

PayPerCloud™ Reseller Agreement

PRIVATE LABEL PARTNER AGREEMENT

CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A LEGAL BINDING AGREEMENT BETWEEN YOU AND PAYPERCLOUD™. ONLY AN AUTHORIZED OFFICER OF YOUR COMPANY MAY EXECUTE THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, CLOSE YOUR BROWSER AND DO NOT PROCEED WITH USING OR RESELLING THE SERVICES.

By accepting this Agreement between You and PayPerCloud. – by clicking "I Agree and Submit" – You agree to be bound by all of the terms and conditions of (i) this Private Label Partner Agreement with Miles Consulting Corp DBA heretofore referred to as PayPerCloud or PayPerCloud™ and (ii) the following (as each is defined below):

- PayPerCloud's PLP Policy,
- PayPerCloud's Privacy Policy, and
- PayPerCloud's Acceptable Use Policy (collectively, this "Agreement").

Each of the foregoing are expressly incorporated herein by reference. Current copies of the PLP Policy, Privacy Policy, and AUP are located at <http://www.theppcdifference.com/legal>.

If You do not agree to these terms, then You (I) must click "I Decline" or close your browser and (ii) do not have PayPerCloud's permission to resell or use the Services.

If you are an individual entering into this Agreement on behalf of an Entity, you represent and warrant that you have the authority to bind such Entity to this Agreement. If you do not have such authority, neither you nor such Entity may accept this Agreement, resell, or use the Services.

This Agreement is effective as of the date last signed by the parties ("Effective Date"), by and between Miles Consulting Corp, a California Corporation DBA PayPerCloud, having offices at 193 Blue Ravine Road, Suite 160, Folsom, CA 95640 ("PayPerCloud"), and yourself ("Reseller"). In consideration of the mutual covenants contained in this Agreement, PayPerCloud® and Reseller agree as follows:

1. APPOINTMENT

1.1 PayPerCloud appoints you as a non-exclusive authorized Reseller for PayPerCloud services within the following described Territory: United States (the "Territory").

1.2 Reseller is authorized to Remarket and/or Resell PayPerCloud services within the Territory to Reseller's customers.

1.3 This Agreement does not obligate Reseller to Remarket, Resell, or purchase PayPerCloud services. If Reseller wants to use PayPerCloud services as the end user, the parties agree to enter into an agreement for such use separate from this Agreement.

2. DEFINITIONS

2.1 "Agreements" means this Agreement, the Exhibits to this Agreement, Orders, Change Orders, and the other terms listed on the PayPerCloud web interface.

2.2 "Business Hours" means 8:00 a.m. to 5:00 p.m. Pacific Coast Time in the U.S., Monday through Friday.

2.3 "Data Center" means any of the data centers used by PayPerCloud to provide PayPerCloud services.

2.4 "Exhibits" mean attachments to this Agreement that are part of and integrated into this Agreement.

- Exhibit A - Automated Managed Hosting Specifications
- Exhibit B- Public Cloud Hosting and Private Cloud Hosting Specifications
- Exhibit C - PayPerCloud Service Level Agreement
- Exhibit D - Rules and Regulations regarding use of PayPerCloud Services
- Exhibit E - Terms and Conditions Regarding Use of Microsoft Software
- Exhibit F - Terms and Conditions Regarding Use of Red Hat Software
- Exhibit G - Price List and Discounts

2.5 "Government Controls" means economic and other sanctions instituted by a Governmental Body related to certain transactions including the U.S. Foreign Corrupt Practices Act, and sanctions administered by the

U.S. government pursuant to the U.S. Export Administration Act, the U.S. Arms Export Control Act, the International Emergency Economic Powers Act, and the USA PATRIOT Act, all as amended, the regulations promulgated thereunder, certain regulations promulgated by the U.S. Department of the Treasury, and certain Executive Orders.

2.6 "Governmental Body" means any (a) nation, state, country, or other jurisdiction of any nature, (b) national, federal, state, local, municipal, foreign, or other government, governmental, or quasi-governmental authority or any nature (including any government corporation or any governmental agency, branch, department, official, or entity and any court or other tribunal), or (c) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

2.7 “Including” The word “including” means “including without limitation” or “including, but not limited to.”

2.8 “Intellectual Property Rights” mean all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing rights associated with works of authorship, including copyrights, moral rights, trademarks, service marks, trade secret rights, and patents.

2.9 “Order” means an order for PayPerCloud services executed by Reseller and PayPerCloud.

2.10 “Passwords” means the unique password issued either by Reseller’s or a customer’s account custodian and/or the unique password(s) issued by PayPerCloud to reset a password(s).

2.11 “Remarket” means Reseller takes the PayPerCloud services and rebrands the PayPerCloud management portal and PayPerCloud services as Reseller’s own (“Private Label”).

2.12 “Resell” and “Resale” means Reseller sells PayPerCloud services to Reseller’s customers with the PayPerCloud brand on the PayPerCloud management portal and PayPerCloud services (“PayPerCloud Branded”).

2.13 “Rules and Regulations” means PayPerCloud’s written rules and regulations regarding the use of PayPerCloud services that are posted to the PayPerCloud web interface(s), as revised or amended from time to time by PayPerCloud.

2.14 “Service Level Agreement” or “SLA” means the separate written document (see Exhibit C) describing various specifics of PayPerCloud services (including uptime guarantees, downtime, credits, maintenance, availability, exclusions, trouble tickets, credit limitations, and Internet bandwidth measurements).

2.15 “Service Start Date” means the date PayPerCloud begins providing PayPerCloud services to Reseller or Reseller’s customer.

2.16 “PayPerCloud Technology” means PayPerCloud’s proprietary technology and processes, including PayPerCloud services and any related Intellectual Property Rights (whether owned by PayPerCloud or licensed to PayPerCloud from a third party) and also including any derivative works.

2.17 “Term” means the period of time beginning with Reseller’s acceptance of this Agreement and continuing through the end all Initial Term(s) and any Renewal Term(s), unless Reseller’s access to PayPerCloud services is earlier terminated pursuant to the terms of this Agreement, in which case it shall be the date of termination.

2.18 “U.S.” means the United States of America and all of its territories and possessions, including the District of Columbia.

3. PAYPERCLOUD LICENSE GRANT

3.1 During the Term and conditioned upon Reseller's ongoing compliance with the Agreements, PayPerCloud grants Reseller a limited, non-exclusive, non-transferable, non-sub-licensable, revocable license ("License Grant") to use the PayPerCloud Technology (as defined below) solely for the purpose of Reselling or Remarketing PayPerCloud services and for no other purpose, in accordance with this Agreement. PayPerCloud reserves all rights not expressly granted by this Agreement.

3.2 PayPerCloud reserves the right, without providing notice to Reseller, to include in the PayPerCloud Technology and PayPerCloud services, a proprietary scheme to protect PayPerCloud Technology and PayPerCloud services.

3.3 PayPerCloud may disable an account's access to PayPerCloud services or terminate an account in the event that Reseller is not current on payment for reasonably undisputed invoices, Reseller or its customer is in violation of any Government Controls, Reseller or its customer is in violation of the Rules and Regulations, or Reseller or its customer have otherwise failed to comply with the material aspects of the Agreements.

