



## **MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT GOVERNS CUSTOMER'S USE OF CHEETAH SERVICES (AS DEFINED HEREIN). CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER ACCEPTS AND AGREES TO THE TERMS OF THIS MASTER SERVICES AGREEMENT.

This Master Services Agreement ("**Agreement**") is made between the Cheetah Digital entity set forth in Section 12 ("**Cheetah**") and the customer that executes an Order Form ("**Customer**"), together referred to as the "**Parties**" and each individually as a "**Party.**" Specific services terms, product details and any applicable license and/or subscription terms will be set forth in applicable Order Form(s) and/or SOW(s), which shall become binding on the Parties and subject to this Agreement.

Each Party hereby agrees as follows:

### **1. DEFINITIONS.**

"**Affiliate**" of a Party means any entity that controls, is controlled by, or is under common control with, such Party where control means having more than fifty percent (50%) of the voting interests of the subject entity.

"**Authorized User**" means one individual natural person, whether an employee, business partner, contractor, or consultant of Customer or its authorized Affiliates who is registered by Customer to use the Cheetah Services. If the Authorized User is not an employee of Customer, use of the Cheetah Services will be allowed only if the user is under confidentiality obligations with Customer at least as restrictive as those in this Agreement and is accessing or using the Cheetah Services solely to support Customer's and/or an authorized Customer Affiliate's internal business purposes.

"**Cheetah Data**" means any data that Cheetah provides to Customer or that Cheetah sources and uses in connection with this Agreement but excluding Customer Data.

"**Cheetah Services**" means the Cheetah Software and Professional Services identified on the Order Form and/or SOW and obtained by Customer pursuant to this Agreement.

"**Cheetah Software**" means a subscription-based, hosted solution that is supported and provided by Cheetah under an applicable Order Form.

"**Confidential Information**" shall have the meaning set forth in Section 7.1.

"**Consumer User**" means an individual who is Customer's current or prospective customer, who uses any consumer-facing features of the Cheetah Services.

**“Customer Data”** means any data that Customer or Customer’s designee supplies to Cheetah for Cheetah’s performance of the Cheetah Services pursuant to this Agreement but excluding any Cheetah Data.

**“Deliverable”** means a deliverable under an SOW or Order Form.

**“Documentation”** means Cheetah's specifications for the applicable Cheetah Services and any related manuals and instructions as made generally available by Cheetah.

**“Force Majeure Event”** shall have the meaning set forth in Section 13.4.

**“Non-Cheetah Services”** means a web-based, mobile, offline or other service or software that is provided by Customer or a third party and interoperates with the Cheetah Services.

**“Order Form”** means the order form provided by Cheetah that references this Agreement and sets forth the pricing and options of the Cheetah Services selected by Customer. An Order Form is not binding until it is duly executed by both Cheetah and Customer, at which point it becomes incorporated into and part of this Agreement.

**“Professional Services”** means any implementation, configuration, consulting, training, transition and similar ancillary Cheetah Services that are set forth in an Order Form or SOW. Unless otherwise specified in the applicable SOW or Order Form, all Deliverables provided by or for Cheetah in the performance of Professional Services, excluding Customer Data and Customer’s Confidential Information, are owned by Cheetah and constitute part of the Cheetah Services under this Agreement.

**“SOW”** means any statement of work provided by Cheetah that references this Agreement and sets forth the Professional Services selected by Customer.

**“Term”** shall have the meaning set forth in Section 8.1.

**“ToU”** means an agreement with terms no less protective of Cheetah and the Cheetah Services than this Agreement and that each Consumer User must agree to before getting access to the consumer-facing features of any Cheetah Services.

