

## Terms of Service

Welcome to [www.caperno.com](http://www.caperno.com). These Terms of Service contain the terms and conditions that govern all use of our Platform (as defined below) and Services (as defined below) and all content, services and/or products available on or through the Platform (collectively, the “Caperno Services”).

The Caperno Services are offered to you subject to your acceptance, without modification (other than Special Terms (as defined below) agreed by the parties pursuant to these Terms of Service), of all of the terms and conditions contained herein and all other operating rules, policies (including, without limitation, our Privacy Policy at [www.caperno.com/privacy](http://www.caperno.com/privacy)), the Guidelines (as defined below) and any future modifications thereof, and procedures that may be published from time to time on the Platform or made available to you on or through the Caperno Services (collectively, the “Terms”). When accepted by you (as defined below), these Terms form a legally binding contract between you and Supplier (as defined below). If you are entering into these Terms on behalf of an entity, such as your employer or the company you work for, you represent that you have the legal authority to bind that entity.

PLEASE READ THESE TERMS CAREFULLY. BY REGISTERING FOR, ACCESSING, BROWSING, AND/OR OTHERWISE USING THE CAPERNO SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, DO NOT ACCESS, BROWSE OR OTHERWISE USE THE PLATFORM OR THE CAPERNO SERVICES.

Supplier may, in its sole discretion, elect to suspend or terminate access to, or use of the Caperno Services to anyone who violates these Terms.

The original language of these Terms is English. Supplier may make available translations for convenience. In case of conflicts between the original English version and any translation, the English version shall prevail.

### 1. Definitions

#### Definitions

##### Account

the primary means for accessing and using the Caperno Services, subject to payment of a Fee designated in the selected Plan;

##### Additional Terms

Provisions applicable to the Client’s use of a particular Feature as indicated by the Supplier in relevant areas of Caperno Services;

##### Authorization

the set of rights and privileges on the Web Site assigned to a User by a Client;

##### Client

a natural or legal person who has accepted these Terms with the Supplier;

##### Client Data

Files, documents, and any other digital data and information, which is subjected to the Caperno Services or otherwise inserted to the System by the Client.

##### Content

any data and information available through Caperno Services or contained within the structure of the System, articles, documents, brochures, presentations, pictures, images, audiovisual works, videos, other informational materials and any comments;

##### Feature

A function or set of functions providing a particular capability within Caperno Services as determined by the Supplier;

##### Fee

regular payment for using the activated Account;

##### Files

documents of any kind that are inserted to the System by the Client, and usually associated with a particular Person;

**Guidelines**

additional guidelines or rules applicable to specific Features, applications, products, or services which may be posted from time to time on the Platform or otherwise made available on or through the Caperno Services;

**Plan**

various criteria related to the use and functionality of the Caperno Services and on which the Fee is based;

**Platform**

the Caperno software application;

**Special Terms**

any particulars, specifications and conditions by which the parties have agreed to deviate from these Terms;

**Supplier**

as the context requires, Caperno, LLC;

**System**

the integrated cloud computing solution for providing the Caperno Services, including applications, software, hardware, data bases, interfaces, associated media, documentation, updates, new releases and other components or materials provided therewith;

**User**

a natural person granted with the Authorization to use the Account on behalf of a Client;

**Web Site**

the compilation of all web documents (including images, php and html files) made available via [www.caperno.com](http://www.caperno.com) or its sub domains or domains with identical names under other top domains and owned by Supplier.

**2. Authority to Enter into These Terms with Supplier**

The use of the Caperno Services is subject to acceptance of these Terms. To accept these Terms for itself or on behalf of a Client, a person must have the legal capacity to do so. In the case of an individual, the individual must be at least 18 years of age or have valid authorization from his/her legal representative or custodian. In the case of a legal entity, the entity must be duly incorporated and in good standing.

The Terms are accepted as soon as one of the following occurs first:

- a. the person has received the confirmation of the creation of the Account and necessary credentials from Supplier in order to log in to his/her/its Account; or
- b. for those Caperno Services and parts of the Web Site the use of which is not dependent on creating an Account, upon the moment of gaining access to such services.