4. TERM OF THIS AGREEMENT

4.1 The term of this Agreement will be 12 months from the Effective Date of this Agreement.

4.2 The Agreement will be automatically renewed for additional one (1) year periods at all anniversary dates, unless this Agreement is otherwise terminated by one party providing the other party with written notice at least 30 days prior to the end of a term for this Agreement.

4.3 Either party may terminate this Agreement upon 60 days written notice to the other party.

4.4 Termination of this Agreement is not a termination of existing Orders, which shall remain in effect through their respective term and in accordance with the respective terms and conditions of this Agreement.

5. PAYPERCLOUD SERVICES

5.1 All PayPerCloud services are eligible for Remarketing and Resale unless PayPerCloud notifies Reseller at any time with at least 60 days advance written notice and shall only apply to Orders placed by Reseller after the end of the notice period.

5.2 PayPerCloud may discontinue offering any portion of PayPerCloud services or all of PayPerCloud services by providing Reseller at least 90 days advance written notice. Discontinuance does not affect existing Orders for the discontinued portion of PayPerCloud services or all of PayPerCloud services at the time of discontinuance.

5.3 PayPerCloud does not provide support for third party applications, software, or data that Reseller, its customers, or others load or use in PayPerCloud services.

5.4 If Reseller's customer uses a Microsoft, Red Hat, or other third party operating system or software license ((a) supplied by PayPerCloud with the PayPerCloud services (b) purchased from PayPerCloud, or (c) loaded by Reseller or Reseller's customers), then Reseller's customer must use the operating system or software license in compliance with Microsoft's, Red Hat's, or other third party's terms and conditions, as applicable. As applicable, Reseller agrees to include in its contract with the customer the exact language used in Exhibits E and F.

6. MARKETING, TRAINING, TECHNICAL SUPPORT

6.1 Marketing and Training.

(a) PayPerCloud Branded. PayPerCloud will make available, at no charge to Reseller, product marketing materials and training for the PayPerCloud Branded services in such amounts that PayPerCloud shall determine. PayPerCloud may also provide access to product information and other materials in electronic format.

(b) Private Label. Reseller will be responsible for product marketing materials and training for Private Label services.

6.2 Technical Support and Contact Information. PayPerCloud will provide Reseller with technical support contact information, procedures for escalation of technical questions, and other resource information Reseller reasonably requests, all in the manner and to the extent to which PayPerCloud provides such support to its PayPerCloud services customers. The responsibility for 1st level support will depend on the type of service the Reseller is selling to its customers.

(a) Private Label. Reseller shall be responsible for 1st level support.

(b) PayPerCloud Branded. PayPerCloud shall be responsible for 1st level support.

7. PRICES

7.1 The prices, charges, discount levels, and fees to be paid by Reseller for PayPerCloud services are set forth in Exhibit G and are subject to change by PayPerCloud at any time with at least 60 days advance written notice and shall only apply to Orders placed by Reseller after the end of the notice period.

7.2 PayPerCloud will honor prices for quotes given to Reseller for 60 days from the quote date.

7.3 Customs, duties and charges, if any, shall be borne by Reseller. All required import or export licenses, approvals or both shall be obtained by Reseller at its cost. Prices to Reseller do not include any federal, state or local taxes that may be applicable to PayPerCloud services. When PayPerCloud has the legal obligation to collect such taxes, the appropriate amount shall be added to Reseller invoice and paid by Reseller, unless Reseller provides PayPerCloud with a valid tax exemption certificate authorized by the appropriate taxing authority.

7.4 Any applicable transportation charges will be invoiced as separate items.

8. ORDERS

8.1 Placement of an Order. PayPerCloud services are subject to availability, and availability will be determined at the time of Order placement. The PayPerCloud service requested, quantities, prices, term of the Order, and other specifics will be listed in the Order. When placing an Order, Reseller will indicate whether the Order is for Remarketing or Resale, PayPerCloud will not be obligated to accept any Order placed by Reseller. Upon placement of an Order by Reseller and acceptance by PayPerCloud:

(a) PayPerCloud will generate a login for the PayPerCloud services.

(b) PayPerCloud will email the login information to Reseller.

(c) PayPerCloud will email the login information within 48 hours of the Order.

(d) Reseller will be responsible for providing its customers with the login information.

(e) Reseller and its customers are responsible for the confidentiality of passwords and the activities which occur under or pursuant to passwords. PayPerCloud will only have has the ability to reset passwords, which Reseller or Reseller's customers must change when logging back into the PayPerCloud web portal.

8.2 Renewal of an Order. Unless (a) a party notifies the other prior to the end of a Term (for this Agreement) or

(b) this Agreement otherwise is terminated as provided elsewhere in this Agreement, at the end of the initial term of an Order, the Order will automatically be renewed on a month-to-month basis until Reseller or PayPerCloud provides the other party with 30 days written termination notice ("Renewal Term"), and the charges and fees for the renewal term will become those in effect at the time of renewal.

8.3 Termination of an Order. On the effective termination date of an Order, PayPerCloud will cease providing PayPerCloud services and all payments for PayPerCloud services provided through the termination date for the terminated Order shall become due and payable by per Section 9.

8.4 THE PAYPERCLOUD SERVICES ENVIRONMENT (INCLUDING ALL DATA) WILL BE DELETED AFTER TERMINATION OF THE ORDER, AND RESELLER AND RESELLER'S CUSTOMERS ARE SOLELY RESPONSIBLE FOR COPYING ANY DATA OR INFORMATION STORED IN THE PAYPERCLOUD ENVIRONMENT BEFORE TERMINATION.

8.5 PayPerCloud will have no liability, and Reseller and Reseller's customers shall hold PayPerCloud harmless, for (a) Reseller or Reseller's customers failure to copy any data or information prior to termination of an Order or (b) PayPerCloud deleting the PayPerCloud services environment and all data after the effective date of that an Order is terminated.

9. INVOICES AND PAYMENT

9.1 Invoices. PayPerCloud will send invoices to Reseller for all charges applicable to PayPerCloud services. PayPerCloud has the right to send Reseller invoices by email.

9.2 Set-Up Charges are charges to set-up, install, and start PayPerCloud services. Set-up charges are due and payable net 30 days.

9.3 Monthly Recurring Charges (“MRC”) are the recurring charges each month for the PayPerCloud services. MRC is due and payable on net 30 from the 1st day of the month in which PayPerCloud services are to be provided.

9.4 Non-Recurring Charges (“NRC”) are charges that are variable in nature or periodic, often depending upon quantity. Examples are (a) burstable Internet bandwidth charges and (b) charges for backup based on the number of GB backed up in a month. NRC is due and payable net 30 days.

9.5 Charges and Method of Payment. Reseller agrees to pay charges due according to the prices for each PayPerCloud service listed in each Order in US dollars (US\$) by a method acceptable to PayPerCloud, including credit card, check, wire transfer, automatic transfer, and PayPal™.

9.6 Credit Card. If Reseller elects to pay for PayPerCloud services with a credit card, Reseller hereby authorizes PayPerCloud to charge Reseller’s credit card throughout the term for the PayPerCloud services charges that become due. MRC will be charged to Reseller’s credit card on the last day of each month during the term. NRC will be charged to Reseller’s credit card at the end of the month. Set-up charges will be charged to Reseller’s credit card when an Order is entered by PayPerCloud.