## **2. USAGE AND ACCESS RIGHTS.**

**2.1 Right to Use.** Cheetah will provide the Cheetah Services to Customer as set forth in the Order Form and/or SOW. Subject to the terms and conditions of this Agreement, Cheetah grants to Customer a limited non-exclusive, non-transferable right and license during the Term, solely for its and its authorized Affiliate’s internal business purposes, and in accordance with the Documentation, to: (a) use the Cheetah Services; (b) implement, configure, and permit its Authorized Users to access and use the Cheetah Services; and (c) access and use the Documentation. Customer shall ensure compliance with the terms of this Agreement by all Authorized Users and Customer’s Affiliates (if authorized to use the Cheetah Services under any Order Form or SOW), and Customer shall be responsible for such Authorized Users’ and Affiliates’ acts and omissions in connection with this Agreement.

**2.2 Customer Responsibilities.** Customer shall: (i) retain sole responsibility for the content of its transmissions through the Cheetah Services; (ii) delegate a Customer mailing domain to Cheetah for deployment of Customer's emails through the Cheetah Services (such mailing domains shall resolve to an active Customer website); (iii) comply with consent recordkeeping required under the applicable laws (including without limitation the Telephone Consumer Protection Act and CAN-SPAM Act, as applicable) and produce any consent records to Cheetah upon Cheetah's reasonable request; (iv) ensure that each Consumer User has accepted the ToU prior to accessing the consumer-facing features of the Cheetah Services; and (v) permit Cheetah to: (a) apply authentication protocols to Customer-designated domain names and messaging in accordance with standards set forth by the Internet Engineering Task Force and as used by Internet Service Providers ("ISP"), (b) apply any complaint data received from an ISP or message recipient to Customer's and/or Cheetah's network suppression list, which is designed to prevent deliverability issues, and (c) independently create and maintain outbound and inbound IP addresses on behalf of Customer.

**2.3 Restrictions.** Customer shall not, and shall not permit others to, do the following with respect to the Cheetah Services: (a) use the Cheetah Services, or allow access to them, in a manner that circumvents contractual usage restrictions; (b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or time share or otherwise make any portion of the Cheetah Services or Documentation available for access by third parties except as otherwise expressly provided in this Agreement; (c) access or use the Cheetah Services or Documentation for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Cheetah Services or allow access by a direct competitor of Cheetah; (d) reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the Cheetah Services or technologies unless otherwise permitted by applicable law and then only with the express prior written consent of Cheetah; (e) use the Cheetah Services or Documentation in a way that: (i) violates or infringes upon the rights of a third party, (ii) effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene, or (iii) violates Cheetah's Acceptable Use Policy, attached hereto as Exhibit A; or (f) interfere with or disrupt the integrity, operation, or performance of the Cheetah Services or interfere with the use or enjoyment of it by others.

**2.4 Cheetah's Responsibilities.** Cheetah will: (i) provide portal support for the Cheetah Services (or, if purchased by Customer in an applicable Order Form or SOW, premium or platinum support) under Cheetah's then-current applicable support terms and conditions for the applicable Cheetah Service, and (ii) use commercially reasonable efforts to make the Cheetah Software available 24 hours a day, 7 days a week except for: (a) planned downtime (of which Cheetah shall give advance electronic notice); and (b) any unavailability caused by a Force Majeure Event.

**2.5 Discretion to Select Online Service Provider.** Cheetah may host the Cheetah Services using a reputable online service provider of its choice, which is currently Amazon Web Services.

**2.6 Suspension of Access.** Cheetah may suspend any use of the Cheetah Services or remove or disable the Cheetah Services if Cheetah reasonably and in good faith believes Customer's use of the Cheetah Services violates this Agreement. Cheetah will use commercially reasonable efforts to notify Customer prior to any such suspension or disablement, unless Cheetah reasonably believes that: (a) it is prohibited from doing so under

applicable law or under legal process; or (b) it is necessary to delay notice in order to prevent imminent harm to the Cheetah Services or a third party. Under circumstances where notice is delayed, Cheetah will provide notice if and when the related imminent harm in the previous sentence no longer applies.

**2.7 Beta Programs.** Cheetah may make available services or functionality to Customer to try at its option at no additional charge which is designated as beta, pilot, limited release, or evaluation (each, a “**Beta Program**”). Customer may be presented with additional terms and conditions when registering for a Beta Program, and any such additional terms and conditions are hereby incorporated into this Agreement by reference and are legally binding upon the Parties. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION SECTION 9, BETA PROGRAMS ARE PROVIDED “AS-IS” AND “AS AVAILABLE” AND, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WITHOUT ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY.