You may not, without Supplier's prior written consent, access the Caperno Services (i) for production purposes, (ii) if you are a competitor of Caperno, (iii) to monitor the availability, performance or functionality of the Caperno Services or (iv) for other benchmarking or competitive purposes.

Once accepted, these Terms remain effective until terminated as provided for herein.

**3. Modifications to Terms**

Supplier reserves the right, at its sole discretion, to change, modify, add, or remove portions of the Terms at any time by posting such changes on or through the Platform or the Caperno Services. Please check these Terms periodically for changes. Your continued use of the Caperno Services after such changes have been posted as provided above constitutes your binding acceptance of such changes. Such amended Terms will automatically be effective upon the earlier of (i) your continued use of the Caperno Services, or (ii) 30 days from posting of such modified Terms on or through the Platform. Notwithstanding the foregoing, the resolution of any dispute that arises between you and Supplier will be governed by the Terms in effect at the time such dispute arose.

## **4. Our Responsibilities**

### **4.1. Provision of Caperno Services**

Supplier will (a) make the Caperno Services and Content available to a Client pursuant to these Terms, (b) provide applicable standard support for the Caperno Services to Client at no additional charge, and/or upgraded support (for an additional charge, if applicable), (c) use commercially reasonable efforts to make the Caperno Services available 24 hours a day, 7 days a week, except for:

(i) planned downtime (of which Supplier shall give advance electronic notice as provided in the Guidelines), and (ii) any unavailability caused by circumstances beyond Supplier's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack.

### **4.2. Protection of Client Data**

Supplier will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Client Data, as described in the Guidelines. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Client Data by Supplier personnel except (a) to provide the Caperno Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 7.4 (Compelled Disclosure) below, or (c) as a Client or User expressly permit in writing.

Supplier may use service providers to perform the Services. Supplier will make commercially reasonable efforts to ensure that data transfers to service providers meet requirements applicable to Clients' processing of data.

## **5. Using the Caperno Services**

### **5.1 Establishing an Account**

Certain Features, functions, parts or elements of the Caperno Services can be used or accessed only by holders of an Account. The person who wishes to create an Account must:

- a. complete the sign-up form on the Web Site; and
- b. accept these Terms by clicking "Sign up" or other similar button

Each Client may have only one Account. If several persons need to use an Account on behalf of Client, Client must designate such persons as Users. Each such User shall be subject to the restrictions set forth in these Terms.

If Client has designated Users and granted them Authorization, such Users will be deemed to be authorized to act on behalf of Client when using the Account. Supplier is not responsible for and shall have no liability for verifying the validity of Authorization of any User. However, Supplier may, in its discretion, request additional information or proof of the person's credentials. If Supplier is not certain if a User has been granted Authorization, Supplier may, in its sole discretion, prevent such User from accessing the Caperno Services.

The Client and any User associated with an Account must provide Supplier with true, accurate, current, and complete information about the Client, Users or Account and keep it up to date.

### **5.2 Logging Into an Account**

Supplier shall provide Client with a username and password (“Login Credentials”) to be used to log in to its Account. These Login Credentials must not be used by multiple persons. If Client has designated several Users, each User will be provided with separate Login Credentials. Client and each User are responsible for keeping confidential all login credentials associated with an Account. Client must promptly notify Supplier:

- a. of any disclosure, loss or unauthorized use of any Login Credentials;
- b. of a User’s departure from the Client’s organization;
- c. of a change in a User’s role in the Client’s organization;
- d. of any termination of a User’s right for any reason.

### **5.3 Termination of Account**

Client may terminate these Terms at any time as provided in Section 16.

Supplier shall permanently delete the Account within six months of the effective date of the termination.

