



3351 Claystone Street SE, Suite 100  
Grand Rapids, MI 49546

## SOFTWARE AS A SERVICE AGREEMENT

This SaaS Agreement (this “**Agreement**”) is entered into as of the date set forth on the Quote Form (“**Effective Date**”) by and between SalesPad Inc d/b/a Cavallo Solutions, a Michigan corporation with offices at 3351 Claystone Street SE Suite 100 Grand Rapids, MI 49546 (“**Cavallo**”) and the corporation, partnership, limited liability company, sole proprietorship, or other organization or entity which has accepted this Agreement through the execution of a Quote Form (as defined below) referencing this Agreement (“**Customer**”). Cavallo and Customer are sometimes referred to jointly as the “Parties” or singularly as a “Party.” For good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

### 1. SERVICES

- 1.1. Purpose. This Agreement sets forth the terms and conditions under which Cavallo will: (i) make the Subscription Services (defined in Paragraph 18 below) available to Customer; and (ii) provide the applicable Implementation Services (if any) related to such Subscription Services.
- 1.2. Subscription Services; Access and Use License. Cavallo hereby grants Customer and Authorized Users a non-exclusive, non-sublicensable, non-transferable, worldwide license to access and use the Subscription Services, solely for internal business purposes as set forth herein and subject to the terms of this Agreement.
- 1.3. Quote Form. Each applicable Quote Form shall specify and further describe the applicable Services, user limitations, fees, term and other applicable terms and conditions.
- 1.4. Customization Services. In the event Customer requests that Cavallo provide Customization Services, the parties shall execute a statement of work (“**SOW**”) which shall govern the performance of such services by Cavallo. Such SOW shall be considered part of the entire agreement between the Parties.
- 1.5. Changes to Services. Cavallo may, in its sole discretion, make any changes to the Services that it deems necessary or useful to (i) maintain or enhance: (a) the quality or delivery of Cavallo’s products or services to its customers, (b) the competitive strength of, or market for, Cavallo’s products or services, (c) the cost efficiency or performance of the Services, or (ii) comply with applicable law.
- 1.6. Support. In the event Customer has engaged Cavallo to provide support services, the Subscription Services include Cavallo’s standard customer support services in accordance with the support terms as updated from time to time, accessible via <https://support.cavallo.com>.
- 1.7. ERP Solution License. The Subscriptions Services are designed as an add-on to the ERP Solution. The third party developers or owners of such ERP Solutions may impose limitations or additional license requirements regarding Customer’s use of add-ons (including the Subscription Services) with such ERP Solutions. Customer is responsible for obtaining a valid license to the ERP Solution and ensuring that Customer’s use of the Subscription Services is in compliance with such license.

### 2. ACCESS AND AUTHORIZED USERS

- 2.1. Authorized Users. Customer may allow such number of Authorized Users set forth on Quote Form to use the Subscription Services on behalf of Customer.
- 2.2. Customer Responsibility. Customer shall (i) be responsible for Authorized Users’ compliance with this Agreement and Quote Forms, (ii) be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Cavallo promptly of any such unauthorized access or use, (iv) use Services and Third Party Materials only in accordance with this Agreement, Quote Form, and applicable laws and government regulations, (v) use Third Party

Materials only in accordance with the terms and conditions associated with such use; and (vi) comply with terms of service of any Third-Party Services with which Customer uses the Subscription Services.

