

# Terms of Service

The following Terms of Service (“Terms” or “Agreement”) constitute a legal agreement between you or the entity or company that you represent (“Customer” or “You”) and Best Software, Inc. (“Best Software”), which governs Customer’s use of the Services. The Services can be accessed (a) as a free-to-the-user service having the specifications outlined in the respective Plan (the “Free Version”) and (b) as a paid service having the specifications outlined in the respective Plan, for which Customer pays a monthly or yearly subscription fee (the “Paid Version”). Customer’s use of the Services is subject to (a) the terms and conditions set forth below and (b) CheetahPro privacy policy, found at <http://cheetah.pro/privacy> and incorporated herein by reference, so please take the time to fully understand how these Terms and CheetahPro privacy policy govern Customer’s relationship with CheetahPro and Customer’s use of the Services. The Services are available only to individuals who are at least 18 years old. If Customer is an individual, Customer represents and warrants that Customer is at least 18 years old. Each business or individual may have only 1 Free Version account.

Customer acknowledges that the Free Version is provided at no charge, and therefore, the terms that govern use of the Free Version are different, in part, from the terms that govern use of the Paid Version. The specific provisions that relate only to the Paid Version are set forth in Sections 6 (Paid Version Payments), 7.1 (Paid Version Limited Warranty), 8.1 (Paid Version Limitation of Liability), and 9.2 (Termination of the Paid Version), and the specific provision that relates only to the Free Version is set forth in Section 8.2 (Free Version Limitation of Liability). All other non-specified terms shall apply to both the Paid Version and Free Version. If Customer upgrades from the Free Version to a Paid Version, Customer acknowledges and agrees that the terms that govern the use of the Paid Version shall automatically apply to Customer upon such upgrade.

**CUSTOMER’S RIGHT TO USE THE SERVICES IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF THESE TERMS. BY CLICKING ON THE "ACCEPT" BUTTON**

AND/OR USING THE SERVICES, YOU ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCESSING THE SERVICES ON BEHALF OF YOUR EMPLOYER OR ANOTHER ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO AGREE TO THESE TERMS ON ITS BEHALF. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

## 1. Definitions

**“Confidential Information”** means all trade secrets, know-how, inventions, developments, software and other financial, business or technical information disclosed by or for a party in relation to this Agreement, but not including any information the receiving party can demonstrate is (a) already rightfully known by it without restriction, (b) rightfully furnished to it by a third party without restriction and without breach of any obligation to the disclosing party, (c) generally available to the public without breach of this Agreement or (d) independently developed by it without reliance on the Confidential Information of the disclosing party. All pricing information is CheetahPro Confidential Information.

**“Content”** means all text, software, scripts, graphics, photos, sounds, music, videos, audiovisual combinations, interactive features and other materials that may be viewed on, accessed through, or contributed to the Services.

**“Customer Data”** means all Customer registration information and other transaction data collected, processed and retained by CheetahPro in connection with providing the Services, including without limitation content submitted by Customer Managers and Contacts.

**“Plan”** means CheetahPro free or any paid plans, as applicable and as further described on CheetahPro website available at: <http://cheetah.pro/pricing>.

**“Services”** means the services hosted by CheetahPro and provided to Customer under this Agreement.

**“Systems”** means modems, servers, software, network and communications equipment and ancillary services that are owned, controlled or procured by Customer.

**“Updates”** means any patch, revision or update to the Services delivered by CheetahPro.

## 2. Services

### 2.1 Services.

Subject to all terms and conditions of this Agreement, CheetahPro will use commercially reasonable efforts to provide the Services. CheetahPro may provide the Services to Customer directly, or indirectly using contractors or other third party vendors or service providers. Use of the Services by Customer shall not unreasonably interfere with use of the Services by other CheetahPro customers. All Plans have an associated monthly bandwidth limit as specified on the pricing page of the CheetahPro website (<http://cheetah.pro/pricing>). Monthly limits are calculated based on calendar months and are based on the date of account activation. Once an account reaches its monthly bandwidth limit You will be notified and given the option of (a) upgrading to a plan with a higher bandwidth limit, or (b) paying for extra bandwidth at the then current overage rate for your account (unless otherwise previously mutually agreed upon).

### 2.2 Users.

Customer's use of the Services is limited to the number of administrative user (“Manager”) seats specified in the Customer's Plan. Each Manager may appoint the

number of end users (“Contacts”) specified in the Plan and determine what feature permissions to grant to such Contacts, provided that the aggregate use of the Services by all Customer Managers and all Customer appointed Contacts may not exceed the maximum limits as specified in the Plan. Customer shall be responsible for any breaches of this Agreement by its Managers and Contacts.