### **5.4 Fees**

The use of an Account is subject to a Fee. Upon sign-up for an Account, the Client must select a Plan. Different rates apply to different Plans. The applicable Fee is charged in advance on monthly or annual payment intervals, unless agreed otherwise between parties. All Fees are non-refundable, i.e. there are no refunds or credits for periods where the Client did not use an activated Account, used it only partially, or deactivated the Account or terminated these Terms during an ongoing payment interval. If, after signing up, Client elects to upgrade to a more expensive Plan, the unused portion of any prepaid Fees shall be applied to the Fee of the more expensive Plan.

All Fees are exclusive of all taxes, levies or duties applicable under any applicable law, unless stated otherwise stated herein. Client is solely responsible for the payment of such taxes, levies or duties.

### **5.5 Changing Plans**

Any Client has the right to upgrade or downgrade a current Plan at any time by selecting a new Plan among the collection of Plans determined by the Supplier. In such an event, the Client’s credit card on file with the Supplier will automatically be charged with a Fee for the next payment interval with the rate stipulated in the new Plan.

Downgrading of the current Plan may cause the loss of Features, functionality, or capacity of the Account, as well as the loss of Client Data.

## **6. Payment**

### **6.1 Payment Card Authorization**

Supplier may seek pre-authorization of Client’s payment card account prior to your purchase of Caperno Services in order to verify that the card is valid and has the necessary funds or credit available to cover your purchase. You authorize such payment card account to pay any amounts described herein, and authorize Supplier to charge all sums described in these Terms to such card account. You agree to provide Supplier updated information regarding your payment card account upon Supplier’s request and any time the information earlier provided is no longer valid.

### **6.2 Direct Debit Payments**

In some markets Supplier may, if Client elects, request that Client complete a direct debit mandate to enable direct debit payments. In such cases Supplier shall comply with all applicable national rules and regulations related to direct debit payments.

### **6.3 Electronic Invoice**

If Supplier has not sought pre-authorization of your payment card, then before the end of each payment interval, Client will be issued an electronic invoice for payment of the Fee of the next payment interval. Client must pay the invoice by the due date indicated on the invoice.

### **6.4 Overage Charges**

Upon delay with any payments, Supplier may require the Client to pay interest on the delay (penalty for late payment) for the period as of the time the payment obligation falls due until conforming performance is rendered. The interest rate of penalty for late payment due shall be 1% per month; provided, however, if any interest paid to Caperno, LLC is determined to be in excess of the then legal maximum rate, then that portion of each interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of amounts owing under Section 6.2. Upon calculation of the penalty for late payment, one year shall be deemed to contain 365 calendar days.

## **7. Client data**

### **7.1 Uploading Client Data to Platform**

If the Client uploads Client Data to the Platform, such Client Data and any processing of such Client Data must be in compliance with these Terms and applicable law. All rights, title and interest in and to the Client Data belong to the Client or third persons (including Users, persons and Organizations) whether posted and/or uploaded by you or made available on or through the Caperno Services by Supplier. By uploading Client Data to the Platform, Client authorizes Supplier to process the Client Data. The Client is responsible for ensuring that:

- a. the Client and any of the Users associated with the Account do not create, transmit, display or make otherwise available any Client Data that violates the terms of these Terms, the rights of Supplier, other Clients or Users, persons or Organizations or is harmful (for example viruses, worms, malware and other destructive codes), offensive, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, invasive of another's privacy, hateful or otherwise unlawful; and
- b. the Client and all of the Users associated with the Account have the necessary rights to use the Client Data, including to insert it into the Platform and process it by means of the Account.

### **7.2 No Guarantee of Accuracy**

Supplier does not guarantee any accuracy with respect to any information contained in any Client Data, and strongly recommends that you think carefully about what you transmit, submit or post to or through the Caperno Services. You understand that all information contained in Client Data is the sole responsibility of the person from whom such Client Data originated. This means that Client, and not Supplier, is entirely responsible for all Client Data that is uploaded, posted, transmitted, or otherwise made available through the Caperno Services, as well as for any actions taken by the Suppliers or other Clients or Users as a result of such Client Data.

