

# Cavanti Terms of Service and Subscription Agreement

The Terms of Service and Subscription Agreement (the 'Agreement') governs the acquisition and use of Cavanti's products and services (the 'service') by our customers. If you register for a free trial of our products or services, this agreement shall also govern that free trial.

By accepting this agreement, either by clicking on an 'I agree' check box, or by executing a procedure that references this document (for example a login) or by using the Service, you are agreeing to comply with and be subject to the terms of the agreement. We may update the agreement from time to time, the updated agreement shall be effective when posted.

You may not access the Services if You are Our direct competitor or potential competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

The terms of service agreement was last updated on May 9<sup>th</sup> 2018.

## 14. Definitions.

1. **"Affiliate"** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
2. **"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
3. **"Purchased Services"** means Services that You or Your Affiliates purchase from Cavanti, including but not limited to a Subscription or slush credit, as distinguished from those provided pursuant to a free trial.
4. **"Services"** means the products and services that are ordered by You under a free trial or Purchased Service, and made available by Us.
5. **"Users"** means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by Us.
6. **"We," "Us," "Our"** or "Cavanti" means Cavanti Corporation, with a mailing address at 305 Vineyard Town Center #170, Morgan Hill, California, 95037.
7. **"You"** or **"Your"** means yourself, the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.
8. **"Your Data"** means all electronic data or information submitted by You to the Purchased Services, including but limited to information, files, and images
9. **"Intellectual Property Rights"** means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.
10. **"Subscription Period"** means the amount of time between subscription payments. For monthly subscriptions, the first subscription period begins on the day you purchase the subscription, and renews automatically on the anniversary of that date every month until cancelled.

## 1. Free Trial

- 1.1. If You register for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered or are registering to use the applicable Service or (b) the start date of any Purchased Services ordered by You. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.
- 1.2. Any data you enter or customizations you make to the services during your free trial will be permanently lost after 90 days from the conclusion of the free trial unless you purchase a subscription to the services any time prior to the expiration of the 90 data retention window.
- 1.3. Notwithstanding section 9 (warranties and disclaimers), during the free trial the services are provided "as-is" without any warranty.

## 2. Purchased services

- 2.1. **Provision of Purchased Services.** We shall make the Purchased Services available to You pursuant to this Agreement during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

- 2.2. User Subscriptions.** Unless otherwise specified, Services are purchased as User subscriptions and are for the User and their designated Users only. Services cannot be shared or used by more than one person.

### 3. Use of The Services

**3.1. Our Responsibilities.** We shall:

- i. Make reasonable efforts to ensure the Purchased Services are available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall make every attempt to give at least 8 hours' notice and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), acts of third parties who provide infrastructure or other services to Us, third party website outages, Internet service provider failures or delays, or denial of service attacks.
- ii. Provide the Purchased Services only in accordance with applicable laws and government regulations.

**3.2. Our Protection of Your Data.** We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law or as expressly permitted by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

**3.3. Your Responsibilities.** You shall:

- i. be responsible for Users' compliance with this Agreement,
- ii. be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data,
- iii. use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use,
- iv. use the Services only in accordance with the spirit of the intended service, and applicable laws and government regulations. You shall not:
  - a. make the Services available to anyone other than Users,
  - b. sell, resell, rent or lease the Services,
  - c. use the 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,
  - d. use the Services to store or transmit Malicious Code,
  - e. interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or
  - f. attempt to gain unauthorized access to the Services or their related systems or networks.
- v. be responsible for determining that the Services are suitable and appropriate for your business requirements, and the requirements set out by your local, state or federal laws regarding record keeping, data retention and privacy.
- vi. ensure that You and your Users employ the Services in a manner consistent with legal requirements for data storage and retention.

**3.4. Usage Limitations.** Services may be subject to other limitations, such as but not limited to, limits on disk storage space or amount of email traffic. The Services provide real-time information to enable You to monitor Your compliance with such limitations.