**2.8 Integration with Non-Cheetah Services.** The Cheetah Services may contain features designed to interoperate with Non-Cheetah Services. To use such features, Customer may be required to obtain access to such Non-Cheetah Services from their providers and may be required to grant Cheetah access to Customer’s account for such Non-Cheetah Services. If Customer installs or enables Non-Cheetah Services for use with the Cheetah Services, Customer grants Cheetah permission to allow the provider of that Non-Cheetah Service to access Customer Data as required for interoperation of that Non-Cheetah Service and the Cheetah Service. Cheetah cannot guarantee the continued availability of such Cheetah Service features and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Cheetah Service ceases to make the Non-Cheetah Service available for interoperation with the corresponding Cheetah Service features in a manner acceptable to Cheetah. Cheetah does not warrant or support any Non-Cheetah Services.

### **3. SECURITY AND DATA RESPONSIBILITIES**

**3.1 Security.** Cheetah will use commercially reasonable and industry standard information security technologies described in Cheetah’s Data Security Policy attached hereto as Exhibit B in providing the Cheetah Services.

**3.2 Customer Data.** Customer shall be responsible for Customer Data as entered into, supplied or used in the Cheetah Services. Further, Customer is solely responsible for determining the suitability of the Cheetah Services for Customer's business and complying with any regulations, laws or conventions applicable to the collection and use of Customer Data and Customer’s use of the Cheetah Services. Customer grants to Cheetah the non-exclusive right to process Customer Data (including Personal Data as defined below) for the sole purpose of and only to the extent necessary for Cheetah: (a) to provide the Cheetah Services; (b) to verify Customer’s compliance with the restrictions set forth in Section 2.2 if Cheetah has a reasonable belief of Customer’s non-compliance; and (c) as otherwise set forth in this Agreement. Cheetah may utilize the data concerning and derived from Customer’s use of the Cheetah Services, including Customer Data but excluding Personal Data, for research and development, including to improve Cheetah Services, and to provide Customer with reports on its use of the Cheetah Services. For purposes of this Agreement, “Personal Data” shall mean any information relating to (i) an identified or identifiable natural person, and (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable

information under applicable data protection laws and regulations). Customer agrees that Cheetah may collect, use, and disclose data concerning and derived from Customer's use of the Cheetah Services, including Customer Data, for industry analysis, benchmarking, analytics, marketing, and other business purposes during and after the Term, provided that any such data collected, used, and disclosed for such purposes will be in aggregate form only and will not identify Customer, its Authorized Users, or any third parties utilizing the Cheetah Services as the source of the data ("**Anonymized Data**") and Cheetah complies with all applicable laws in collecting, using and disclosing such Anonymized Data. Anonymized Data shall not be considered Confidential Information of Customer. Except as otherwise expressly set forth in an Order Form, Customer acknowledges and agrees that Cheetah has no obligation to maintain or store Transactional Data for more than two (2) years after the date of origination of such Transactional Data. For purposes of this provision, "Transactional Data" shall mean data relating to Customer's consumer and/or client transactions and email interactions such as purchases, store visits, surveys filled, email clicks and opens, campaign metadata, bounces, web visits, add to cart clicks, and other similar event interaction and disposition data.

**3.3 Personal Data.** Customer agrees that it has collected and shall maintain and handle all Personal Data (as defined below) contained in Customer Data in compliance with all applicable data privacy and protection laws, rules, and regulations. Customer authorizes Cheetah to process its Personal Data in accordance with the applicable data protection provisions and the technical and organizational measures referred to in the Data Security Policy attached hereto as Exhibit B. Customer shall not provide or cause to be provided to Cheetah any social security numbers, driver's license identification numbers, account passwords (other than passwords required to access the Cheetah Services), Payment Card Information (as defined in the Payment Card Industry Data Security Standards), any Protected Health Information under the Health Insurance Portability and Accountability Act of 1996, or any information comprising special categories of personal data (or "sensitive data") under the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) or any other analogous international law, rule or regulation. For the avoidance of doubt, Customer is the controller, and Cheetah is the processor, of Customer Data.