### **7.3 Unlawful Client Data**

Supplier is not obliged to pre-screen, monitor or filter any Client Data or acts of its processing by the Client in order to discover any unlawful nature therein. However, if such unlawful Client Data or the action of its unlawful

processing is discovered or brought to the attention of Supplier or if there is reason to believe that certain Client Data is unlawful, Supplier has the right to:

- a. notify the Client of such unlawful Client Data;
- b. deny its publication on the Web Site or its insertion to the System;
- c. demand that the Client bring the unlawful Client Data into compliance with these Terms and applicable law;
- d. temporarily or permanently remove the unlawful Client Data from the Web Site or Account, restrict access to it or delete it.

If Supplier is presented convincing evidence that the Client Data is not unlawful, Supplier may, at its sole discretion, restore such Client Data, which was removed from the Web Site or Account or access to which was restricted.

In addition, in the event Supplier believes in its sole discretion Client Data violates applicable laws, rules or regulations or these Terms, Supplier may (but has no obligation), to remove such Client Data at any time with or without notice.

Without limiting the generality of the preceding sentence, Caperno LLC complies with the Digital Millennium Copyright Act, and will remove Client Data from the Platform upon receipt of a compliant takedown notice.

#### **7.4 Compelled Disclosure**

Supplier may disclose a Client's confidential information to the extent compelled by law to do so. In such instance, Supplier will use commercially reasonable efforts to provide Client with prior notice of the compelled disclosure (to the extent legally permitted) and Client shall provide reasonable assistance, at its cost, if Client wishes to contest the disclosure. If Supplier is compelled by law to disclose Client's confidential information as part of a civil proceeding to which Supplier is a party, and Client is not contesting the disclosure, Client will reimburse Supplier for its reasonable cost of compiling and providing secure access to that confidential information.

### **8. Services**

#### **8.1 Use of the Caperno Services**

Subject to these Terms, and the payment of the applicable service Fee, Supplier grants Client and its authorized users a non-exclusive, non-transferable, non-sub-licensable license to use the Caperno Services to:

- a. collect, store and organize Client Data; add new Users and grant them Authorizations;
- b. modify and delete Client Data;
- c. receive reasonable help and guidance and from Supplier regarding the use of the Caperno Services.

If Supplier determines Client usage of the Services to be outside of the permitted and intended use as outlined herein, or bandwidth usage of the Service or any Features or functionality to be significantly excessive in relation to other Users, Supplier reserves the right to suspend respective Client Account, (or part thereof) until Client assures Supplier that Client shall refrain from further abuse of the Services.

#### **8.2 Technical Support.**

Supplier shall provide reasonable technical support to Client and its authorized User at the reasonable request of the Client. Supplier shall respond to enquiries of support from a Client utilizing the contacts set forth below as

soon as reasonably possible. Responding to enquiries of Clients and Users who have accepted these Terms but do not have an Account may be less expedient, or may not occur at all.

The contacts for all enquiries of support are:

- a. instant messaging,
- b. built-in notification application on the Web Page, or
- c. e-mail: [support@caperno.com](mailto:support@caperno.com)

### **8.3 Modifications to Service**

Supplier reserves the right to modify the Caperno Services or any part or element thereof from time to time without prior notice, including, without limitation:

- a. rebranding the Caperno Services at its sole discretion;
- b. ceasing providing or discontinuing the development any particular Caperno Service or part or element of the Platform temporarily or permanently;
- c. taking such action as is necessary to preserve Supplier's rights upon any use of the Caperno Services that may be reasonably interpreted as violation of Supplier's intellectual property rights, distribution of Internet viruses, worms, Trojan horses, malware, and other destructive activities or illegal activity.

As applicable, Client may be notified of such modifications when logging in to the Account. Modifications, including change in applicable rates for the Caperno Services, will become effective thirty (30) days before the effective date of such modification.

If the Client does not accept the modification, the Client shall notify Supplier before the effective date of the modification, and these Terms will terminate on the effective date of the modification. The Client's continued use of the Caperno Services, or any part or element thereof, after the effective date of a modification shall indicate its consent to the modifications. Supplier shall not be liable to the Client or to any third person for any modification, suspension or discontinuance of the Caperno Services, or any part or element thereof.