**3.5. Intended for Animal Medical Records.** The Services are intended for data and information associated with animal records only. The services are not intended for use with information or data for human medical records. Cavanti is not certified with HIPPA or any other legal or ethical regulation with regard to the storage and processing of sensitive human information or medical records.

### 4. Support

- 4.1.** Support shall be provided to the Users by the method we deem most appropriate to the issue, including but limited to email or on the website, for the duration of a free trial or for the Purchased Services.

### 5. Knowledge Base

**5.1.** You may use the Knowledge Base subject to the following:

- i. The Knowledge Base or Forum may be used solely for your personal, informational, noncommercial purposes;
- ii. Content provided on or through the Knowledge Base or Forum may not be redistributed; and (c) personal data about other users may not be stored or collected except where expressly authorized by Cavanti.

## 6. Fees and Payment for Purchased Services

- 6.1. Fees.** You shall pay all fees associated with any Purchased Service You select. Except as otherwise specified,
- i. Fees are based on the package purchased and not actual usage. With the exception of the slush fund, any unused sessions are not redeemable, and do not carry forward to the next period.
  - ii. Payment obligations are non-cancelable and fees paid are non-refundable. User subscription fees are based on monthly periods that begin on the subscription start date and are renewable each monthly anniversary thereof.
- 6.2. Invoicing and Payment.** You will provide Us with valid and updated credit card information. By providing credit card information to Us, You authorize Us to charge such credit card for all Purchased Services for the initial Subscription Period and any renewal subscription term(s) if applicable. Such charges shall be made in advance of each Subscription Period.
- 6.3. Suspension of Service.** If any amounts owed by You for Our services are overdue, We may, without limiting Our other rights and remedies, suspend Our services to You until such amounts are paid in full. We will give You 5 days' prior notice that Your account is overdue, in accordance with Section 12.3 (Manner of Giving Notice), before suspending services to You.
- 6.4. Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature. You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 7. Proprietary Rights

- 7.1. Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 7.2. Restrictions.** You shall not
- i. permit any third party to access the Services except as permitted herein,
  - ii. create derivative works based on the Services except as authorized herein,
  - iii. copy, frame or mirror any part or content of the Services,
  - iv. reverse engineer the Services, or
  - v. access the Services in order to build a competitive product or service, or copy any features, functions or graphics, or other collateral of the Services.
- 7.3. Your Data.** Subject to the limited rights granted by You, We shall acquire no right, title or interest to your data under this agreement, including any intellectual property rights.
- 7.4. Equinology:** Equinology® session forms are provided for the exclusive use of Equinology Body Worker Certification Graduates (EEBW) and EEBW Externship students. All images contained in the electronic Equinology session forms are copyrighted and owned by Debranne Pattillo of Equinology. Permission for reproduction is only allowed to EEBWs if accompanied with this statement.
- 7.5. Suggestions.** We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You relating to the operation of the Services.

## 8. Confidentiality

- 8.1. Definition of Confidential Information.** "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that:
- i. is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,
  - ii. was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,
  - iii. is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 8.2. Protection of Confidential Information.** The Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement. Except as otherwise authorized by the Disclosing Party in writing, access to Confidential Information of the Disclosing Party is limited to those of its and its Affiliates'

employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party.

- 8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 9. Warranties and Disclaimers

- 9.1. Warranties.** Both parties warrant that they have validly entered into this Agreement and have the legal power to do so
- 9.2. Disclaimer.** Except as expressly provided herein, neither party makes any warranties of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including but not limited to
- i. Any warranties of merchantability or fitness for a particular Purpose or Requirement, to the maximum extent permitted by applicable law.
  - ii. Non-infringement with respect to the site and all content provided on or through the site.
  - iii. The site will be available on an uninterrupted, timely, secure, or error-free basis;
  - iv. The results that may be obtained from the use of the site or any content provided on or through the site will be accurate or reliable;
- 9.3. Pre-Release Services.** From time to time We may invite You to try, at no charge, Our products or services that are not generally available to Our customers. You may accept or decline any such trial in Your sole discretion. Pre-Release Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Pre-Release Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. Pre-Release services are provided "as is" with no express or implied warranty, and We may discontinue Pre Release Services at any time at our sole discretion and may never make them generally available. In the event that the product or service under evaluation should become a commercial product, every effort shall be made to carry forward Data entered by the Beta Tester during the evaluation period into the commercial product if required.