## **4. PROFESSIONAL SERVICES**

**4.1 Scope of Professional Services.** Cheetah shall provide Customer with the Professional Services, and any Deliverables, specified in each SOW or Order Form in accordance with the applicable SOW and Order Form, subject to Customer's payment of all applicable fees set forth in the applicable Order Form. Unless otherwise set forth in an Order Form, Cheetah's standard hours for the provision of Professional Services are between 9am and 6pm Cheetah local time and shall exclude weekends and holidays. Customer acknowledges that Cheetah shall have the right to charge additional fees for Services performed outside of Cheetah's standard hours or to complete a project in a timely manner if there has been a significant delay on Customer's behalf.

**4.2 Customer Tasks.** Customer shall cooperate reasonably and in good faith with Cheetah in its performance of the Professional Services including, without limitation: (a) timely delivery of any Customer materials, Customer Data, and other information and materials required under an SOW or Order Form, (b) allocation of sufficient resources to timely perform Customer tasks required for Cheetah to perform its obligations under each SOW or Order Form,

and (c) timely response to Cheetah's inquiries in connection with the Professional Services. Cheetah's provision of any Deliverables set forth in an SOW may be conditioned on Customer's assets or deliverables being received by Cheetah in accordance with the SOW. Cheetah shall not be responsible for any delays in performance of the Professional Services that result from Customer's failure to comply with the foregoing tasks or timely provision of Customer's assets or deliverables.

**4.3 Acceptance.** If Customer, in its reasonable and good faith judgment, determines that any submitted Deliverable does not materially conform to the functional requirements in the applicable SOW or Order Form or, if applicable, additional acceptance criteria as mutually agreed upon in writing by the parties for such Deliverable ("**Acceptance Criteria**"), Customer must notify Cheetah in writing within 10 business days after Cheetah's completion of the Deliverable, specifying the deficiencies in detail. Cheetah will use commercially reasonable efforts to correct such deficiencies and resubmit the Deliverable to Customer as soon as practicable. Customer will again review and test the Deliverable against the agreed-upon Acceptance Criteria and detail any deficiencies to Cheetah in writing within 10 business days after resubmission of the Deliverable. If a Deliverable fails to meet the Acceptance Criteria after its second resubmission to Customer, Customer may either, as its sole and exclusive remedy: (i) again reject the Deliverable and return it to Cheetah for further correction and resubmission in accordance with the process described above or (ii) terminate the relevant SOW or Order Form immediately upon written notice and recover all fees paid under such SOW or Order Form for such deficient Deliverable.

**4.4 License to Use Deliverables.** Cheetah retains all right, title, and interest in and to the Deliverables. Subject to payment of all applicable fees for Professional Services and Deliverables provided to Customer, Cheetah hereby grants Customer a non-exclusive, non-transferable (except pursuant to permitted assignment of this Agreement), royalty-free license to use the Deliverables solely in connection with receiving the Cheetah Services for the duration of the Term.

**4.5 Change Orders.** The scope of an SOW is based on information and/or documentation provided by Customer. If upon commencement of the Professional Services Cheetah discovers variations to the information and/or documentation provided by Customer, the scope of the SOW may be subject to the Change Request process described below. Requested changes to an SOW shall be submitted to the other Party in writing (each a "Change Request"). After receipt of a Change Request, the Parties shall discuss, in good faith, such Change Request at their earliest opportunity. To the extent Cheetah can accommodate a Customer Change Request, Cheetah shall provide Customer with a quote and scope for the Change Request. Customer and Cheetah shall then work in good faith to sign a mutually agreed upon change order in writing reflecting the agreed upon terms of the Change Request ("Change Order"). Cheetah will not proceed with any additional services with respect to the Change Request until a Change Order is signed by both Parties.