### **8.4 Additional Features**

Supplier may from time to time make additional Features available through the Caperno Services, which may be subject to Additional Terms. The Client's use of any such Feature is subject to their acceptance of Additional Terms presented within the relevant Feature or these Terms of Service.

## **9. Restrictions**

### **9.1 Prohibited Activities**

Client and its authorized Users may use the Caperno Services and any part or element thereof only in the scope, with the means and for purposes as identified in these Terms and applicable law. By way of example, neither the Client nor any User may:

- a. use the Caperno Services or any part or element thereof to commit a crime, breach any applicable law or entice or invite others to carry out such illegal actions;
- b. copy, duplicate, distribute, modify, adapt, hack, create derivative works, reverse engineer or decompile the Caperno Services or any part or element thereof, or attempt to extract the source code thereof,

- unless (i) it is expressly allowed under applicable law, and (ii) to the extent that the Supplier is not permitted by that applicable law to exclude or limit the foregoing rights;
- c. use the Caperno Services or any part or element thereof unless it has agreed to these Terms.

## **9.2 Certain Uses Require Supplier Consent**

The Client or any User may not, without Supplier's prior express written consent (e-mail, fax, Skype, etc.):

- a. sell, resell, lease, license, sublicense, distribute, provide, disclose, divulge, exploit or otherwise grant Access or make the Caperno Services available in whole or in part to any third persons, unless such third person is another authorized User of the same Client;
- b. use the Caperno Services or any part or element thereof in a scope, with means or for purposes other than those for which their functionality was created;
- c. use the Caperno Services or any part or element thereof by means of programs that send them automatic enquiries or requests, unless such program has been made available by Supplier;

## **10. Privacy**

Supplier takes the privacy of its Clients and Users very seriously. Supplier's Privacy Policy at [www.caperno.com/privacy](http://www.caperno.com/privacy) is hereby incorporated into these Terms by reference. Please read the Privacy Policy carefully as it governs Supplier's collection, use, and disclosure of Client's or User's personal information.

## **11. Intellectual Property Rights**

### **11.1 Caperno's Intellectual Property Rights in the Caperno Services**

The Caperno Services, Caperno Materials, Caperno trade names and trademarks, and any parts or elements thereof are solely and exclusively owned and operated by Supplier and its third party vendors and hosting partners. Caperno Materials are protected by copyright, trade dress, patent, trade secrets, and trademark laws, international conventions and treaties, and all other relevant intellectual property and proprietary rights laws. Supplier, its affiliates and licensors retains all right, title and interest in such Caperno Services, Caperno Materials, Caperno trade names and trademarks, and any parts or elements. Your use of the Caperno Services and Caperno Materials, and any parts or elements does not grant to you any ownership right or intellectual property rights therein. Any commercial or promotional distribution, publishing or exploitation of the Caperno Materials is strictly prohibited unless you have received the express prior written permission from Supplier or the otherwise applicable rights holder. Supplier reserves all rights to the Caperno Services, Caperno Materials and Caperno trade names and trademarks not expressly granted in the Terms.

### **11.2 Client Data**

- a. Supplier respects your right to exclusive ownership of your Data. Unless specifically permitted by you, your use of the Caperno Services does not grant Supplier the license to use, reproduce, adapt, modify, publish or distribute the Data created by you or stored in your Account for Supplier's commercial, marketing or any similar purpose. Client expressly grants Supplier the right to use and analyze aggregate system activity data associated with use of the Caperno Services by Client and its Users for the purposes of optimizing, improving or enhancing the way the Caperno Services operate, and to create new Features and functionality in connection with the Caperno Services in the sole discretion of Supplier.
- b. Client is solely responsible for its own Client Data and the consequences of posting or publishing them on or through Caperno. In connection with Client Data, Client affirms, represents, and warrants that: (i) Client either owns its Client Data or has the necessary licenses, rights, consents, and permissions to use and



