



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

## SUBSCRIPTION SOFTWARE LICENSE AGREEMENT

This Software License Agreement (this "Agreement") is entered into on the date indicated on an applicable 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." The Parties agree as follows:

### 1. LICENSE

- 1.1. License Grant. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, Cavallo hereby grants to Customer a limited, non-exclusive, non sublicensable, non-transferrable, worldwide license to use the Software and Documentation (defined in Section 20 below) for internal business purposes as set forth herein during the Term.
- 1.2. Quote Form. Each applicable Quote Form shall specify and further describe the applicable Software and Services (if any), user limitations, fees, term and other applicable terms and conditions.
- 1.3. Scope of License. Customer may install, use, and run one copy of the Software on Customer's network for use by up to such number of Authorized Users set forth on Quote Form on behalf of Customer.
- 1.4. License Restrictions. Except as this Agreement expressly permits, Customer shall not, and shall not permit any other person to:
  - (i) copy the Software, in whole or in part, except as necessary to install the Software for use in accordance with this license;
  - (ii) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Software;
  - (iii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software to any third party;
  - (iv) reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
  - (v) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or intellectual property rights, proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of the Software or Documentation;
  - (vi) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law;
  - (vii) use the Software for purposes of: (a) benchmarking or competitive analysis of the Software or (b) developing, using, or providing a competing software product or service;
  - (viii) use the Software in or in connection with the design, construction, maintenance, operation, or use of any hazardous environments, systems, or applications, any safety response systems or other safety critical applications, or any other use or application in which the use or failure of the Software could lead to personal injury or severe physical or property damage; or
  - (ix) use the Software or Documentation other than for Customer's internal business purposes or in

- any manner or for any purpose or application not expressly permitted by this Agreement
- (x) use the Software 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;
  - (xi) attempt to gain unauthorized access to the Software or its related systems or networks, including permitting direct or indirect access to or use of the Software in a way that circumvents a contractual usage limit;
  - (xii) frame or mirror any part of the Software other than framing on Customer's own intranets, or otherwise for its own internal business purposes; or
  - (xiii) use the Software in a manner that in Cavallo's judgment imminently threatens the security, integrity, or availability of the Software.

Violation of this Section 1.4 may result in Cavallo's immediate suspension of the Services and/or termination of the license granted in Section 1.1.

- 1.5. ERP Solution License. The Software is 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 Software) with such ERP Solutions. Customer is responsible for obtaining a valid license to the ERP Solution and ensuring that Customer's use of the Software is in compliance with such license.

## **2. DELIVERY AND ACTIVATION**

- 2.1. Delivery. Cavallo or its authorized reseller shall deliver one copy of the Software electronically, on tangible media, or by other means, in Cavallo's sole discretion, to Customer by the Effective Date.
- 2.2. Access Credentials. Within a reasonable time following the Effective Date, Cavallo shall provide Customer with the credentials necessary to access the Software ("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.
- 2.3. Maintenance Releases. During the Term, Cavallo shall deliver Maintenance Releases that Cavallo may, in its sole discretion, make generally available to its licensees. All Maintenance Releases are deemed Software. Customer will install all Maintenance Releases as soon as practicable after receipt.

## **3. SERVICES**

- 3.1. Customization Services. In the event Customer requests that Cavallo provide Customization Services, the Parties shall execute a statement of work ("SOW" or "Statement of Work") which shall govern the performance of such services by Cavallo. Such SOW shall be considered part of the entire agreement between the Parties.
- 3.2. 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, and (c) the cost efficiency or performance of the Services; or (ii) comply with applicable law.
- 3.3. Support. In the event Customer has engaged Cavallo to provide support services, Cavallo shall provide such support services in accordance with <https://support.cavallo.com/> as updated from time to time ("Support Services").
- 3.4. Implementation Services. In the event Customer has engaged Cavallo to provide Implementation Services, the Quote Form and subsequent change orders, if any, shall govern the performance of such services by Cavallo.