9.7 Late Payments. PayPerCloud will email Reseller if Reseller has not paid invoices by the due date. Starting five (5) days after the date the email is sent to Reseller, PayPerCloud may charge Reseller a one percent (1%) fee per month on overdue payments for invoices which have not been disputed in writing.

9.8 Reinstatement Fee. If an account is suspended, there will be a reinstatement fee per Exhibit G to have that account’s PayPerCloud services reinstated.

9.9 Additional Services while an Account is Delinquent. If an account is delinquent because of lack of payment by Reseller, PayPerCloud may elect not to provision additional PayPerCloud services for that specific account until Reseller has paid all past due amounts on that account that are not reasonably being disputed.

9.10 Reseller will be responsible for payment of PayPerCloud invoices. Reseller will be responsible for invoicing Reseller’s customers for the PayPerCloud services that PayPerCloud provides and for collecting amounts under such invoices. Reseller’s payment of PayPerCloud invoices is entirely independent of and specifically not conditioned upon Reseller receiving payment from Reseller’s customers for those services.

10. INDEMNIFICATION

10.1 PayPerCloud will indemnify, defend, and hold Reseller and its successors and assigns (“Reseller Indemnitees”) harmless against all loss, damages, costs and expenses (including reasonable attorneys’ fees) based on any claims, demands, suits, proceedings, and actions (“Claims”), in connection with any alleged infringement by PayPerCloud or the PayPerCloud services of any patent, copyright, trademark, trade secret or other intellectual property right of a third party, including any Claims that PayPerCloud services, including any tools and materials, documentation, manuals and software, or the process, design, or methodology used while providing PayPerCloud services infringes any third party patent, copyright, trademark, trade secret, or other intellectual property right. PayPerCloud shall have no liability for any claim of infringement arising out of (i) the combination by Reseller or Reseller’s customers with other technology not provided by PayPerCloud, if the infringement was caused by such combination or (ii) any modification of PayPerCloud services not made or authorized by PayPerCloud, if the infringement was caused by such modification.

10.2 Reseller agrees to indemnify and hold PayPerCloud, its parent, successors and assigns (“PayPerCloud Indemnitees”) harmless from and against any and all Claims made by any person or entity arising out of the Remarketing and Resale of PayPerCloud services by Reseller other than where and to the extent that such claims are indemnifiable by PayPerCloud under Section 10.1 above.

10.3 The indemnified party under Sections 10.1 or 10.2 will:

- (a) Provide the indemnifying party with prompt and sufficient written notice of any such Claims, so that the indemnifying party is not prejudiced by the promptness or sufficiency of notice or a lack of notice, and
- (b) Grant full authority to the indemnifying party to defend and settle such Claims, and upon the indemnifying party’s request, provide reasonable assistance and information, at the indemnifying party’s reasonable cost and expense.

10.4 Sole and Exclusive Obligations and Remedies. THE FOREGOING INDEMNITY AND LIMITED REMEDIES ARE EACH PARTY’S SOLE AND EXCLUSIVE OBLIGATIONS AND SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO SECTIONS 10.1 AND 10.2.

11. LIMITATION OF LIABILITY

11.1 PayPerCloud has No Liability for Damage to Data, Software, or Equipment. PAYPERCLOUD SHALL HAVE NO LIABILITY TO RESELLER, RESELLER’S CUSTOMERS, OR ANY THIRD PARTY FOR ANY DAMAGE TO, OR LOSS OF, ANY DATA, SOFTWARE, OR EQUIPMENT RESULTING FROM ANY CAUSE OTHER THAN PAYPERCLOUD’S WILLFUL MISCONDUCT.

11.2 Waiver of Consequential and Incidental Damages. IN NO EVENT SHALL PAYPERCLOUD OR RESELLER BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY TYPE OF INDIRECT, SPECIAL, PUNITIVE,

INCIDENTAL, CONSEQUENTIAL, OR SIMILAR DAMAGES OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO LOST REVENUE, LOST PROFITS, LOSS OF DATA, LOSS OF USE, INTERRUPTION, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, WHETHER ARISING UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

11.3 Maximum Liability. PAYPERCLOUD'S ENTIRE MAXIMUM AGGREGATE LIABILITY TO RESELLER RELATED TO OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE BASIS OF THE CLAIM, WILL BE LIMITED TO THE TOTAL AMOUNT RESELLER PAID TO PAYPERCLOUD FOR THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT WHICH GAVE RISE TO LIABILITY. PAYPERCLOUD WILL HAVE NO LIABILITY TO RESELLER'S CLIENTS.

11.4 PayPerCloud's Prices are based on the Limitations of Liability. PAYPERCLOUD HAS SET ITS PRICES AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT SUCH LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS ARE FUNDAMENTAL ELEMENTS, AND FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN RESELLER AND PAYPERCLOUD. PAYPERCLOUD WOULD NOT BE ABLE TO OFFER PAYPERCLOUD SERVICES FOR REMARKETING AND RESALE TO RESELLER OR FOR USE BY RESELLER'S CUSTOMERS WITHOUT SUCH LIMITATIONS.

11.5 Failure of Essential Purpose. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT SHALL SURVIVE AND APPLY EVEN IF THE REMEDIES PROVIDED HEREIN ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

11.6 There are No Warranties on Statutory or Regulatory Compliance. PAYPERCLOUD DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT USE OF PAYPERCLOUD SERVICES WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE, OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS INCLUDING THE U.S. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), THE U.S. GRAMM-LEACH-BLILEY ACT OF 1999, THE U.S. SARBANES-OXLEY ACT OF 2002, ALL AS AMENDED OR OTHER GOVERNMENT MANDATES, STATUTES, OR REGULATIONS. RESELLER AND ITS CUSTOMERS ARE SOLELY RESPONSIBLE FOR ENSURING THAT USE OF PAYPERCLOUD SERVICES IS IN ACCORDANCE WITH, AND COMPLIES WITH, ALL APPLICABLE LAW AND REGULATIONS, INCLUDING GOVERNMENT CONTROLS.

11.7 Internet Disclaimer; Transmission of Data. PayPerCloud does not and cannot control the flow of data to or from PayPerCloud's network and the Internet. Third parties can impair or disrupt connections to the Internet. Although PayPerCloud will take actions it deems appropriate to remedy and avoid such events, PayPerCloud cannot guarantee that such events will not occur. It is Reseller's and its customers responsibility to ensure that the information transmitted and received by Reseller and its customers is

secure and complies with all applicable laws and regulations. Accordingly, PayPerCloud disclaims any liability resulting from or related to such events.

11.8 “Service Level Goals” means the service level objectives applicable to PayPerCloud services as set forth in the SLA(s). If a Reseller or its customers experiences any service performance issues or failures, such as service outages or downtime, the remedies and credits described in the applicable SLA shall apply and serve as Reseller’s sole and exclusive remedy (i.e., payment) for such failure. As an essential part of the Agreements, these liquidated damages payable to Reseller by PayPerCloud shall be Reseller’s sole and exclusive measure of damages and remedy, and PayPerCloud’s sole and exclusive liability and obligation, arising out of or in any way relating to PayPerCloud’s failure to meet the Service Level Goals or any other failure or default by PayPerCloud in any way relating to PayPerCloud services or PayPerCloud's failure to perform or provide any PayPerCloud service. PayPerCloud shall have no liability to Reseller’s customers for PayPerCloud’s failure to meet the Service Level Goals or any other failure or default by PayPerCloud in any way relating to PayPerCloud services or PayPerCloud's failure to perform or provide any PayPerCloud service. For Resale, Reseller will provide its customers with the same Service Level Goals, credits, exclusions, and maintenance periods as described in Exhibit C. For Remarketing, Reseller is free to provide its customers with the Service Level Goals, credits, exclusions as Reseller sees fit, but Reseller must keep in mind that PayPerCloud will only provide PayPerCloud services per these Agreements.

