAILABLE FOR ANY DOWNTIME OR OTHER FAILURE TO OPERATE OF THE PRODUCTS AND SERVICES.

14.3. SHOPHERO MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE PRODUCTS AND SERVICES. MERCHANT-USER ACKNOWLEDGES THAT THE PRODUCTS AND SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE PRODUCTS AND SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS, INCLUDING EMERGENCY SERVICES CALLS, OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

15. DISPUTES.

15.1. **Equitable Relief.** The Parties agree that any breach of either of the Parties' obligations regarding the other Party's intellectual property, Confidential Information, Personal Data and/or Sensitive Personal Data may result in irreparable injury for which there may be no adequate remedy at law. THEREFORE, IN THE EVENT OF ANY BREACH OR THREATENED BREACH OF SUCH OBLIGATIONS, THE AGGRIEVED PARTY WILL BE ENTITLED TO SEEK INJUNCTIVE AND EQUITABLE RELIEF, WITHOUT HAVING TO PROVE MONETARY DAMAGES WOULD BE INADEQUATE AND WITHOUT HAVING TO POST A BOND OR OTHER SECURITY, IN ADDITION TO ITS OTHER AVAILABLE LEGAL REMEDIES IN A COURT OF COMPETENT JURISDICTION.

15.2. **Obligation of Good Faith.** Before either Party initiates a lawsuit against the other relating to a dispute or claim under the Agreement, the Parties agree to work in good faith to resolve between them all disputes and claims arising out of or relating to the Agreement, the Parties' performance under it, or its breach. To this end, either Party may request, after informal discussions have failed to resolve a dispute or claim, that each Party designate an officer or other management employee with authority to bind the Party to meet in good faith and attempt to resolve the dispute or claim. During their discussions, each Party will honor the other Party's reasonable requests for information which is not privileged and which relates to the dispute or claim. This Section 15.2 (Obligation of Good Faith) will not apply should the expiration of the statute of limitations for a cause of action be imminent.

16. GENERAL.

16.1. **Notices.** ShopHero shall give notice to Merchant-User by email to Merchant-User's designated contact as defined in the Sales Order. Merchant-User shall give notice to ShopHero by sending an email to legal@shophero.com.

- 16.2. Assignment.** The Agreement may not be assigned or otherwise transferred (including by operation of law), in whole or in part, by either Party without the prior written consent of the other Party, which the other Party will not unreasonably withhold, condition or delay except that either Party may assign the Agreement, or any of its rights or obligations under the Agreement, to any of its subsidiaries or Affiliates without consent of the other Party so long as such Party provides prompt notice to the other Party of such assignment. Notwithstanding the foregoing, ShopHero may assign or transfer the Agreement pursuant to or as part of any merger, acquisition, consolidation or sale of all or substantially all of its assets or stocks without the consent of the other Party. In no event will Merchant-User assign or otherwise transfer, by operation of law or otherwise, the Agreement to any competitor of ShopHero. Any attempted assignment or transfer in violation of the foregoing will be null and void.
- 16.3. Force Majeure.** A Party affected by an event of Force Majeure will be released without any liability on its part from the performance of its obligations hereunder, except for the obligation to pay any amounts then due and owing to the extent, and for the period, that its performance of such obligations is prevented by the event of Force Majeure. “Force Majeure” means any event or condition, not reasonably within the control of either Party, that prevents in whole or in material part, the performance by one of the Parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Denial of services attacks (whether distributed or not) and similar malicious acts shall constitute a Force Majeure event. The application of any law or regulation that would prevent the legal fulfillment by either Party of its obligations under the Agreement will constitute an event of Force Majeure. During the period that the performance by one of the Parties of its obligations hereunder has been suspended by reason of an event of Force Majeure, the other Party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.
- 16.4. Waivers.** Failure to enforce any provision of the Agreement will not constitute a waiver. No waiver by a Party of any condition or any breach of any term, covenant, representation or warranty contained in the Agreement shall be effective unless in writing, and no waiver of any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty. A valid waiver is limited to the specific situation for which it was given.
- 16.5. Severability.** Whenever possible, each provision of the Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement is found to violate a law, it will be severed from the rest of the Agreement and ignored.

- 16.6. No Agency.** The Parties are independent contractors and neither Party is an employee, agent, servant, representative, partner, or joint-venturer of the other. Neither Party has the right or ability to bind the other Party to any agreement or contract with a third party or to incur any obligation or liability on behalf of the other Party without the other Party's written consent. Neither Party will have any direction or control of the other Party, or of any person employed by or contracted for by the other Party.
- 16.7. Third Party Beneficiaries.** No term of the Agreement shall be enforceable by a person who is not a Party to the Agreement.
- 16.8. Equitable Relief.** Nothing in the Agreement will limit either Party's ability to seek equitable relief .
- 16.9. Choice of Law; Venue.** The Agreement will be governed by and construed in accordance with the laws of the State of Utah, without regard to principles of conflicts of law. EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN UTAH COUNTY OF THE STATE OF UTAH, AND OF THE FEDERAL DISTRICT COURT SITTING IN SALT LAKE COUNTY OF THE STATE OF UTAH OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT.
- 16.10. Compliance.** Each Party agrees to comply with all applicable laws, rules, regulations and orders, including, without limitation, those of the United States, the State of Utah and other applicable state and local jurisdictions of the United States.
- 16.11. Construction.** The Agreement has been negotiated by the Parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.
- 16.12. Counterparts; Translations.** The Agreement may be executed in two or more counterparts in the English language, and each counterpart will be deemed an original, but all counterparts together will constitute a single instrument. The English language version of the Agreement will control regardless of any subsequent translations of the Agreement.
- 16.13. Forms.** The Parties agree that the use of pre-printed forms, such as acknowledgment(s), purchase order(s) or invoice(s), is for convenience only and all terms and conditions stated on the forms are void and of no effect.
- 16.14. Headings.** The headings and use of boldface type contained in these General Terms in the Agreement are for the purposes of convenience only and are not intended to define or limit the contents of these General Terms.
- 16.15. Amendment.** ShopHero may revise these General Terms at any time by posting a new version online at www.shophero.com/legal. The new version will become

effective on the date of such posting. Each user is obliged to visit such webpage frequently to review the current version of the General Terms and to make yourself aware of any amendments to the General Terms. Any use of any Product or Services after the webpage General Terms has been amended shall be the user's acceptance of, and agreement to, such amended General Terms.

16.16. Entire Agreement. The Agreement, including all documents incorporated by reference, constitutes the entire understanding of the Parties with respect to the subject matter hereof and merges all prior written or oral communications, understandings, and agreements with respect to the subject matter of the Agreement.

16.17. Time. Whenever reference is made in the Agreement to "days," the reference means calendar days, not business days, unless otherwise specified.

16.18. Attorneys' Fees and Legal Costs. If any Party hereto brings an action or proceeding for the declaration of the rights of the Parties hereunder, for injunctive relief, or for an alleged breach or default of, or any other action arising out of the Agreement, the Products and Services or the transactions contemplated hereby, the prevailing Party (as determined by the court in such action or proceeding) in any such action shall be entitled to an award of reasonable attorneys' fees and any legal and other litigation and court costs, including, without limitation, filing, document and expert witness fees, incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

16.19. Taxes. Merchant-User shall pay all applicable United States federal, state and local taxes and other national, provincial or local taxes, or other tariffs of any jurisdiction in which Merchant-User of the Parties to the Agreement resides or is otherwise subject, in accordance with the laws of the United States or any such other jurisdiction as then in effect.