- 2.3. Usage Limits. The Subscription Services may be subject to usage limits specified in Quote Forms. If Customer exceeds a contractual usage limit, Customer will execute a Quote Form for additional quantities of the applicable Subscription Services promptly upon Cavallo's request, and pay any invoice for excess usage in accordance with Section 6 below.
- 2.4. Access Credentials. Within a reasonable time following the Effective Date, Cavallo shall provide Customer with the credentials necessary to access the Services ("**Credentials**"). Customer has and will retain sole responsibility for: (i) the security and use of the Credentials; and (ii) all access to and use of the Services directly or indirectly by or through the Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.
- 2.5. Usage Restrictions. Customer will not, nor permit or encourage any third party to, directly or indirectly (i) make available or distribute the Subscription Services, or use any Subscription Services for the benefit of, anyone other than Customer or Authorized Users, unless expressly stated otherwise in an Quote Form, (ii) sell, resell, license, sublicense, rent or lease the Subscription Services or include such Subscription Services in a service bureau or outsourcing offering, (iii) use the Subscription Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (iv) knowingly interfere with or disrupt the integrity or performance of the Subscription Services or third-party data contained therein, (v) attempt to gain unauthorized access to the Subscription Services or its related systems or networks, (vi) permit direct or indirect access to or use of the Subscription Services in a way that circumvents a contractual usage limit, (viii) frame or mirror any part of the Subscription Service other than framing on Customer's own intranets, or otherwise for its own internal business purposes, (ix) reverse engineer, decompile, disassemble or otherwise attempt to discover or derive the code, object code or underlying structure, ideas, know-how or algorithms relevant to any software, documentation or data related to the Subscription Services generally, or (x) modify, remove or obstruct any proprietary notices or labels. Further, any use of the Subscription Services that in Cavallo's judgment imminently threatens the security, integrity, or availability of Cavallo's services, may result in Cavallo's immediate suspension of the Services.
- 2.6. Cooperation. Customer shall provide all cooperation and assistance as Cavallo may reasonably request to deliver the Services including providing Cavallo with access to Customer's information technology infrastructure, as is necessary for Cavallo to perform the Services. Customer represents and warrants that it has and will maintain the requisite licenses for Customer represents and warrants that it has and will maintain the requisite rights, licenses, consents and permissions to collect, access, use and disclose, and to permit Cavallo to access and use and disclose the Customer Materials provided or otherwise made available to Cavallo in connection with the Services and this Agreement. Customer acknowledges and agrees that except as expressly provided in this Agreement, Cavallo shall have no responsibility or liability for such Customer Materials.
- 2.7. Customer Systems. Customer shall be responsible for obtaining and maintaining—both the functionality and security of—any equipment and ancillary services needed to connect to, access or otherwise use the Subscription Services, including modems, hardware, servers, software, operating systems, networking, web servers, etc.

### 3. THIRD PARTY SERVICES AND MATERIALS

- 3.1. General. In the event that Customer chooses to use Third-Party Services with the Subscription Services, Customer grants Cavallo permission to allow the Third-Party Services and its provider to access Customer Data as required for use of the Third-Party Services in conjunction with the Subscription Services. Cavallo is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Third-Party Services.
- 3.2. Integrations. Certain of the Services may contain features designed to interoperate with Third-Party Services. To use such features, Customer may be required to obtain access to such Third-Party Services from their providers, and may be required to grant Cavallo access to Customer's account(s) on such Third-Party Services. Cavallo cannot guarantee the continued availability of such Third-Party Service features, and may cease providing them without entitling Customer to any refund, credit, or

other compensation, if for example and without limitation, the provider of a Third-Party Service ceases to make the Third-Party Service available for interoperation with the Subscription Services.

- 3.3. Third Party Materials. The Subscription Services may enable Customer to access Third-Party Materials. Cavallo does not control and is not responsible for Third-Party Materials, and are provided on an “as-is” and “as available” basis without any warranty of any kind.