### 2.3 Security Measures.

Customer, Customer Managers and Customer appointed Contacts may access the Services as CheetahPro instructs through a combination of one or more user names and passwords.

### 2.4 Passwords.

Customer shall take full responsibility and liability for the security of each of its user names and passwords (including, without limitation, those assigned to its Managers and Contacts), and shall be solely responsible for all use of the Services through such user names or passwords. Customer agrees to immediately notify CheetahPro of any unauthorized use of the Services or any other breach of security known to Customer.

### 2.5 Prohibited Uses.

As a condition of use of the Services, You promise not to use the Services for any purpose that is prohibited by these Terms.

By way of example, and not as a limitation, You shall not (and shall not permit any Manager or Contact to) upload, download, post, submit or otherwise distribute or facilitate distribution of any Content on or through the Services, that:

- infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity;
- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, vulgar, pornographic, profane, contains or depicts nudity, contains or depicts sexual

activity, or is otherwise inappropriate, as determined by CheetahPro in its sole discretion; or

- contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of CheetahPro or any third party.

Additionally, You shall not (directly or indirectly) or permit any third party to: (a) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services; (b) use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, “scrape”, “data mine” or in any way gather information, content or other materials from Services or reproduce or circumvent the navigational structure or presentation of Services; (c) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Services, except to the limited extent applicable laws specifically prohibit such restriction, (d) use any of CheetahPro Confidential Information to create any software, documentation or service that is similar to the Services or any documentation provided in connection therewith; (e) modify, translate, or otherwise create derivative works of any part of the Services, (f) copy, license, sublicense, sell, resell, encumber, rent, lease, time-share, distribute, transfer or otherwise use or exploit or make available the Services in any service bureau arrangement or otherwise for the benefit of any third party without the prior written consent of CheetahPro. You shall abide by all applicable local, state, national and international laws and regulations, including, without limitation, any export control laws or regulations of the United States of America or any other relevant jurisdiction. Finally, you must be a human. Access to the Services by “bots” or other automated methods is not permitted.

## 2.6 Changes.

CheetahPro reserves the right to modify or discontinue any Services or Plan (in whole or in part) at any time by giving at least 60 days’ notice to Customer.

## 2.7 Limitations.

CheetahPro will not be responsible or liable for any failure in the Services resulting from or attributable to (a) Customer's Systems, (b) network, telecommunications or other service or equipment failures outside of CheetahPro facilities, (c) Customer's or third party's products, services, negligence, acts or omissions, (d) any force majeure or cause beyond CheetahPro reasonable control, (e) scheduled maintenance or (f) unauthorized access, breach of firewalls or other hacking by third parties.

## 2.8 Systems.

Customer shall obtain and operate all Systems needed to connect to, access or otherwise use the Services, and provide all corresponding backup, recovery and maintenance services. Customer shall ensure that all Systems are compatible with the Services. Customer shall maintain the integrity and security of its Systems (physical, electronic and otherwise).

# 3. Support and Maintenance

## 3.1 Support.

CheetahPro will use commercially reasonable efforts to provide Customer with support and maintenance services for the Services in accordance with its standard practices (as amended from time to time). Customer agrees that CheetahPro will have the right to charge in accordance with its then current policies for any support services resulting from problems, errors or inquiries relating to Systems or any other network, equipment, service or software not owned, controlled or procured by CheetahPro.

## 3.2 Updates.

CheetahPro shall have no obligation to provide Updates, except that CheetahPro will provide Customer with any Update that it makes generally available without charge to its similar customers.

## 4. Proprietary Rights

### 4.1 Customer Data.

As between the parties, Customer shall own all Customer Data. CheetahPro shall not disclose to third parties or use any Customer Data except as reasonably necessary to provide the Services or to comply with any legal, regulatory or similar requirement or investigation. Notwithstanding the foregoing, CheetahPro may use Customer Data, as combined with other CheetahPro customers' data, to improve and/or market the Services. Customer hereby grants CheetahPro a nonexclusive and royalty-free right and license to use the Customer Data solely for the purposes described above. Customer agrees to indemnify and hold CheetahPro harmless from all claims, damages, liabilities, losses, costs and expenses (including attorneys' fees) arising out of any use or disclosure of Customer Data in connection with the provision of Services or to comply with any legal, regulatory or similar requirement or investigation. Customer agrees to create archival copies or backup copies of all Customer Data.