authorize the Suppliers to display or otherwise use the Client Data under all patent, trademark, copyright, trade secrets, or other proprietary rights in and to your Client Data in a manner consistent with the intended Features and functionality of the Caperno Services and these Terms, and (ii) Client Data, Supplier's or any Caperno Licensee's use of such Client Data pursuant to these Terms, and Supplier's do not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (b) violate any applicable law or regulation anywhere in the world; or (c) require obtaining a license from or paying any fees and/or royalties by Supplier to any third party for the performance of any Caperno Services Client has chosen to be performed by Supplier or for the exercise of any rights granted in these Terms, unless Client and Supplier otherwise agree.

### **11.3 Feedback**

If Client or a User provides Suppliers with any comments, bug reports, feedback, or modifications for the Caperno Services ("Feedback"), Supplier shall have the right to use such Feedback at its discretion, including, but not limited to the incorporation of such suggested changes into the Caperno Services.

Client or User (as applicable) hereby grants Supplier a perpetual, irrevocable, nonexclusive, royalty free license under all rights necessary to incorporate, publish, reproduce, distribute, modify, adapt, prepare derivative works of, publicly display, publicly perform, exploit and use your Feedback for any purpose. Supplier shall have the right to modify or remove any Feedback provided in the public areas of the Web Site if the Supplier deems, at its discretion, harmful, offensive, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, invasive of another's privacy, hateful or otherwise unlawful.

### **12. Third-Party Sites, Products and Services**

The Caperno Services may include links to other websites or services ("Linked Sites") solely as a convenience to Clients. Unless otherwise specifically and explicitly indicated, Supplier does not endorse any such Linked Sites or the information, material, products, or services contained on or accessible through Linked Sites. Furthermore, Supplier makes no express or implied warranties with regard to the information, material, products, or services that are contained on or accessible through Linked Sites. ACCESS AND USE OF LINKED SITES, INCLUDING THE INFORMATION, MATERIAL, PRODUCTS, AND SERVICES ON LINKED SITES OR AVAILABLE THROUGH LINKED SITES, IS SOLELY AT YOUR OWN RISK.

### **13. Disclaimers; No Warranty**

UNLESS OTHERWISE EXPRESSLY STATED BY SUPPLIER, THE CAPERNO SERVICES, CAPERNO MATERIAL, AND ANY CONTENT, SERVICES, OR FEATURES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE CAPERNO SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, SUPPLIER AND ITS AFFILIATES DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF PROPRIETARY RIGHTS, CORRECTNESS, ACCURACY, AND RELIABILITY.

UNLESS OTHERWISE EXPRESSLY STATED BY SUPPLIER, SUPPLIER AND ITS AFFILIATES DO NOT WARRANT THAT THE CAPERNO SERVICES AND ANY CONTENT, CLIENT DATA SERVICES, OR FEATURES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE CAPERNO SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE CAPERNO SERVICES AND ANY CONTENT, CLIENT DATA, SERVICES, OR FEATURES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE CAPERNO SERVICES OR THE SERVER THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

UNLESS OTHERWISE EXPRESSLY STATED BY SUPPLIER, SUPPLIER AND ITS AFFILIATES DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE PLATFORM, THE CAPERNO SERVICES, CAPERNO MATERIAL OR ANY LINKED SITES, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

THE LAWS OF CERTAIN COUNTRIES AND STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

#### **14. Indemnification**

You agree to defend, indemnify and hold harmless Supplier and its affiliates, and their respective directors, officers, employees and agents, from any claims, losses, damages, liabilities, including attorney's fees, arising out of your use or misuse of the Caperno Services, Caperno Materials, representations made to the Supplier, its affiliates and/or third parties, violation of these Terms, violation of the rights of any other person or entity, or any breach of the foregoing representations, warranties, and covenants. Supplier reserves the right, at its own expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Supplier, and you agree to cooperate with such defense of these claims.