#### 4. CONFIDENTIALITY

- 4.1. Confidential Information. Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has been, and may be, exposed to or acquired business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Confidential Information**”). Confidential Information of Cavallo includes, among other things: (i) all user-visible aspects of the Services, (ii) all non-public information regarding features, functionality, and performance of the Services, and (iii) the terms and conditions of this Agreement, including all pricing and related metrics. Confidential Information of Customer includes Customer Data.
- 4.2. Exceptions. Notwithstanding anything to the contrary contained herein, Confidential Information shall not include any information that the Receiving Party can document (i) is or becomes generally available to the public, (ii) was in its possession or known by the Receiving Party prior to receipt from the Disclosing Party, (iii) was rightfully disclosed to it without restriction by a third party, or (iv) was independently developed without use of any Confidential Information of the Disclosing Party.
- 4.3. Non-use and Non-disclosure. With respect to Confidential Information of the Disclosing Party, the Receiving Party agrees to: (i) use the same degree of care to protect the confidentiality, and prevent the unauthorized use or disclosure, of such Confidential Information it uses to protect its own proprietary and confidential information of like nature, which shall not be less than a reasonable degree of care, (ii) hold all such Confidential Information in strict confidence and not use, sell, copy, transfer reproduce, or divulge such Confidential Information to any third party, (iii) not use such Confidential Information for any purposes whatsoever other than the performance of, or as otherwise authorized by, this Agreement.
- 4.4. Compelled Disclosure. Notwithstanding Section 4.3, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent necessary to comply with a court order or applicable law; provided, however that the Receiving Party delivers reasonable advance notice of such disclosure to the Disclosing Party and uses reasonable efforts to secure confidential treatment of such Confidential Information, in whole or in part.
- 4.5. Remedies for Breach of Obligation of Confidentiality. The Receiving Party acknowledges that breach of its obligation of confidentiality may cause irreparable harm to the Disclosing Party for which the Disclosing Party may not be fully or adequately compensated by recovery of monetary damages. Accordingly, in the event of any violation, or threatened violation, by the Receiving Party of its obligations under this Section, the Disclosing Party shall be entitled to seek injunctive relief from a court of competent jurisdiction in addition to any other remedy that may be available at law or in equity, without the necessity of posting bond or proving actual damages.

#### 5. PROPRIETARY RIGHTS

- 5.1. Ownership of Subscription Services. Cavallo shall own and retain all right, title, and interest in and to the Services. To the extent Customer acquires any right, title, or interest therein, Customer hereby assigns all of its right, title, and interest in such Subscription Services to Cavallo.
- 5.2. Customer Data. Customer shall own and retain all right, title, and interest in and to Customer Data. Customer hereby grants to Cavallo a non-exclusive irrevocable, transferable, sublicensable, worldwide and royalty-free license and all such other rights and permissions in or related to Customer Data as are necessary or useful to Cavallo to deliver the Services contemplated by this Agreement, including, without limitation, the right to (i) process Customer Data in connection with providing the Services; (ii) modify and create derivative works from the Customer Data in connection with providing the Services, including creation of Aggregate Data; and (iii) monitor and improve the Services, both during and after the Term. It is Customer’s sole responsibility to back up Customer Data during the Term, and Customer acknowledges that it will not have access to Customer Data through Cavallo or the Services following the expiration or termination of this Agreement. For the avoidance of doubt,

Cavallo shall own and retain all right, title, and interest in and to Aggregate Data.

- 5.3. Feedback. Customer grants to Cavallo a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer or Authorized Users relating to the Services.
- 5.4. No Other Rights. No rights or licenses are granted except as expressly set forth herein.

## 6. FEES & PAYMENT

- 6.1. Fees. Customer will pay the fees set forth in the applicable Quote Form, to Cavallo or Cavallo's reseller as directed therein, in accordance with the terms set forth herein ("**Fees**"), including, for the avoidance of doubt, any fees incurred through Customer's use of the Subscription Services exceeding the usage limits specified on the applicable Quote Form.
- 6.2. Reimbursable Expenses. In addition to the Fees, Customer shall reimburse Cavallo for reasonable out-of-pocket expenses incurred by Cavallo in connection with performing the Services, if any ("**Expenses**").
- 6.3. Invoicing and Payment. Fees will be invoiced in advance unless otherwise stated in the relevant Quote Form. Fees are due fifteen (15) days from the date of invoice. Customer is responsible for providing complete and accurate billing and contact information to Cavallo or Cavallo's reseller and notifying of any changes to such information.
- 6.4. Overdue Charges. If any invoiced amount is not received by Cavallo or Cavallo's reseller by the due date, then without limiting Cavallo's rights or remedies, those charges may accrue late interest at the rate of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. If any Fee owed by Customer is thirty (30) days or more overdue, Cavallo may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full.
- 6.5. Payment Disputes. If Customer believes that Cavallo has billed Customer incorrectly, Customer must contact Cavallo no later than thirty (30) days after the invoice date on the invoice in which the believed error or problem appeared in order to receive an adjustment or credit, if appropriate. Inquiries should be directed to Cavallo's accounting department at [account@cavallo.com](mailto:account@cavallo.com). In the event that Customer is billed by Cavallo's reseller, all contact, notice, and inquiries as described in this paragraph above shall be handled according to Customer's agreement with reseller.
- 6.6. Taxes. Customer shall pay, and shall be liable for, all taxes relating to Cavallo's provision of the Services hereunder. Cavallo shall pay, and shall be liable for, taxes based on its net income or capital.
- 6.7. No Deductions or Setoffs. All amounts payable to Cavallo hereunder shall be paid by Customer to Cavallo in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason except as may be required by applicable law.
- 6.8. Electronic Funds Transfer. If required by Cavallo at any time during the Term (as defined below), Customer shall promptly take all necessary steps, including completing and signing necessary authorization forms, to enable Cavallo or its designee to electronically deduct, from a financial account maintained by Customer, any amounts that become payable to Cavallo under this Section 6, or otherwise under this Agreement. Customer shall be responsible for any fees and charges assessed by Customer's financial institution in connection with transactions within this scope of this Section 6.8.