11.9 Liquidated Damages. Reseller acknowledges and agrees that:

(a) Because of the unique nature of PayPerCloud services, it is difficult or impossible to precisely determine the specific amount of damages that Reseller and Reseller’s customers might incur as a result of PayPerCloud’s failure to meet the Service Level Goals, or Reseller’s failure to pay the Discontinuance Fee, or the specific amount that should be a party’s responsibility in such circumstances or the specific amount that should be PayPerCloud’s responsibility in such circumstances.

(b) Therefore, due to the impracticable or extremely difficult nature of fixing the resulting actual damages, the parties agree that the credits for failure to meet the Service Level Goals and/or the Discontinuance Fee are in the nature of liquidated damages, and not a penalty, and are fair and reasonable under the circumstances, and such payments represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from, as applicable to the circumstances, PayPerCloud’s failure to meet the Service Level Goals or early termination of an Order.

11.10 Warranties and Exclusions. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE SERVICE LEVEL AGREEMENT (EXHIBIT C), PAYPERCLOUD SERVICES ARE PROVIDED ON AN “AS IS” BASIS, AND USE OF PAYPERCLOUD SERVICES IS AT RESELLER’S AND ITS CUSTOMERS OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PAYPERCLOUD DOES NOT MAKE, AND PAYPERCLOUD DISCLAIMS WITHOUT LIMITATION, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED GUARANTEES AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR

TRADE PRACTICE. PAYPERCLOUD DOES NOT WARRANT THAT PAYPERCLOUD SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, FREE FROM BUGS, COMPLETELY SECURE, MEET RESELLER'S OR ITS CUSTOMERS REQUIREMENTS, OR THAT ALL ERRORS WILL BE CORRECTED. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO RESELLER OR ITS CUSTOMERS. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO 45 DAYS FROM THE INITIAL DELIVERY OF THE APPLICABLE PAYPERCLOUD SERVICES.

12. CONFIDENTIAL INFORMATION

12.1 Confidential Information. Each party may have access to certain proprietary or confidential information of the other ("Confidential Information"). Confidential Information includes: information in tangible or intangible form that is marked or designated as confidential; PayPerCloud Technology, and the terms and conditions of this Agreement.

12.2 Non-Confidential Information. Data and information will not be considered Confidential Information if such information:

- (a) Is or becomes known to the non-disclosing party without a violation of this Agreement or applicable law; or
- (b) Is independently developed by the non-disclosing party without reference to the disclosing party's Confidential Information.

12.3 Non-Disclosure. PayPerCloud and Reseller each agree that it will not use the other party's Confidential Information in any way, for its own account or the account of any third party, except as expressly permitted by or required to achieve the purposes of the Agreements, nor disclose to any third party, any of the other's Confidential Information.

12.4 Protection and Preservation. PayPerCloud and Reseller will receive and hold all Confidential Information of the other in trust and confidence and will treat all Confidential Information of the other with no less than a reasonable level of care. PayPerCloud and Reseller shall:

- (a) Not sell, license, transfer, publish, disclose, display or otherwise make available the Confidential Information of the other;
- (b) Not reverse assemble or reverse compile any applicable Confidential Information;
- (c) Take commercially reasonable steps to preserve the other's ownership rights in Confidential Information;
- (d) Similarly bind in writing their Representatives to the confidentiality obligations of the Agreements. Reseller and PayPerCloud have the right to disclose, solely on a "need to know" basis, the other's Confidential Information to its own officers, directors, employees, auditors and attorneys ("Representatives"), provided that they agree to be bound by the provisions of this section. Further,

PayPerCloud and Reseller may disclose the other's Confidential Information to the extent necessary to comply with an order of an administrative agency or court of competent jurisdiction, or to enforce a party's rights under the Agreements. The party being required to disclose the information shall promptly provide written notice thereof to the other party so the other party may, if it so chooses, attempt to prevent such disclosure or otherwise contest such disclosure. PayPerCloud and Reseller will ensure that their respective Representatives will not make use of, disseminate, or in any way disclose any Confidential Information of the other party to any person, firm, or business, except as necessary to perform obligations set forth in the Agreements and then only under a written confidentiality agreement no less restrictive than this section.

12.5 Return of Confidential Information. Upon termination or expiration of the Agreements, or upon written request by a disclosing party, the receiving party shall, and shall cause its Representative to, promptly return all documents and other tangible materials representing the disclosing party's Confidential Information and all copies thereof, and shall permanently erase or destroy all Confidential Information stored by or for the receiving party in electronic, optical, mechanical, or other storage medium, except as required to comply with any applicable legal requirements, and shall certify, in writing, the completion of the foregoing to the disclosing party.

12.6 Injunctive Relief. Because of its unique nature, the unauthorized use or disclosure of Confidential Information can and will cause the disclosing party to suffer irreparable harm and damage and that monetary damages would be inadequate to compensate the disclosing party for such disclosure. The disclosing party, in addition to any other remedies available to it at law or in equity, will be entitled to seek injunctive relief to enforce the terms of this Agreement.

13. COMPLIANCE WITH LAWS. PayPerCloud and Reseller agree to comply with all laws, statutes, ordinances, rules, regulations and orders of any governmental authority having jurisdiction applicable to its performance of this Agreement, including, without limitation, the export control laws, regulations and orders of the United States.

14. NON-SOLICITATION

14.1 PayPerCloud and Reseller (including their respective parent companies, as applicable) shall not knowingly directly solicit the other party's Prospects or customers.

14.2 A "Prospect" is any person or entity as to which a party notifies the other party in writing that such person or entity is a "Prospect" and such person or entity has either (i) executed a letter of intent with the party with respect to the PayPerCloud services or (ii) has entered into substantive contractual negotiations with respect thereto.

14.3 These limitations shall be narrowly construed and shall only apply to the specific business operating unit within a customer or Prospect's organization.

15. SUSPENSION OR TERMINATION OF AN ACCOUNT; LOSS / DELETION OF DATA.

15.1 Email notice regarding late payment or Rules and Regulation violation. If Reseller is delinquent in paying an invoice for a customer or a customer is violating the Rules and Regulations, and the terms for suspension or termination apply, only that customer account will be suspended or terminated. No other Reseller's account will be suspended or terminated.

15.2 Suspension / Termination of an Account. An account may be suspended or terminated if:

(a) Reseller does not pay an account's Charges.

(i) Prior to suspending or termination an account for non-payment, PayPerCloud will send Reseller a minimum of 2 emails to notify Reseller it has not paid PayPerCloud services charges for an account by the due date.

(ii) PayPerCloud will have the right to suspend an account if Reseller has not paid all reasonably undisputed charges within 10 days of PayPerCloud sending Reseller the 1st email notice of Reseller's past due charges.