### 4.2 No Implied License.

Except for the limited rights and licenses expressly granted hereunder, no other license is granted, no other use is permitted and CheetahPro (and its licensors) shall retain all right, title and interest in and to the Services (including all intellectual property and proprietary rights embodied therein). Customer shall not take any action inconsistent with such rights.

### 4.3 Trademark.

Customer shall not alter, obscure or remove any printed or on-screen trademark, patent legend or other proprietary or legal notice.

## 5. Confidentiality

## 5.1 Confidentiality.

Except for the specific rights granted by this Agreement, the receiving party shall not use or disclose any of the other's Confidential Information without its written consent, and shall use reasonable care to protect the other's Confidential Information, including ensuring that its employees and contractors with access (a) have a need to know for the purposes of this Agreement and (b) are bound by obligations of confidentiality at least as protective as those provided herein. Each party shall be responsible for any breach of confidentiality by its employees and contractors. Promptly after any termination of this Agreement (or at the disclosing party's request at any other time), the receiving party shall return all of the other's tangible Confidential Information, permanently erase all Confidential Information from any storage media and destroy all information, records and materials developed therefrom. Notwithstanding the foregoing, CheetahPro may retain and use Customer Data, as combined with other CheetahPro customers' data, solely to improve and/or market the Services, even after termination of the provision of Services to You. Each party may disclose only the general nature, but not the specific terms, of this Agreement without the prior consent of the other party; provided, either party may provide a copy of this Agreement or otherwise disclose its terms in connection with any financing transaction or due diligence inquiry.

## 5.2 Compelled Disclosure.

Nothing herein shall prevent a receiving party from disclosing any Confidential Information as necessary pursuant to any court order, lawful requirement of a governmental agency or when disclosure is required by operation of law (including disclosures pursuant to any applicable securities laws and regulations); provided, that prior to any such disclosure, the receiving party shall use reasonable efforts to (a) promptly notify the disclosing party in writing of such requirement to disclose and (b) cooperate with the disclosing party in protecting against or minimizing any such disclosure or obtaining a protective order.

## 6. Paid Version Payments



## 6.1 Fees.

Customer agrees to pay CheetahPro the fees, in the amounts and at the times specified in the selected Plan.

## 6.2 Credit Card Information.

In order to set up an account with CheetahPro, Customer must provide CheetahPro with accurate and complete billing information including legal name, address, telephone number, and a valid credit card. Customer's card will never be charged without its authorization. By submitting such credit card information, Customer gives CheetahPro permission to charge all fees incurred through its account to the designated credit card. CheetahPro reserves the right to terminate this Agreement in accordance with Section 9.2 hereto if Customer does not provide a valid credit card for the payment of fees hereunder.

## 6.3 Payment Terms.

The Services are billed in advance on a monthly or yearly basis, depending upon which payment plan is chosen by Customer. CheetahPro will not provide refunds or credits in the case of cancellations, downgrades, or when there are unused portions of the Services on an open account. For any Services upgrade, Customer's credit card will automatically be charged the new rate for the next billing cycle (i.e., the next month or year), and for those Customers on the yearly payment plan, the additional fee for the Services upgrade for the remainder of the current year will also automatically be charged to the Customer's credit card.

## 6.4 Taxes.

All payments are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value added taxes), and Customer agrees to bear and be responsible for the payment of all such charges, excluding taxes based upon CheetahPro net income. All amounts due hereunder shall be grossed-up for any withholding taxes imposed by any foreign government.

## 7. Limited Warranty and Disclaimers

### 7.1 Paid Version Limited Warranty.

CheetahPro warrants that it will provide the Paid Version in a manner consistent with general industry standards reasonably applicable to the provision thereof.

Notwithstanding the foregoing, the Paid Version may be temporarily unavailable, for example, when deemed reasonably necessary or prudent by CheetahPro to repair, maintain or upgrade the Paid Version or for causes beyond CheetahPro reasonable control. CheetahPro will notify Customer at least 48 hours in advance of any known planned Paid Version-related outages.