## 5. FEES

**5.1 Fees.** Except as expressly set forth in the applicable Order Form, Customer will pay all fees set forth in the Order Form within thirty (30) days from the date of invoice. Upon execution by Customer and Cheetah, each Order Form and/or SOW is non-cancellable and non-refundable except as provided in this Agreement, and the Term as set forth in the Order

Form for Cheetah Services is a continuous and non-divisible commitment for the full duration of the Term regardless of any invoice schedule.

**5.2 Offsets; Late Charges; Attorneys' Fees.** Amounts due to Cheetah may not be withheld or offset by Customer for any reason against amounts due or asserted to be due to Customer from Cheetah. Cheetah may assess late charges equal to the lesser of one and one-half percent (1.5%) of the unpaid balance per month or the highest rate permitted by applicable law. Customer will be responsible for any fees (including attorneys' fees), costs and expenses incurred by Cheetah to collect any amounts that are not paid when due. If Customer fails to timely pay any amounts due under this Agreement, then without limitation of any of its other rights or remedies, Cheetah may suspend performance of those Cheetah Services until Cheetah receives all past due amounts from Customer. Cheetah will not exercise its rights under this Section 5.2 with respect to late charges and/or suspension if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. Customer must raise any dispute regarding the fees within 10 business days after the date of the applicable invoice or waive its right to do so.

**5.3 Expenses.** Customer will reimburse Cheetah for reasonable pre-approved travel and out-of-pocket expenses incurred in connection with Professional Services. If an estimate of incidental expenses is provided in the applicable SOW or Order Form, Cheetah will not exceed such estimate without Customer's written consent.

**5.4 No Contingency; Future Functionality.** Customer's license of the Cheetah Software is not contingent upon Customer receiving Professional Services from Cheetah. Customer agrees that its purchases under any Order Form are not contingent on any future functionality or features, or dependent on any oral or written comments (outside of this Agreement) made by Cheetah regarding future functionality or features.

**5.5 Taxes.** The fees set forth in an Order Form do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Cheetah has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 5.5, Cheetah will invoice Customer and Customer will pay that amount unless it provides Cheetah with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Cheetah is solely responsible for taxes assessable against it based on its income, property and employees.

## **6. OWNERSHIP**

**6.1 Customer Data.** Customer Data processed using the Cheetah Services is and will remain, as between Customer and Cheetah, owned by Customer. Customer hereby grants Cheetah the right to process, transmit, store and disclose the Customer Data in order to provide the Cheetah Services to Customer and as otherwise permitted under Section 3.2, to comply with any request of a governmental or regulatory body (including subpoenas or court orders), or as otherwise required by law.

**6.2 Cheetah Services.** Cheetah, its Affiliates, or its licensors own all right, title, and interest in and to any and all copyrights, trademark rights, patent rights, database rights, and other intellectual property or other rights in and to the Cheetah Services and Documentation,

any updates, upgrades, improvements, design contributions, or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder.

**6.3 Limited Use of Customer Name.** Customer grants Cheetah a limited license to use Customer's trade name, trademark, or service mark as associated with any Customer mailing domain name delegated to Cheetah, and in limited released public marketing materials, including prospective and existing customer meetings and presentations.

**6.4 Feedback.** Cheetah encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to Cheetah Services and related resources. To the extent Customer provides such feedback, Customer grants to Cheetah a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 13.2), non-exclusive, irrevocable, perpetual, worldwide right and license to use and exploit feedback in connection with any products and services (including by incorporation of such feedback into the Cheetah Services) without any restriction, and to use, sell, offer for sale, import and otherwise commercialize such products and services without any restriction.