(b) Violation of PayPerCloud's Rules and Regulations attached as Exhibit D as such may be updated from time to time.

(c) There is a failure to comply with any applicable Government Controls.

(d) Reseller is otherwise in breach of any of the material terms and conditions of this Agreement and does not cure within the allowed period.

(e) Adequate Assurances. In the event that an account's access is suspended, Reseller shall promptly take steps to PayPerCloud's reasonable satisfaction to ensure that Reseller and Reseller's customer(s) will conform to the terms of this Agreement and the Rules and Regulations going forward.

15.3 Reinstatement Fee. If an account's PayPerCloud services are suspended, there will be a reinstatement fee per Exhibit G.

15.4 Termination and Loss / Deletion of Data.

(a) PAYPERCLOUD WILL TERMINATE AN ORDER AND DELETE AN ACCOUNT'S ENTIRE PAYPERCLOUD SERVICES ENVIRONMENT, INCLUDING ALL DATA THEREIN

(i) AT ANY TIME AS REQUIRED BY LAW (INCLUDING ANY GOVERNMENT CONTROLS).

(ii) 15 DAYS AFTER SUSPENSION IF RESELLER HAS NOT PAID ALL PAST DUE CHARGES REGARDING AN ACCOUNT (Excluding those in reasonable dispute).

(iii) IMMEDIATELY IF RESELLER INDICATES THAT RESELLER WILL NO LONGER PAY PAYPERCLOUD CHARGES (Excluding those in reasonable dispute).

(b) PayPerCloud will have no liability for such loss / deletion of data.

16. TERMINATION

16.1 Insolvency. A party may terminate the Agreement effective upon written notice to the other party, if the other party is the subject of (a) a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors (not brought by the party seeking to terminate the Agreements) or (b) an involuntary petition or involuntary proceeding that is not dismissed within 30 days of filing.

16.2 For Cause. Either Reseller or PayPerCloud may terminate this Agreement and an Order(s) if the other party breaches any material term or condition of this Agreement and fails to cure such breach within 30 days after receipt of written notice of the same, except as noted elsewhere in the Agreements.

16.3 Termination of an Order for Convenience. Reseller may terminate an Order for any reason at any time by providing 30 days written notice to PayPerCloud and by paying PayPerCloud an early termination fee equal to 1 month MRC (“Discontinuance Fee”).

16.4 Termination of this Agreement. Upon this Agreement’s expiration or earlier termination, each receiving party will return to the disclosing party all Confidential Information obtained from the disclosing party in connection with this Agreement.

17. INTELLECTUAL PROPERTY

17.1 PayPerCloud Intellectual Property Ownership. Except for the a limited license grant that will be given to Resellers to Resell and Remarket PayPerCloud services, this Agreement does not transfer to Reseller or Reseller’s customers any PayPerCloud Technology and all right, title, and interest (including Intellectual Property Rights) in and to the PayPerCloud Technology will remain solely with PayPerCloud.

17.2 Reseller Intellectual Property Ownership. The Agreement does not transfer any of Reseller’s technology and all right, title, and interest (including Intellectual Property Rights) in and to Reseller’s technology will remain solely with Reseller. PayPerCloud will not obtain any property interest, intellectual or otherwise, in the data or information Resellers or Reseller’s customers load or maintain in PayPerCloud services.

17.3 Restrictions. Reseller agrees to:

(a) Not translate, reverse engineer, decompile, or disassemble PayPerCloud Technology.

(b) Not allow any unauthorized third party or unlicensed user or computer system to access PayPerCloud Technology.

(c) Not to use PayPerCloud Technology to develop a competing product to any PayPerCloud product or service.

(d) Not create any derivative work based on PayPerCloud Technology. Though Reseller is not authorized to do so, should Reseller create any derivative works of PayPerCloud services, Reseller assigns any and all right, title and interest (including Intellectual Property Rights) in such derivative works of PayPerCloud Technology to PayPerCloud.

17.4 Use of Trademarks / Trade Names. During the term of this Agreement, Reseller is authorized to use PayPerCloud's trademarks, trade names and logos solely in connection with Reseller's Resale, Remarketing, advertisement, and promotion of PayPerCloud services. All representations of PayPerCloud's trademarks shall first be submitted to PayPerCloud for approval, which approval shall not be unreasonably withheld, or shall be exact copies of those used by PayPerCloud. All right, title and interest to PayPerCloud's trademarks (except the limited right to use such trademarks as set forth herein) shall remain with PayPerCloud. At no time during or after the term of this Agreement shall Reseller challenge or assist others to challenge PayPerCloud's trademarks or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to those of PayPerCloud. Upon termination of this Agreement, Reseller will cease to use any of such marks, names or logos and shall, within a reasonable time, remove any reference to PayPerCloud from its advertising and promotional material. PayPerCloud may publicly disclose Reseller's name on a list of PayPerCloud clients and use Reseller's logo or other trademark or service mark on such a list.

18. GENERAL

18.1 PayPerCloud Services Located in the U.S. and Subject to U.S. Export Law. The PayPerCloud services are performed in the U.S. and PayPerCloud Technology is of U.S. origin for purposes of Government Controls promulgated by any U.S. Governmental Body. Reseller agrees to comply (and to cause its customers to comply) with all applicable Government Controls that apply to PayPerCloud services and the PayPerCloud Technology in any jurisdiction in which PayPerCloud services and the PayPerCloud Technology is accessed or used, as well as end-user, end-use, and destination restrictions issued by any Governmental Body.

18.2 Independent Contractors. PayPerCloud and Reseller are independent contractors engaged in their own business and neither party is or will be considered to be an agent or employee of the other or have authority to act for the other as agent or employee or have authority to make commitments on behalf of the other. Nothing in the Agreements will be construed to establish a joint venture, partnership, employer-employee relationship, or other association between the parties.

18.3 Enjoinment. If PayPerCloud services are enjoined, or are likely to be enjoined, then PayPerCloud may at its sole option and expense either:

- (a) Obtain the right for Reseller and its customers to continue using PayPerCloud services;
- (b) Replace or modify PayPerCloud services so that they are non-infringing and substantially equivalent in function to the enjoined services; or

(c) If options (a) and (b) above cannot be accomplished despite PayPerCloud's commercially reasonable efforts, then PayPerCloud may terminate Reseller's rights and PayPerCloud's obligations under the Agreements with respect to the relevant PayPerCloud services and refund to Reseller the unearned portion of any charges paid to PayPerCloud.

18.4 Insurance. Reseller and Reseller's customers are solely responsible to obtain and maintain any insurance coverage that they want, desire or need for their data, software, and equipment associated with PayPerCloud services. PayPerCloud does not provide any insurance for Reseller and Reseller's customers and their data, software, and equipment.

18.5 Customer Data. Although PayPerCloud will use commercially reasonable efforts to treat customer data stored in PayPerCloud services as confidential, PayPerCloud will not be liable to Reseller for a breach of confidentiality regarding such data if such data was not transmitted to and stored in PayPerCloud services using encrypted methods (by a minimum of a 256 bit key encryption) and was maintained by a strong passphrase as specified by the encryption hardware or software. PayPerCloud shall have no liability to customer.

18.6 Assignment. The Agreements may not be assigned partially or completely by either party without the prior written consent of the other, which shall not be unreasonably withheld. The Agreements will be binding upon and inure to the benefit of the parties and their successors and assigns. Both parties may assign the Agreements without prior written consent as part of a sale of Reseller's or PayPerCloud's business (partial or whole), or as part of a corporate reorganization, or an IPO.