## 7. TERM AND TERMINATION

- 7.1. Term. This Agreement commences on the Effective Date shall run for the period specified in the Quote Form, unless terminated earlier by either party as provided in Section 7.2. (the "**Initial Term**"). Unless otherwise set forth in the Quote Form, this Agreement shall renew for additional one (1) year periods ("**Renewal Term**"), unless written notice of non-renewal is received by the other party at least sixty (60) days prior to the expiration of the then current Initial or Renewal Term.
- 7.2. Termination. Either party may terminate this Agreement (and the Quote Form) for cause if: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) upon written notice if the other party becomes the subject of a petition

in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

- 7.3. **Effect of Termination.** Upon termination of the Agreement: (i) Cavallo shall immediately cease providing the Services; (ii) all unpaid Expenses and all Fees will become immediately due and payable.
- 7.4. **Extension of Services.** In the event Customer elects not to renew this Agreement, Cavallo will continue to make the Subscription Service available to Customer for an additional period of up to ninety (90) days from the date of termination (the "**Transition Period**"), upon Customer's written request, provided that the following requirements are satisfied:
- (i) Customer provides Cavallo with written notice of its request to continue receiving the Subscription Services at least thirty (30) days prior to the expiration of this Agreement; and
  - (ii) Customer is in compliance with the terms of this Agreement, including all payment obligations; and (iii) Customer has executed a Transition Period Quote Form for the Subscription Services which: (a) sets forth Customer's agreement to pay Cavallo for the Subscription Services prior to the start of the Transition Period; and (b) specifies the pricing for the Subscription Services as equal to one hundred twenty-five percent (125%) of the pricing for such Services as applied immediately before termination.
- 7.5. **Transition Assistance.** Any assistance to be provided by Cavallo to Customer during the Transition Period in addition to making available the Subscription Services shall be subject to the parties' execution of a SOW detailing the fees and scope of such services to be performed by Cavallo.
- 7.6. **Survival.** Sections 3.1, 4-6, 7.3-7.6, and 9-17 shall survive any termination or expiration of this Agreement. All other rights and obligations shall be of no further force or effect.

## 8. WARRANTY AND DISCLAIMER

- 8.1. **Representations.** Each party represents and warrants that it has validly entered into this Agreement and that it has the power and authority to do so.
- 8.2. **Cavallo Warranties.** Cavallo warrants that during the Term: (i) the Subscription Services will perform materially in accordance with the applicable documentation; and (ii) Cavallo will perform the Services in a professional and workmanlike manner.
- 8.3. **Customer Warranties.** Customer warrants that: (i) Customer owns or has a license to use and has obtained all consents and approvals necessary for the provision and use of the Customer Materials and Customer Data; and (ii) it shall comply with applicable law, and the provision and use of Customer Materials or Customer Data as contemplated by this Agreement and the Services does not and shall not violate any terms of use or other agreement to which Customer is a party or any law or regulation to which Customer is subject to.
- 8.4. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, CAVALLO DOES NOT WARRANT THAT ACCESS TO THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES CAVALLO MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS," AND CAVALLO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CAVALLO MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED REGARDING THIRD-PARTY SERVICES, INCLUDING THE ABILITY TO INTEGRATE THE SAME WITH CAVALLO'S SERVICES. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS".