#### **15. Limitation of Liability**

##### **15.1 No Liability**

Supplier shall not be liable to the Client or User for any consequences resulting from:

- a. any modifications in these Terms, calculation and rates of Fees, the Caperno Services, Caperno Material, or any part or element thereof (including but not limited to Account), including any error, permanent or temporary interruption, discontinuance, suspension or other type of unavailability of the Caperno Services or Caperno Material;
- b. deletion of, corruption of, or failure to store any Client Data;
- c. use of Client Data by the Client or any of the Users associated with the Account;
- d. upgrading or downgrading the current Plan;
- e. any disclosure, loss or unauthorized use of the login credentials of Client or any authorized User due to Client's failure to keep them confidential;
- f. the Client's use of the Account or the Caperno Services by means of browsers other than those accepted or supported by the Supplier;
- g. the application of any remedies against the Client or authorized Users by the Supplier, for example if the Client or User has committed a crime or conducted a breach of applicable law by using the Caperno Services or any part or element thereof;
- h. the differences between technologies and platforms used for access, for example if certain Features, functions, parts or elements of the Caperno Services are designed for use on a personal computer or laptop and do not function on a mobile platform or a tablet;
- i. the Supplier's application of the remedies described in these Terms, even if the reasonable grounds or legal basis for the application of these remedies turned out to be unfounded or invalid afterwards.

In addition, Supplier and its affiliates shall not be liable to the Client for any claim by any User, person, Organization or third persons against the Client arising out of the Client's failure to:

- a. provide Supplier with accurate information about the Client, Users or Account;
- b. notify Supplier of any reasons due to which a User does not have the right to use the Account on behalf of the Client;

- c. provide any Products which it has agreed to provide to such a person or Organization (whether such failure arises as a result of Supplier's negligence, breach of these Terms or otherwise);
- d. ensure the lawfulness of the Client Data;
- e. obtain the necessary rights to use the Client Data; or
- f. abide by any of the restrictions described in these Terms.

## **15.2 Limitation of Liability**

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CAPERNO AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THESE TERMS EXCEED THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER FOR THE CAPERNO SERVICES GIVING RISE TO THE LIABILITY IN THE SIX MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CLIENT'S PAYMENT OBLIGATIONS UNDER THE "PAYMENT" SECTION ABOVE.

## **15.3 Exclusion of Consequential and Related Damages**

IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.

THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **16. Termination of These Terms**

### **16.1 For Convenience**

These Terms may be terminated for convenience in the following situations;

- a. by the Client any time by emailing support@caperno.com;
- b. by Supplier upon decision to end provision of the Caperno Services and close the Platform; or
- c. immediately by either party, if proceedings are initiated for the other party's liquidation or insolvency or a negotiated settlement with the other party's creditors is concluded or an assignment is made on behalf of the other party for the benefit of creditors.

### **16.2 For Default**

These Terms may be terminated for default upon written notice to the other party as indicated in the "Notice" Section below:

- a. by either party in case of breach of these Terms by the other party, if the breach has not been cured within 30 days of receipt of a notice from the non-breaching party; or
- b. immediately by either party if the other party breaches its obligations, as applicable under Sections 11 [Intellectual Property Rights], 14 [Indemnification], or 9 [Restrictions] of these Terms.

### **16.3 Effect of Termination**

Upon termination of these Terms,

- a. Supplier shall deactivate and permanently delete the Account, within three months of the effective date of termination of these Terms. If the Client has specifically requested for an earlier deletion of the Account, Supplier shall fulfill such request within 1 month of its receipt of such request.
- b. Client must:
  - stop using and prevent the further usage of the Caperno Services, including, without limitation, the Platform;
  - pay any amounts owed to Supplier under these Terms; and
  - discharge any liability incurred by the Client before under these Terms prior to their termination; and
- c. The following provisions shall survive the termination of these Terms: Sections 1, 7.4, 9, 10, 11, 13, 14, 15, 17 and 18.