18.7 Notices. Any notice required or permitted to be sent to either party under the terms of this Agreement or any agreement entered into pursuant to this Agreement shall be in writing and may be given personally; mailed postage prepaid by registered or certified mail, return receipt requested; by overnight delivery, or by email where successful transmissions can be confirmed, to the party to be notified at the address set forth below or such other address as the party may from time to time designate in writing:

Notices shall be considered delivered upon the earlier of (i) actual receipt by the applicable party, (ii) confirmed successful transmission by email, (iii) confirmed delivery via overnight courier service, or (iv) five days after mailing such notice via prepaid certified U.S. Mail, return receipt requested. Invoices, notices of service start dates, late payment notice, and similar routine notices relating to the PayPerCloud services may also be delivered by PayPerCloud to Reseller by first class mail (postage prepaid) or email, and such notices are considered to have been the day deposited in the mail or emailed.

18.8 Not a Lease or Sale. The Agreements allow Reseller to Remarket and Resell PayPerCloud services. The Agreements are not a lease of any property or a transaction for the sale of goods or property in which Reseller or Reseller's customers acquire any property interest.

18.9 Force Majeure. Neither party will be liable for failure to fulfill its obligations under the Agreements for any failure or delay in its performance or downtime under the Agreement due to any cause beyond a

party's reasonable control ("force majeure"), including, acts of God, war, earthquake, flood, fire, riot, sabotage, terrorism, labor dispute, strike or lockout, significant failure of an energy provider to supply power, governmental act, significant failure of the Internet, delays in transportation or inability to obtain labor or materials through its regular sources.

18.10 Limitations on Authority. Neither party will assume or create any obligations on behalf of the other party or make any representations or warranties about the other party, other than those authorized. 18.11 Disclosure of this Agreement. Neither PayPerCloud nor Reseller shall make or authorize any news release, advertisement, or other disclosure to third parties concerning the terms, conditions and prices of the Agreements without the prior written consent of the other.

18.12 Governing Law and Venue. The Agreements are made under California law and will be governed by and interpreted according to California law. The UN Convention on Contracts for the International Sale of Goods and the Uniform Computer Transaction Act shall not apply to the Agreements. Any litigation relating to the Agreements shall be resolved only in a state or federal court in Sacramento County, California. Reseller and PayPerCloud agree to the personal jurisdiction and subject matter jurisdiction of the state and federal courts located in Sacramento County, California and waive all objections to this venue and personal jurisdiction.

18.13 Waiver of Breach or Default. The waiver of any breach or default of this Agreement by either party will not (a) be considered a waiver of any subsequent or continuing breach or default and (b) act to change the rights of the waiving party.

18.14 Limitations on Time to Sue. Unless otherwise required by law, any action or proceeding by Reseller to enforce an obligation, duty, or right arising under these Agreements must be commenced within one (1) year after the cause of action accrues.

18.15 Severability of Unenforceable Terms. If any provision of the Agreements is determined by a court to be unenforceable, and that provision cannot be construed more narrowly by the court to avoid the unenforceability, the provision shall, to the extent of such unenforceability, be severed, and the remaining provisions of the Agreements shall remain in full force and effect

18.16 Third Party Trademarks. PayPerCloud services may contain Red Hat® Linux, Microsoft Windows®, Microsoft® Hyper-V™, VMware, or other third party operating systems and software. "Red Hat" and "Red Hat Linux" are the trademarks or registered trademarks of Red Hat, Inc, in the United States and other countries. "Windows" is a registered trademark of the Microsoft group of companies. "Linux" is a registered trademark of Linus Torvald. VMware, the VMware "boxes" logo and design, Virtual SMP and VMotion are registered trademarks or trademarks of VMware, Inc. in the United States and/or other jurisdictions. All other trademarks, service marks, and logos referred to or used in PayPerCloud services are the property of their owners.

18.17 Third Party Beneficiaries. There shall be no third party beneficiaries to the terms of the Agreements.

18.18 Survival of Terms. Those provisions of the Agreements which by their nature are meant to survive termination or expiration of this Agreement shall survive termination or expiration of this Agreement.

18.19 Order of Precedence. In the event of a conflict between documents, the order of precedence will be the following: (a) Change Order signed by both parties, (b) Order, (c) this Agreement, and (d) other documents signed by both parties.

18.20 English Language. The Agreements are written in English and the parties agree English shall be the language governing any interpretation of the Agreements. Each party hereby waives and disclaims any and all rights it may have to have the Agreements written in or interpreted in accordance with any other language.

18.21 Entire Agreement. This Agreement and documents incorporated by reference constitute the complete and exclusive agreement between Reseller and PayPerCloud regarding PayPerCloud services, and supersedes and replaces all prior discussions, negotiations, understandings, and agreements, written and oral, regarding PayPerCloud services.

18.22 Modifications to the Agreement. This Agreement, Change Orders, and Orders may be changed only by a written document signed by authorized representatives of each party. Emails, even if they include a typed name and/or signature block do not constitute signed writings.

EXHIBIT B: SERVICE LEVEL AGREEMENT

The Services are provided subject to the following terms and conditions, referred to as a "Service Level Agreement" or "SLA."

1. **HOST SERVICES AVAILABILITY.** Host will use commercially reasonable efforts to provide the Host services. However, Host services, including software, operating systems, applications, and data may not be available during maintenance and other periods. From time to time Host services may be inaccessible or inoperable for any reason, including: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs that Host may undertake; or (iii) causes beyond Host's control or that are not reasonably foreseeable by Host.

2. **5 Nines (99.999%) NETWORK UPTIME**

a. Uptime Guarantee

- i. Host guarantees 99.999% availability of its network, excluding maintenance periods.
- ii. Network uptime includes functioning of all Host network infrastructure including VPN, routers, switches, and cabling.
- iii. Network uptime does not apply to services or software running on a Host server or other Host hardware components.

b. Downtime. Network downtime exists when Host is unable to forward packets on User's behalf and is measured from the time User opens a trouble ticket with Host until the server network is available to User.

c. Credits. Five percent (5%) of the monthly server charge and five percent (5%) of the monthly charges for other affected Host services for each sixty (60) minutes of downtime for an affected Host server (up to one-hundred percent (100)% of the monthly charge for the server).

3. **FOUR (4) HOUR REPLACEMENT GUARANTEE FOR HARDWARE FAILURE**

a. FOUR (4) Hour Replacement Guarantee

- i. Host guarantees the functioning of all Managed Hosting hardware components and will replace any failed component at no cost to User.
- ii. Managed Hosting hardware is defined as the server and server components, SAN storage, load balancer, firewall, and other related hardware included with the Managed Hosting server.
- iii. This guarantee excludes the time required to rebuild a RAID array and to reload operating systems and applications.

b. Downtime

i. Hardware failure downtime exists when a Hosting hardware component fails or stops working, and downtime is measured from the time User opens a trouble ticket with Host and Host identifies the cause of the hardware failure until the server hardware is powered on and on-line.

ii. Hardware replacement is guaranteed to be complete within four (4) hours of Host's problem cause identification.

c. Credits. Five percent (5%) of the monthly server charge per additional hour of downtime for the affected Hosting server (up to one-hundred percent (100%) of the monthly charge for the server) if Host takes more than four (4) hours to replace faulty hardware.