## 7. CONFIDENTIALITY

**7.1 Confidential Information.** For purposes of this Agreement, "**Confidential Information**" shall include: (a) any information of a Party that is disclosed in writing or orally and is designated as confidential or proprietary at the time of disclosure (and, in the case of oral disclosures, summarized in writing within thirty (30) days of the initial disclosure and delivered to the Recipient (as defined below)), or (b) that due to the nature of the information the Recipient would reasonably understand it to be confidential information of the disclosing Party, even if it is not designated as confidential or proprietary. Cheetah Services and Documentation constitute Confidential Information of Cheetah. Confidential Information shall not include any information that: (i) was or becomes generally known to the public through no fault or breach of this Agreement by the Recipient; (ii) was rightfully in the Recipient's possession at the time of disclosure without restriction on use or disclosure; (iii) was independently developed by the Recipient without use of the disclosing Party's Confidential Information; or (iv) was rightfully obtained by the Recipient from a third party not under a duty of confidentiality and without restriction on use or disclosure.

**7.2 Restricted Use and Nondisclosure.** The Party receiving Confidential Information ("**Recipient**") will: (a) use the Confidential Information of the other Party solely for the purpose for which it is provided and permitted under this Agreement; and (b) use the same degree of care to protect the disclosing Party's Confidential Information as it does with respect to its own Confidential Information of similar nature, but with no less than reasonable care.

**7.3 Required Disclosure.** If Recipient is required by law to disclose Confidential Information of the other Party, Recipient will give prompt written notice to the other Party before making the disclosure, unless prohibited from doing so by the legal or administrative process, and cooperate with the disclosing Party to obtain where reasonably available an order protecting the Confidential Information from public disclosure.

**7.4 Ownership.** Recipient acknowledges that, as between the Parties, all Confidential Information it receives from the disclosing Party, including all copies thereof in Recipient's possession or control, in any media, is proprietary to and exclusively owned by the disclosing Party. Except as set forth in Section 2.1 with respect to Customer's limited rights with respect to



Cheetah Services and Documentation and Sections 3.2 and 6.1 with respect to Cheetah's limited rights with respect to Customer Data, nothing in this Agreement grants Recipient any right, title or interest in or to any of the disclosing Party's Confidential Information. Recipient's incorporation of the disclosing Party's Confidential Information into any of its own materials will not render Confidential Information non-confidential.

**7.5 Remedies.** Recipient acknowledges that any actual or threatened breach of this Section 7 may cause irreparable, non-monetary injury to the disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the disclosing Party may seek injunctive relief in addition to all remedies available to the disclosing Party at law and/or in equity, to prevent or mitigate any breaches of this Agreement or damages that may otherwise result from those breaches.

## **8. TERM AND TERMINATION.**

**8.1 Term.** The term of an Order Form is the period of time, including all renewals thereto, that begins on the start date and, unless terminated sooner as provided herein, will continue until the end date, both dates as specified on the Order Form (the "**Term**"). In the case of an SOW for Professional Services, if no end date is specified in the SOW, then the SOW shall expire upon completion of Professional Services or early termination as permitted by this Agreement. The term of this Agreement shall continue as long as an Order Form or SOW governed by this Agreement remains valid and in effect. Termination or expiration of any Order Form or SOW shall leave other Order Forms or SOWs unaffected.

**8.2 Termination for Breach; Termination for Insolvency.** If either Party commits a material breach or default in the performance of any of its material obligations under this Agreement, then the other Party may terminate this Agreement in its entirety by giving the defaulting Party written notice of termination, unless the material breach or default in performance is cured within thirty (30) days after the defaulting Party receives notice thereof. Either Party may terminate this Agreement in its entirety upon written notice if the other Party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement, or an assignment for the benefit of creditors.

**8.3 Post-Termination Obligations.** If the Agreement expires or is terminated for any reason: (a) Customer will pay to Cheetah any amounts that have accrued before, and remain unpaid as of, the effective date of the expiration or termination; (b) any and all liabilities of either Party to the other Party that have accrued before the effective date of the expiration or termination will survive; (c) licenses and use rights granted to Customer with respect to Cheetah Services and intellectual property will immediately terminate; (d) Cheetah's obligation to provide any further services to Customer under this Agreement will immediately terminate, except any such services that are expressly to be provided following the expiration or termination of this Agreement; and (e) the Parties' rights and obligations under Sections 6.1, 7.2, 7.3, 8.3, and 10 through 13 will survive. If the Agreement is terminated for any reason other than Cheetah's material breach in accordance with Section 8.2, then Customer will pay to Cheetah an early termination fee equal to all amounts which would have been due to Cheetah under the applicable Order Form had such Order Form not been terminated early. To the extent the early termination fee is deemed to be liquidated damages, Customer acknowledges that the amount of damage Cheetah would suffer as a result of the early termination is difficult to estimate and

that the early termination fee reflects the Parties' reasonable estimation of the anticipated damages which Cheetah may incur as a result of the early termination.