## **16.4 Remedies**

If Supplier terminates these Terms as a result of an uncured breach by a Client or User, Supplier is entitled to use the same or similar remedies against any other persons who use the Caperno Services in conflict with these Terms. Notwithstanding the foregoing, Supplier may also apply any other remedies available to it under the applicable law. Upon application of any remedies, the Client or User may lose Access or suffer a loss of certain Features, functions, parts or elements of the Caperno Services.

If Supplier has reasonable grounds to believe that the Client's or User's use of the Caperno Services, including the Account may harm any third persons, Supplier has the right to take adequate measures under its control to prevent, stop and eliminate the harm, where possible, in order to protect those third persons.

The Supplier has the right to suspend access to all or any part of the Service, including removing Content, at any time for violation of this Agreement or to protect the integrity, operability, and security of the Service, effective immediately, with or without notice. Unless prohibited by law or legal process or to prevent imminent harm to the Service or any third party, Supplier typically provides notice in the form of an email on or before such suspension. Supplier will, in its discretion and using good faith, tailor any suspension as needed to preserve the integrity, operability, and security of the Service.

## **17. Governing Law**

### **17.1 Dispute Resolution**

In the event of a dispute, controversy or claim arising out of or in relation to these Terms, including but not limited to the formation, validity, breach or termination thereof, the parties shall attempt to solve the matter amicably in mutual negotiations. In the event a mutually acceptable resolution cannot be reached within a reasonable time, either party will be entitled to seek available remedies, including legal remedies subject to the terms and conditions set forth below. Notwithstanding the foregoing and subject to the terms and conditions set forth below, either party may seek injunctive relief with respect to any disputed matter to the extent possible under applicable law. Should an amicable settlement between parties not be possible, the dispute shall be finally solved by arbitration as designated herein subject to the terms and conditions set forth below.

### **17.2 Governing Law and Arbitration**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota without giving effect to the conflict of laws principle. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The number of arbitrators shall be one. The place of arbitration shall be Minneapolis, Minnesota. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

### **17.3 Enforceability**

If any part of this provision is ruled to be unenforceable, then the balance of this provision shall remain in full effect and construed and enforced as if the portion ruled unenforceable were not contained herein.

Use of the Caperno Services is not authorized in any jurisdiction that does not give effect to all provisions of these Terms, including without limitation, this section.

## **18. General Provisions**

### **18.1 Relationship of the Parties**

The parties will act solely as independent contractors. These Terms shall not be construed as creating an agency, partnership, joint venture, fiduciary duty, or any other form of legal association between the Client and either Supplier, and the Client shall not represent to the contrary, whether expressly, by implication, appearance or otherwise. These Terms are not for the benefit of any third parties.

### **18.2 Severability**

If any term, condition or provision of these Terms is held to be invalid, unenforceable or illegal in whole or in part for any reason, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties. The validity and enforceability of the remaining terms, conditions or provisions, or portions of them, shall not be affected.

### **18.3 Entire Agreement**

These Terms are the entire agreement between Client and Supplier regarding Client's use of the Caperno Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of these Terms will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

### **18.4 Assignment**

Client may not, directly or indirectly, in whole or in part, by operation of law or otherwise, assign or transfer these Terms or delegate any of its rights and/or obligations under these Terms without Supplier's prior written consent. Any attempted assignment, transfer or delegation without such prior written consent will be void and unenforceable. Notwithstanding the foregoing, the Client, or its permitted successive assignees or transferees, may assign or transfer these Terms or delegate any rights or obligations hereunder without consent: (1) to any entity controlled by, or under common control with the Client, or its permitted successive assignees or transferees; or (2) in connection with a merger, reorganization, transfer, sale of assets or product lines, or change of control or ownership of the Client, or its permitted successive assignees or transferees.

### **18.5 No Waiver**

Failure of either Party to exercise or enforce any provision of or any of its rights under these Terms shall not be deemed a waiver of future enforcement of that or any other provision or right.

### **18.6 Notices**

Except as otherwise specified in these Terms, all notices related to these Terms will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim (“Legal Notices”), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to you will be addressed to the relevant billing contact designated by you. All other notices to you will be addressed to the relevant Services system administrator designated by you.

Last update: March 1, 2022