## **4. ACCESS AND AUTHORIZED USERS**

- 4.1. Authorized Users. Customer may allow such number of Authorized Users set forth on Quote Form to use the Software on behalf of Customer.
- 4.2. 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 Software, and notify Cavallo promptly of any such unauthorized access or use, (iv) use Software and Third-Party Materials only in accordance with this Agreement, Quote Forms 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 Software.
- 4.3. Usage Limits. The Software 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 Software promptly upon Cavallo's request, and pay any invoice for excess usage in accordance with Section 8 below.
- 4.4. 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 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.
- 4.5. 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 Software or for Cavallo to perform the Services, including modems, hardware, servers, software, operating systems, networking, web servers, etc.

## 5. THIRD PARTY SERVICES AND MATERIALS

- 5.1. General. In the event that Customer chooses to use Third-Party Services with the Software, 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 Software. Cavallo is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Third-Party Services.
- 5.2. Integrations. Certain of the Software 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 Software.
- 5.3. Third-Party Materials. The Software may enable Customer to access Third-Party Materials. Cavallo does not control and is not responsible for Third-Party Materials, which are provided on an "as-is" and "as available" basis without any warranty of any kind.

## 6. CONFIDENTIALITY

- 6.1. 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 and the Software, (ii) all non public information regarding features, functionality, and performance of the Services and the Software, (iii) the terms and conditions of this Agreement, including all pricing and related metrics, (iv) the source code of the Software, and (v) the

Documentation. Confidential Information of Customer includes Customer Data.

- 6.2. 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 it 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.
- 6.3. 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, and (iii) not use such Confidential Information for any purposes whatsoever other than the performance of, or as otherwise authorized by, this Agreement.
- 6.4. Compelled Disclosure. Notwithstanding Section 6.3, 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.
- 6.5. 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.

## 7. PROPRIETARY RIGHTS

- 7.1. Ownership of Software. Cavallo shall own and retain all right, title, and interest in and to the Software. To the extent Customer acquires any right, title, or interest therein, Customer hereby assigns all of its right, title, and interest in such Software to Cavallo.
- 7.2. 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.
- 7.3. Feedback. Customer grants to Cavallo a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its products or services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer or Authorized Users.
- 7.4. No Other Rights. No rights or licenses are granted except as expressly set forth herein.
- 7.5. U.S. Government Rights. If Customer is a branch or agency of the U.S. Government, then Customer acknowledges that the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Any technical data provided with such Software is commercial technical data as defined in 48 C.F.R. 12.211. Consistent with 48 C.F.R. 12.211 through 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, and 48 C.F.R. 252.227-7015, all U.S. Government end users acquire the Software with only those rights set forth in this Agreement.

## 8. FEES & PAYMENT

- 8.1. **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 additional fees incurred through Customer's use of the Software exceeding the usage limits specified on the applicable Quote Form.
- 8.2. **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").
- 8.3. **Invoicing and Payment.** Fees will be invoiced in advance unless otherwise stated in the relevant Quote Form. Fees are due 15 (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.
- 8.4. **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.
- 8.5. **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.
- 8.6. **Taxes.** Customer shall pay, and shall be liable for, all taxes relating to Cavallo's provision of the Services or Software hereunder. Cavallo shall pay, and shall be liable for, taxes based on its net income or capital.
- 8.7. **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.
- 8.8. **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 8, 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 8.8.

## 9. TERM AND TERMINATION

- 9.1. **Term.** This Agreement will remain in effect during the Term and shall automatically renew for successive periods of one (1) years thereafter ("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.
- 9.2. **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.
- 9.3. **Effect of Termination.** Upon termination of the Agreement: (i) each outstanding Quote Form shall continue to its conclusion unless terminated in accordance with Section 9.2, (ii) Cavallo immediately cease providing the Services, if any; (iii) all unpaid Expenses and all Fees will become immediately due

and payable; and (iv) all rights, licenses and authorizations granted to licensee hereunder will immediately terminate and Customer will immediately cease all use of and other activities with respect to the Software and Documentation.