4. **PUBLIC CLOUD HOSTING AND PRIVATE CLOUD HOSTING**

a. Hour Restoration or Repair Guarantee for Public and Private Cloud Hosts

i. Host guarantees the functioning of all Public and Private Cloud hosts including compute, storage, and hypervisor.

ii. Public and Private Cloud Server Host downtime exists when a Host hardware component fails or stops working, and downtime is measured from the time User opens a trouble ticket with Host and Host identifies the cause of the hardware failure until the server hardware is powered on and on-line.

iii. Host guarantees that restoration or repair will be complete within one (1) hour of problem identification.

iv. Host guarantees the functioning of all Host hardware components and will replace any failed component at no cost to User.

b. Public and Private Cloud Migration

i. If a Public and/or Private Cloud migration is required, Host will notify User at least twenty-four (24) hours in advance of beginning the migration, unless Host determines in its reasonable judgment, that the migration must happen sooner to protect Public and/or Private Cloud data.

ii. Host guarantees that the migration will be complete within three (3) hours of the time that Host begins the migration.

c. Credits. Five percent (5%) of the monthly Public and/or Private Cloud charge per additional hour of downtime for the affected Host server (up to one-hundred percent (100%) of the monthly charge for the server) if Host exceeds the time allowed above.

5. **DEDICATED HOSTING**

a. Four (4) Hour Replacement Guarantee

i. Host guarantees the functioning of all Host hardware components and will replace any failed component at no cost to User.

ii. Host hardware is defined as the server and server components, load balancer, firewall, and other related hardware included with or paid for with the Host server.

b. Downtime

i. Hardware failure downtime exists when Host hardware component fails or stops working, and downtime is measured from the time User opens a trouble ticket with Host, and Host identifies the cause of the hardware failure until the server hardware is powered on and on-line.

ii. Hardware replacement is guaranteed to be complete within four (4) hours of Host problem cause identification.

c. Credits. Five percent (5%) of the monthly server charge per additional hour of downtime for the affected Host server (up to one-hundred percent (100%) of the monthly charge for the affected server) if Host takes more than four (4) hours to replace faulty hardware.

6. **SCHEDULED MAINTENANCE**

a. Accessibility of the Host web interface. During Scheduled Maintenance, the Host server might be available, but User might not be able to access it.

i. Normal scheduled maintenance (“Normal Maintenance Window”) occurs at least one (1) weekend each month

ii. The Normal Maintenance Window is subject to change at Host’s sole discretion, and the new Normal Maintenance Window will become effective upon posting to Host’s web interface(s) or email notification.

b. Infrastructure Maintenance. Includes all Host components, including the server(s). During Infrastructure Maintenance, the Host server and other Services may not be available.

c. Scheduled maintenance does not count as downtime and is not included in the calculation of the uptime guarantees.

d. If Host intends to perform scheduled maintenance outside of the Normal Maintenance Window or Quarterly Maintenance Window, Host will post a notice to Host’s web interface(s) or email notification to User with at least twenty-four (24) hours notice.

7. **EMERGENCY MAINTENANCE**

a. Host has the right to perform emergency maintenance if there is an immediate, material threat to Host servers or the Host services.

b. Host will attempt to notify User by email prior to emergency maintenance, but notice depends upon the severity and critical nature of the emergency maintenance.

c. Emergency maintenance does not count as downtime and is not included in the uptime guarantee calculations.

8. **HARDWARE REPLACEMENT.** Host has the right to replace hardware for any reason, at any time.

9. **DOWNTIME EXCLUSIONS.** The unavailability of Host services due to the following will not be considered to be downtime (nor will credits be issued):

a. User's applications and content, and errors from User's own custom scripting or coding.

b. User's configuration(s) outside of the Host infrastructure that affects Host services.

c. User's acts or omissions.

d. Force majeure.

e. Services provided by a third party outside of Host's control.

f. Maintenance.

g. Downtime to install services User requests.

h. Internet traffic exchange points external to Host, including without limitation Network Access Points ("NAPs") and Metropolitan Area Exchanges ("MAEs"), and Internet networks controlled by others.

i. Suspension of Host services (e.g. User doesn't pay charges to Host).

10. **CREDIT REQUEST AND LIMITATIONS**

a. To receive a credit, User must have opened a trouble ticket for the problem, and User must contact a Host Service Representative via Support@PayPerCloud.com or within thirty (30) days of the outage or failure and request a credit.

b. Multiple credits will not be paid for different types of outages occurring at the same time (no overlapping credits). There are no duplicate credits for the same outage, and the greater of the applicable credits will apply. For example, if a server has network downtime and hardware downtime at the same time for a total of forty-five (45) minutes, User would receive a total credit of five percent (5%).

c. There is an overall cap on credits in a month. Credit in a month for a service cannot exceed one-hundred percent (100%) of the charges for the service for a month.

11. **TROUBLE TICKETS.** A member of our Network Operations Center Service Desk staff will be available to assist you with problems and questions regarding the hosting services. We will supply telephone and/or email support to you regarding the hosting services twenty-four (24) hours a day, seven (7) days a week. If problem is determined to be non-hosting environment related a charge may be incurred at an hourly rate of one-hundred and fifty dollars (\$150) per hour.

a. User may open a trouble ticket using one of the following methods:

i. Host Web Interface. Create a trouble ticket by logging into the Host web interface and selecting "Support."

ii. Call (877) MY-CLOUD.

iii. Chat. User can log into the Host web interface and chat with one of Host's representatives

iv. Email. support@paypercloud.com

12. **HOST WILL ONLY PAY CREDITS FOR DOWNTIME OR OUTAGES.** The credits listed above are Host's only liability, no matter what type of claim, for Host services downtime or outages. Host is not liable for any damages (direct, consequential, incidental, lost business, etc.) User claims to have suffered because of Host downtime or outages, including the unavailability of software, operating systems, applications, and data. The credits set forth herein this Exhibit are User's sole and exclusive remedy for Host's inability to achieve the SLAs set forth herein.

13. **INTERNET BANDWIDTH.**

a. Metered Bandwidth.

i. User is charged based on the cumulative bandwidth usage each month.

ii. If bandwidth consumption exceeds the purchased amount, an overage charge is billed to User.

b. Internet Bandwidth Measurement – 95th Percentile.

i. Internet bandwidth is measured by taking samples of usage every five (5) minutes during a calendar month and collecting two (2) readings (cumulative of inbound feeds and cumulative of outbound feeds at the same measured point in time).

ii. The measurements are stored and become data points. At the end of the month, all data points taken during the month are ranked in ascending order.

iii. Host will discard the top five percent (5%) for each set (inbound and outbound) of data points.

iv. The highest remaining sample of the two (2) sets becomes User's sustained (base) or burstable usage number for that billing cycle.

- v. User will be invoiced at the end of each month for burstable Internet bandwidth usage, if any.

Exhibit D Rules and Regulations regarding use of PayPerCloud Services

PayPerCloud's rules and regulations regarding the use of PayPerCloud services ("Rules and Regulations") prohibits uses and activities involving PayPerCloud services that are illegal, infringe the rights of others, or interfere with PayPerCloud services.