## 9. INDEMNITY

- 9.1. **Indemnification by Cavallo.** Cavallo will defend Customer against any claim, suit, demand, or action made or brought against Customer by a third party alleging that the Subscription Services, or Customer's use or access thereof in accordance with this Agreement, infringes any intellectual

property rights of such third party, and will indemnify and hold harmless Customer from any damages, losses, liabilities, costs and fees (including reasonable attorney's fees) finally awarded against Customer in connection with or in settlement of any such claim, suit, demand, or action. The foregoing obligations do not apply with respect to portions or components of the Subscription Service: (i) made in whole or in part in accordance with Customer specifications, (ii) that are modified or otherwise altered, (iii) combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Subscription Services is not strictly in accordance with this Agreement. If, due to a claim of infringement, portions or components of any Subscription Service are held by a court of competent jurisdiction to be or is believed by Cavallo to be infringing, Cavallo may, at its option and expense (a) replace or modify the Subscription Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Subscription Services, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for such Subscription Services. This Section states Customer's sole and exclusive remedies for claims of infringement.

The above defense and indemnification obligations do not apply to the extent a claim against Customer arises from any Third-Party Materials, Customer Materials, a Third-Party Service, or a breach of this Agreement or applicable Quote Forms by Customer (including, for avoidance of doubt, by an action or omission of Customer).

- 9.2 Indemnification by Customer. Customer will defend, indemnify, and hold Cavallo including its officers, directors, employees and agents, or its Affiliates (collectively, "**Cavallo Indemnified Parties**") harmless from and against any claim, demand, suit or proceeding made or brought against a Cavallo Indemnified Party by a third party: (i) alleging that any Customer Data infringes or misappropriates such third party's intellectual property rights, (ii) arising from Customer's use of the Services in breach of the Agreement, Quote Form or applicable law; (iii) based on Customer's gross negligence or willful misconduct; (iv) arising out of a claim that Customer's use of the Services infringes the intellectual property rights or breaches any contract related to Third Party Services or Third Party Materials or (v) arising from a breach by Customer of its non-disclosure obligations under Section 6 herein that results in an unauthorized disclosure of Confidential Information; (each a "**Claim Against Cavallo**"). Customer will pay any damages, attorney fees and costs finally awarded against Cavallo Indemnified Parties as a result of, or for any amounts paid by Cavallo Indemnified Parties under a settlement approved by Customer in writing of, a Claim Against Cavallo.

## 10. LIMITATION OF LIABILITY

IN NO EVENT SHALL (I) CAVALLO'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED IN THE AGGREGATE THE TOTAL FEES PAID OR OWED BY CUSTOMER TO CAVALLO (OR CAVALLO'S RESELLER) HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM (SUCH AMOUNT BEING INTENDED AS A CUMULATIVE CAP AND NOT PER INCIDENT), AND (II) CAVALLO HAVE ANY LIABILITY TO CUSTOMER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, COVER, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS AND DISCLAIMERS SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 11. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement is governed in all respects by the laws of the State of Michigan, without giving effect to its rules relating to conflict of laws. Neither any adoption of the Uniform Computer Information Transactions Act nor the U.N. Convention on the International Sale of Goods applies to this Agreement or to the rights or duties of the parties under this Agreement.

## 12. SECURITY

Cavallo will maintain industry-standard administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data. Unless otherwise specified in a Quote Form, Customer Data may not include any sensitive or special data that imposes specific data security or data protection obligations on Cavallo in addition to or different from those specified in the DPA. The terms of the data processing addendum available at [cavallo.com/agreements](https://cavallo.com/agreements) ("**DPA**") shall apply to the extent Customer Data includes personal information (as such term is defined in the DPA) subject to the CCPA (as defined in the DPA).

## 13. PUBLICITY

Customer agrees that Cavallo may identify Customer as a customer of the Subscription Services and use Customer's logo and trademark in Cavallo's promotional materials. Notwithstanding anything herein to the contrary, Customer acknowledges that Cavallo may disclose the existence and terms and conditions of this Agreement to its advisors, actual and potential sources of financing and to third parties for purposes of due diligence.