- 9.4. Survival. Sections 4-7, 9.3, 9.4, 10-13 and 16-19 shall survive any termination or expiration of this Agreement. All other rights and obligations shall be of no further force or effect.

## 10. WARRANTY AND DISCLAIMER

- 10.1. 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.
- 10.2. Cavallo Warranties. Cavallo warrants that during the Term: (i) the Software will perform materially in accordance with the then current documentation; and (ii) Cavallo will perform the Services in a professional and workmanlike manner.
- 10.3. 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 and 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.
- 10.4. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CAVALLO DOES NOT WARRANT THAT ACCESS TO THE SOFTWARE 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 OR THE SOFTWARE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE AND 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 SOFTWARE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS". CAVALLO MAY, IN ITS SOLE DISCRETION, DISCONTINUE MAINTENANCE OF THE SOFTWARE.

## 11. INDEMNITY

- 11.1. 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 Software 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 Software: (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 Software is not strictly in accordance with this Agreement. If, due to a claim of infringement, portions or components of any Software 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 Software 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 Software, 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 Software. 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).

- 11.2. 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, or (ii) arising from Customer's use of the Services or the Software 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 or Software breaches any contract related to Third-Party Services or Third Party Materials; (v) arising out of a claim that Customer's modifications of the Software, or use of the Software not in accordance with this Agreement, infringes intellectual property rights of such third party; or (vi) 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.

## **12. 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 CAVALLO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS AND DISCLAIMERS SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **13. 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.

## **14. SECURITY**

Cavallo will maintain industry-standard administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of any Customer Data processed by Cavallo. 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 that Cavallo will process Customer Data which includes personal information (as defined in the DPA) subject to the CCPA (as defined in the DPA).

## **15. PUBLICITY**

Customer agrees that Cavallo may identify Customer as a customer of the Software 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.

## 16. 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.

## 17. 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.

## 18. 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.

## 19. 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 the 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.

## 20. DEFINITIONS

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

- 20.1. "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.
- 20.2. "Authorized Users" means Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Software under the rights granted to Customer pursuant to this Agreement.



- 20.3. "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 Statement of Work "" between the Parties.
- 20.4. "Customer Data" means electronic data and information submitted by Customer and its Authorized Users to the Software. Customer Data does not include Aggregate Data.
- 20.5. "Customer Materials" means all information, 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 include Customer Data.
- 20.6. "Documentation" means Cavallo's user manuals, handbooks, and installation guides relating to the Software that Cavallo provides or makes available to Customer that describe the functionality, components, features, or requirements of the Software, including any aspect of the installation, configuration, integration, operation, or use of the Software.
- 20.7. "ERP Solution" means the third-party enterprise resource planning solution identified in the Quote Form.
- 20.8. "Implementation Services" means the implementation, setup, configuration, and integration services related to Customer's access to, and use of, the Software as further described in the Quote Form.
- 20.9. "Maintenance Releases" means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Cavallo may provide to Customer from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software.
- 20.10. "Quote Form" means a quote document specifying the Software and Services to be provided under this Agreement, including any addenda and supplements thereto.
- 20.11. "Services" means collectively, the Customization Services, Implementation Services, and Support Services which Cavallo will provide Customer under an applicable Quote Form. For the avoidance of doubt, Services does not include Software.
- 20.12. "Software" means the executable, object code version of the software identified in the Quote Form, and any Maintenance Releases provided to Customer pursuant to this Agreement.
- 20.13. "Term" means the period commencing on the Effective Date and continuing until terminated in accordance with Section 9.
- 20.14. "Third-Party Materials" means software, documents, data, content, specifications, products, or components that may be used in conjunction with the Software. Third-Party Materials are not proprietary to Cavallo.
- 20.15. "Third-Party Services" mean the any Web-based, mobile, offline, or other software application functionality that is provided by Customer or a third party and interoperates with the Software including but not limited to the ERP Solution.