It is Reseller's responsibility to ensure that Resellers Resale and Remarketing of PayPerCloud services and Reseller's customers use of PayPerCloud services complies with all applicable government and regulatory laws and regulations and these Rules and Regulations. PayPerCloud may suspend or terminate a PayPerCloud account for failure to comply with the Rules and Regulations.

Reseller's license to Remarket or Resell PayPerCloud services and Reseller's customer's use of PayPerCloud services is conditioned up the following:

1. Prohibited Uses or Actions; Content and Illegal Use. Reseller's may not Resell or Remarket PayPerCloud services and Reseller's customers may not use PayPerCloud services to:

- Engage in, aid, or assist any activity that is in violation of the law or regulation or the rules of an Internet service provider.
- Violate, infringe, or misappropriate the privacy rights or property rights of others.
- Send, post, host, or display harassing, threatening, abusive, libelous, or obscene materials or assist in any similar activities.
- Intentionally omit, delete, forge, or misrepresent transmission information or withhold or cloak identity or contact information.
- Intentionally transmit or otherwise propagate computer viruses or similar destructive computer codes.
- Post, store, send, transmit, or disseminate any information or material which a reasonable person could deem to be unlawful.
- Upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way information, software or other material obtained through PayPerCloud services or otherwise that is protected by copyright or other proprietary right, without obtaining any required permissions of the owner.
- Send very large numbers of copies of the same or substantially similar messages, empty messages, or messages which contain no substantive content, or send very large messages or files that disrupts a server, account, newsgroup, or chat service.
- Impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar fraudulent activity (for example, "phishing").

- Access any other person's computer or computer system, network, software, applications, or data without his or her knowledge and consent; breach the security of another user or system; or attempt to circumvent the user authentication or security of any host, network, or account.
- Use or distribute tools or devices designed or used for compromising security or whose use is otherwise unauthorized, including password guessing programs, decoders, password gatherers, keystroke loggers, analyzers, packet sniffers, encryption circumvention devices, or Trojan Horse programs. Unauthorized port scanning is prohibited.
- Restrict, inhibit, interfere with, or otherwise disrupt or cause performance degradation, regardless of intent, purpose or knowledge, to PayPerCloud services.
- Interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abusing operator privileges, and attempts to "crash" a host.
- Engage in any other activities that may be reasonably deemed prohibited by PayPerCloud for the purposes of safety, privacy, system reliability, protection of equipment, systems, data, and personnel, and compliance with laws or regulations from governmental agencies.

2. Commercial Email. Reseller (as may be applicable) and Reseller's customers must comply with the CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act) which establishes requirements for those who send commercial email, spells out penalties for spammers and companies whose products are advertised in spam if they violate the law, and gives consumers the right to ask emailers to stop spamming them.

2.1 The CAN-SPAM Act:

- Bans false or misleading header information.
- Prohibits deceptive subject lines.
- Requires that the sender of the email give recipients an opt-out method.
- Requires that commercial email be identified as an advertisement and include the sender's valid physical postal address.

2.2 Reseller's customers may not use PayPerCloud services to:

- "Harvest" email addresses from Web sites or Web services that have published a notice prohibiting the transfer of email addresses for the purpose of sending email or participate in the use of software (including "spyware") designed to facilitate this activity;

- Generate email addresses using a "dictionary attack" – combining names, letters, or numbers into multiple permutations
- Use scripts or other automated ways to register for multiple email or user accounts to send commercial email
- Relay emails through a computer or network without permission – for example, by taking advantage of open relays or open proxies without authorization.
- Use another computer without authorization and send commercial email from or through it
- Use a computer to relay or retransmit multiple commercial email messages to deceive or mislead recipients or an Internet access service about the origin of the message
- Falsify header information in multiple email messages and initiate the transmission of such messages
- Register for multiple email accounts or domain names using information that falsifies the identity of the actual registrant
- Falsely represent the sender as owners of multiple Internet Protocol addresses that are used to send commercial email messages.

1. Vulnerability Testing. Reseller and Reseller’s customers may not attempt to probe, scan, penetrate, test the vulnerability, or otherwise compromise a PayPerCloud services system or network or to breach PayPerCloud services’ security or authentication procedures without PayPerCloud’s prior written consent.

2. IP Addresses. PayPerCloud will register IP addresses in Reseller’s name, but PayPerCloud will retain ownership of such IP addresses. If the IP addresses Reseller’s customers use are listed in a recognized abuse database, Reseller’s customers will be in violation of these Rules and Regulations, and PayPerCloud may take reasonable action to protect the IP addresses, including suspension or termination of a Reseller’s customer PayPerCloud services account.

3. Awareness of Violation of the Rules and Regulations. If Reseller become aware of a violation of the Rules and Regulations, Reseller will (a) immediately notify PayPerCloud and (b) use commercially reasonable efforts to remedy such violation immediately, if under Reseller or Reseller customer’s control.

4. Reporting Abuses. Abuses may be reported to PayPerCloud at abuse@PayPerCloud.com.

5. Modifications to the Rules and Regulations. PayPerCloud may modify these Rules and Regulations from time to time by posting a new version on the PayPerCloud web interface(s) and

emailing Reseller a copy of the new version. Revised versions of the Rules and Regulations are effective immediately upon posting.

6. Suspension and Termination of Access to PayPerCloud services. Reseller or Reseller customer's failure to comply with the Rules and Regulations may result in the suspension or termination of the applicable PayPerCloud services account. PayPerCloud reserves at all times all rights and remedies available to it with respect to such activities at law or in equity. PayPerCloud reserves the right to cooperate with law enforcement which may include immediate suspension or termination of a PayPerCloud services account.

-End of Exhibit D -

Exhibit E Terms and Conditions Regarding Use of Microsoft Software

This document concerns your use of Microsoft software, which includes computer software provided to you by PayPerCloud as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually and collectively “SOFTWARE PRODUCTS”). You do not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which PayPerCloud needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with PayPerCloud, and to your understanding of, compliance with and consent to the following terms and conditions, which PayPerCloud does not have authority to vary, alter or amend.

1. DEFINITIONS.

- “Client Software” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.
- “Device” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” or other electronic device.
- “Server Software” means software that provides services or functionality on a computer acting as a server.

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

3. USE OF CLIENT SOFTWARE. You may use the Client Software installed on your Devices by PayPerCloud only in accordance with the instructions, and only in connection with the services, provided to you by PayPerCloud. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License agreement which may be presented in electronic form during your use of the Client Software.

4. USE OF REDISTRIBUTION SOFTWARE. In connection with the services provided to you by PayPerCloud, you may have access to certain “sample,” “redistributable” and/or software development (“SKD”) software code and tools (individually and collectively “Redistribution Software”). YOU MANY NOT USE, MODIFY, COPY AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER

USE RIGHTS (“SPUR”) APPLICABLE TO MILES CONSULTING, WHICH TERMS MUST BE PROVIDED TO YOU BY PAYPERCLOUD. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by PayPerCloud.

5. COPIES. You may not make any copies of the SOFTWARE PRODUCTS; provided, however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorized by PayPerCloud; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with PayPerCloud, upon notice from PayPerCloud or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.

6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY. You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCTS, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

7. NO RENTAL. You may not rent, lease, pledge, or directly or indirectly transfer or distribute the SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.

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- End of Exhibit E -