### 7.2 Disclaimers.

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. CHEETAHPRO DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, CHEETAHPRO HEREBY DISCLAIMS (FOR ITSELF AND ITS SUPPLIERS) ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

## 8. Limitation of Liability

### 8.1 Paid Version Limitation of Liability.

EXCEPT FOR DEATH, BODILY INJURY OR FRAUD, AMOUNTS OWED TO THIRD PARTIES PURSUANT TO THE INDEMNIFICATION OBLIGATIONS HEREIN, ANY BREACHES OF SECTION 2.5 (PROHIBITED USES) OR SECTION 6.1 (FEES), OR ANY EXCLUSION OR LIMITATION OF LIABILITY THAT IS VOID, PROHIBITED OR UNENFORCEABLE BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY (OR ITS SUPPLIERS) BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL (INCLUDING ANY ERROR OR DAMAGE ATTRIBUTABLE TO ANY NETWORK OR SYSTEM), (B) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (C) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (D) DIRECT DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS PAID TO CHEETAHPRO HEREUNDER WITH RESPECT TO THE SERVICES THAT GAVE RISE TO THE CLAIM DURING THE TWELVE-MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

## 8.2 Free Version Limitation of Liability.

EXCEPT FOR DEATH, BODILY INJURY OR FRAUD, OR TO THE EXTENT THAT ANY EXCLUSION OR LIMITATION OF ITS LIABILITY IS VOID, PROHIBITED OR UNENFORCEABLE BY APPLICABLE LAW, IN NO EVENT SHALL CHEETAHPRO BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL (INCLUDING ANY ERROR OR

DAMAGE ATTRIBUTABLE TO ANY NETWORK OR SYSTEM), (B) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (C) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (D) DIRECT DAMAGES IN EXCESS OF \$100.00 IN THE AGGREGATE, EVEN IF CHEETAHPRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

## 9. Term and Termination

### 9.1 Term.

This Agreement shall commence on the date that this Agreement is accepted. With respect to a Paid Version user, this Agreement shall continue in effect for the initial term specified in the Plan (or if no such term is specified, then for 1 month), unless this Agreement is terminated earlier as permitted in Section 9.2. At the end of such initial term, the Agreement will be extended automatically for additional terms of 1 month each, unless this Agreement is terminated earlier as permitted in this Section 9.1 or in Section 9.2. Either party may elect not to have this Agreement extend automatically by giving written notice of such election to the other party at least 1 month prior to the end of the then current initial or renewal term. Customer is solely responsible for properly notifying CheetahPro of its election not to have this Agreement automatically renew by following the cancellation directions available in Customer's CheetahPro account. With respect to a Free Version user, this Agreement shall continue in effect until either party terminates this Agreement upon at least 5 business days' written notice to the other party.

### 9.2 Termination of the Paid Version.

With respect to the Paid Version, this Agreement may be earlier terminated by either party, in whole or in part, (a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within 10 days (5 days in the case of non-payment) after receiving written notice of such breach from the non-breaching party, or (b) immediately upon written notice, if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other party and is not dismissed within 90 days, or the other party becomes insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course.

### 9.3 Effects of Termination.

Upon any expiration or termination of this Agreement, all rights, obligations and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) and remedies for breach of this Agreement shall survive, (b) CheetahPro may, but shall not be obligated to, delete archived Customer Data (provided, Paid Version customers, upon written request received by CheetahPro within 30 days after the effective date of termination of their accounts, shall be given a copy of their archived Customer Data in the currently existing archived format) and (c) the provisions of Sections 4 (Proprietary Rights), 5 (Confidentiality), 6 (Payments) (only with respect to amounts incurred prior to the effective date of termination), 7.2 (Disclaimers), 8 (Limitation of Liability), 11 (General Provisions) and this Section 9.3 (Effects of Termination) shall survive. For the avoidance of doubt, CheetahPro is under no obligation to provide to a Free Version customer a copy of such customer's archived Customer Data upon any expiration or termination of this Agreement.

## 10. Digital Millennium Copyright Act

## 10.1 General Policy.

CheetahPro has adopted the following general policy toward copyright infringement in accordance with the Digital Millennium Copyright Act (<http://lcweb.loc.gov/copyright/legislation/dmca.pdf>). The address of Company's Designated Agent to Receive Notification of Claimed Infringement ("Designated Agent") is listed at the end of this Section. It is CheetahPro policy to (a) block access to or remove Content that it believes in good faith to be copyrighted material that has been illegally copied and distributed by any of its affiliates, content providers, or users; and (b) remove and discontinue service to repeat offenders.