## 14. NOTICES

All notices, consents, and other communications between the parties under or regarding this Agreement must be in writing (which includes email and facsimile). Notices to Cavallo will be addressed to [accounting@cavallo.com](mailto:accounting@cavallo.com); or as updated by Cavallo via written notice to Customer. Notices to Customer will be addressed to the relevant contact designated by Customer in the initial Quote Form or as updated by Customer via written notice to Cavallo, all notices, consents, and other communications between the parties under a Statement of Work will be sent to the recipient's address specified thereon. All communications will be deemed to have been received on the date actually received. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section.

## 15. FORCE MAJEURE

Cavallo is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Customer or any Authorized User.

## 16. ASSIGNMENT

Neither party may assign this Agreement without the prior written consent of the other party, which shall not be unreasonably denied, delayed, or conditioned; provided that this Agreement may be assigned by operation of law or otherwise in connection with a merger, consolidation, or sale of all or substantially all the assets or equity interests of Cavallo.

## 17. GENERAL PROVISIONS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement, together with any Quote Forms entered into hereunder and all exhibits, annexes and addenda hereto and thereto is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement, and neither party has authority of any kind to bind the other party in any respect whatsoever. In the event of a conflict between this Agreement and any Quote Form, such Quote Form shall prevail unless otherwise expressly indicated in this Agreement. The heading references herein are for convenience purposes only and shall not be deemed to limit or affect any of the provisions hereof. Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words "hereof," "hereby," "herein," "hereto," and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular Section or paragraph of this Agreement;

(ii) the words "include," "includes" or "including" are deemed to be followed by the words "without limitation;" (iii) references to a "Section" or "Exhibit" are references to a section of, or exhibit to this Agreement; and (iv) derivative forms of defined terms will have correlative meanings.

## 18. DEFINITIONS

Capitalized terms used herein shall have the meaning set forth below or as ascribed to them in this Agreement.

- 18.1. **"Aggregate Data"** means data resulting from the aggregation or compilation of Customer Data that is anonymized, de-identified, or otherwise rendered not reasonably associated or linked to Customer or any other identifiable individual person or entity.
- 18.2. **"Authorized Users"** means Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement.
- 18.3. **"Customization Services"** means customization or development services beyond those described in the applicable Quote Form. Customization Services, if any, will be subject to a separate SOW between the parties.
- 18.4. **"Customer Data"** means electronic data and information submitted by Customer and its Authorized Users to the Subscription Services. Customer Data does not include Aggregate Data.
- 18.5. **"Customer Materials"** means all software and hardware (including any third-party hardware, software, information or materials supplied by Customer) provided or otherwise made available to Cavallo in connection with the Services. For the avoidance of doubt, Customer Materials shall not include Customer Data.
- 18.6. **"ERP Solution"** means the third-party enterprise resource planning solution identified in the Quote Form with which the Subscription Services interact. For the avoidance of doubt, the ERP Solution shall be considered Customer Materials.
- 18.7. **"Implementation Services"** means the implementation, setup, configuration, and integration services related to Customer's access to, and use of, the Subscription Services as further described in the Quote Form or subsequent change orders if necessary.
- 18.8. **"Quote Form"** means an ordering or quote document specifying the Services to be provided under this Agreement, including any addenda and supplements thereto.
- 18.9. **"Services"** means collectively the Subscription Services, Customization Services, and the Implementation Services.
- 18.10. **"Subscription Services"** means the software applications which are delivered to the Customer as a service over the Internet, together with any applicable documentation, and necessary programming and user interfaces that are ordered by Customer under a Quote Form. The Subscription Services are set forth in the applicable Quote Form.
- 18.11. **"Third-Party Materials"** means software, documents, data, content, specifications, products, or components that may be used in conjunction with the Services. Third-Party Materials are not proprietary to Cavallo.
- 18.12. **"Third-Party Services"** mean the any Web-based, mobile, offline, or other software application functionality that is provided by a third party and interoperates with the Subscription Services including but not limited to the integrations made available by Cavallo.