## 10. Indemnification

- 10.1.** You will indemnify, defend, and hold harmless Cavanti, its employees, agents or other partners of Cavanti, from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising from Your use of the Services provided by Us, Your Data, or any activity in violation of the Agreement. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that:
- i. any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and
  - ii. the other party may join in the defense with its own counsel at its own expense.

## 11. Limitation of Liability.

- 11.1. Limitation on Indirect Liability.** Neither party will be liable under this agreement for lost revenues or indirect, special, incidental, consequential, exemplary, or punitive damages, even if the party knew or should have known that such damages were possible and even if direct damages do not satisfy a remedy.
- 11.2. Limitation on Amount of Liability.** Neither party may be held liable under this agreement for more than one thousand dollars (\$1000 USD).
- 11.3. Exceptions to Limitations.** These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations.

## 12. Term and Termination

- 12.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all Services granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

**12.2. Term of Purchased User Subscriptions.** Services purchased by You commence on the date of purchase and continue for the Subscription Period. Except as otherwise specified, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription unless either party gives the other notice of non-renewal before the end of the relevant Subscription Period. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 14 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

### 12.3. Termination

- i. **By You.** You may discontinue use of the Service at any time by emailing us or contacting us through our support channel. Once notification is received we will discontinue access to your account, effective from the beginning of the next Subscription Period. You will retain access for the remainder of the current Subscription Period. We will make every effort to process termination requests in a timely manner, but we make no guarantee that the termination request will take effect in the current subscription period if that period is due to end in 5 days or less. In this case the termination request may take effect from the end of the next paid subscription period.
- ii. **By Us.** We may at any time and for any reason terminate this Agreement and/or terminate the provision of all or any portion of the Service. Notwithstanding the foregoing, We will provide at least thirty (30) days' notice to You prior to terminating or suspending the Service; provided that the Service may be terminated immediately if:
  - a. You have breached this Agreement or
  - b. We reasonably determine that it is commercially impractical to continue providing the Service in light of applicable laws.
- iii. **Effects of Termination.** If this Agreement terminates, then:
  - a. the rights granted by one party to the other will cease immediately (except as set forth in this Section);
  - b. We will provide You access to, and the ability to export, Your Data until the end of the current paid subscription period.
  - c. after a period of 90 days have elapsed from the end of the last paid subscription period, We will permanently delete Your Data. You may re-subscribe to the service at any time during this 90 period if such service is available.
- iv. **Surviving Provisions.** Section 6 (Fees and Payment for Purchased Services), 7 (Proprietary Rights), 8 (Confidentiality), 9 (Warranty and Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), 12 (Termination), and 13 (General Provisions) shall survive any termination or expiration of this Agreement.
- v. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the business day of electronic notification. Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

## 13. General Provisions

- 13.1. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 13.2. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, nor fiduciary or employment relationship between the parties.
- 13.3. Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.
- 13.4. Assignment.** Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an Affiliate, but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.
- 13.5. Severability.** If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.
- 13.6. Entire Agreement.** This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms located at a URL and referenced in this Agreement are hereby incorporated by this reference.
- 13.7. Interpretation of Conflicting Terms.** If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Agreement, and the terms located at any URL.
- 13.8. Change of Control.** Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).

**13.9. Governing Law.** This Agreement is governed by California law, excluding that state's choice of law rules. For any dispute arising out of or relating to this agreement, the parties consent to personal jurisdiction in, and the exclusive venue of, the courts in Santa Clara county, California, United States of America