## 10.2 Procedure for Reporting Copyright Infringement.

If You believe that Content residing on or accessible through the CheetahPro web site or Services infringes a copyright, please send a notice of copyright infringement containing the following information to the Designated Agent listed below:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that has been allegedly infringed;
2. Identification of works or materials being infringed;
3. Identification of the Content that is claimed to be infringing including information regarding the location of the Content that the copyright owner seeks to have removed, with sufficient detail so that CheetahPro is capable of finding and verifying its existence;
4. Contact information about the notifier including address, telephone number and, if available, e-mail address;
5. A statement that the notifier has a good faith belief that the Content is not authorized by the copyright owner, its agent, or the law; and
6. A statement made under penalty of perjury that the information provided is accurate and the notifying party is authorized to make the complaint on behalf of the copyright owner.

## 10.3 Once Proper Bona Fide Infringement Notification is Received by the Designated Agent.

It is CheetahPro policy:

1. to remove or disable access to the infringing Content;
2. to notify the Content provider or user that it has removed or disabled access to the Content; and
3. that repeat offenders will have the infringing Content removed from the system and that CheetahPro will terminate such content provider's or user's access to the Services.

#### 10.4 Procedure to Supply a Counter-Notice to the Designated Agent.

If the Content provider, or user believes that the Content that was removed or to which access was disabled is either not infringing, or the Content provider or user believes that it has the right to post and use such Content from the copyright owner, the copyright owner's agent, or pursuant to the law, the Content provider or user must send a counter-notice containing the following information to the Designated Agent listed below:

1. A physical or electronic signature of the Content provider or user;
2. Identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled;
3. A statement that the Content provider or user has a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and
4. Content provider's or user's name, address, telephone number, and, if available, e-mail address and a statement that such person or entity consents to the jurisdiction of the Federal Court for the judicial district in which the Content provider's or user's address is located, or if the Content provider's or user's address is located outside the United States, for any judicial district in which CheetahPro is located, and that such person or entity will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Designated Agent, CheetahPro may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed Content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the Content provider or user, the removed Content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at CheetahPro discretion.

## 11. General Provisions

### 11.1 Entire Agreement.

This Agreement, together with CheetahPro privacy policy and the applicable Plan(s), constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties about the subject matter of this Agreement. In the event of any conflict or inconsistency between the Agreement and the Plan, the terms and conditions in the Plan will prevail and be controlling, and the terms and conditions in the Agreement will prevail and be controlling over terms set forth in Customer's purchase order (or other similar document). Customer's purchase order is only effective as its unqualified commitment to access and pay for the Services upon the terms (and only the terms) set forth herein. No waiver, consent or, except as expressly provided herein, modification of these Terms shall bind either party unless in writing and signed by the party against which enforcement is sought. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights. If any provision of this Agreement is determined to be illegal or unenforceable, 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. If this Agreement is required to be registered with any governmental authority, Customer shall cause such registration to be made and shall bear any expense or tax payable in respect thereof.

### 11.2 Governing Law.



This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, USA, without regard to its conflicts of law provisions. Neither the United Nations Convention on Contracts for the International Sale of Goods nor any enactment of the Uniform Computer Information Transactions Act shall apply to this Agreement. The sole jurisdiction and venue for actions related to this Agreement will be the state or federal courts located in Massachusetts having jurisdiction over CheetahPro offices, and both parties consent to the jurisdiction of such courts with respect to any such action. In any action or proceeding to enforce or interpret this Agreement, the prevailing party will be entitled to recover from the other party its costs and expenses (including reasonable attorneys' fees) incurred in connection with such action or proceeding and enforcing any judgment or order obtained.

### 11.3 Remedies.

Except as specifically provided otherwise, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of Section 5, the non-breaching party may suffer irreparable damage for which it may have no adequate remedy at law.

Accordingly, the non-breaching party shall be entitled to seek injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.

### 11.4 Notices.

Except as otherwise provided in Sections 9.1 and 10, any notice or communication hereunder shall be in writing and either personally delivered or sent recognized express delivery courier or certified or registered mail, prepaid and return receipt requested, addressed to the other party at its address specified in the Plan, or at such other address designated in a subsequent notice. All notices shall be in English, effective upon receipt.

### 11.5 Assignment.

This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent (which shall not be unreasonably withheld). However, without consent, either party may assign this Agreement to any successor to all or substantially all of its business which concerns this Agreement (whether by sale of assets or equity, merger, consolidation or otherwise). Any attempted transfer in violation hereof will be void and of no effect. This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

#### 11.6 Independent Contractors.

The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

#### 11.7 Publicity.

Neither party will make public announcements or issue press releases relating to this Agreement or the terms hereof without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.