**8.4 Return of Data.** Upon request by Customer made within 30 days after the effective date of termination or expiration of this Agreement, Cheetah will make Customer Data available to Customer for export or download in an industry standard format. After such 30-day period, Cheetah will have no obligation to maintain or provide any Customer Data.

## 9. WARRANTIES AND DISCLAIMERS.

**9.1 Cheetah Warranties.** Cheetah warrants that during the Term the Cheetah Services, when used as authorized under this Agreement, will perform substantially in conformance with the specifications associated with the applicable Cheetah Services. Customer's sole and exclusive remedy for any breach of this warranty by Cheetah is for Cheetah to repair or replace the affected Cheetah Services to make them conforming, or, if Cheetah determines that the foregoing remedy is not commercially reasonable, then either Party may terminate this Agreement.

**9.2 Mutual Warranties.** Each Party warrants that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of this Agreement; (b) no authorization or approval from any third party is required in connection with its execution, delivery, or performance of this Agreement; (c) it shall perform all of its obligations under this Agreement in accordance with all applicable laws, rules, and regulations.

**9.3 Disclaimer.** Except for the express representations and warranties stated in this Section 9, Cheetah: (a) makes no additional representation or warranty of any kind -- whether express, implied in fact or by operation of law, or statutory -- as to any matter whatsoever; (b) disclaims all implied warranties, including but not limited to merchantability, fitness for a particular purpose, non-infringement of third party rights, and title; and (c) does not warrant that the Cheetah Services are or will be error-free or meet Customer's requirements. Customer has no right to make or pass on any representation or warranty on behalf of Cheetah to any third party. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## 10. MUTUAL INDEMNIFICATION

**10.1 By Cheetah.** Cheetah will indemnify and defend Customer, and its employees, directors, and representatives from any actual or threatened third-party claim or legal or administrative agency action or proceeding ("**Claim**") to the extent arising from or related to: (i) Cheetah's gross negligence or willful misconduct; or (ii) any alleged infringement of any third-party intellectual property rights by the Cheetah Services as provided by Cheetah; *provided, however,* that Cheetah will not be responsible for alleged infringement that is due to (a) the combination of Cheetah Services with goods or services provided by Customer or by third parties, (b) modifications to the Cheetah Services made by a party other than Cheetah; or (c) Customer's use of the Cheetah Services other than in strict accordance with the Agreement.

**10.2 By Customer.** Customer will indemnify and defend Cheetah and its Affiliates, and each of their employees, directors, and representatives from any Claim to the extent arising from or related to: (a) any breach by Customer of its obligations under Section 2.2 or 2.3; (b) the nature and content of all Customer Data processed by the Cheetah Services; or (c) Customer's gross negligence or willful misconduct.

**10.3 Procedures.** The Parties' respective indemnification obligations above are conditioned on: (a) the indemnified party giving the indemnifying Party prompt written notice of the Claim, except that the failure to provide prompt notice will only limit the indemnification obligations to the extent the indemnifying Party is prejudiced by the delay or failure; (b) the indemnifying Party has full and complete control over the defense and settlement of the Claim (as long as the settlement does not include any payment of any amounts by or any admissions of liability, whether civil or criminal, on the part of the indemnified party); (c) the indemnified party providing reasonable assistance in connection with the defense and settlement of the Claim, as the indemnifying Party may reasonably request and at the indemnifying Party's expense; and (d) the indemnified party's compliance with any settlement or court order made in connection with the Claim.

**10.4 Infringement Remedy.** If Cheetah believes that Customer is or may become enjoined or otherwise prohibited from using any of the Cheetah Services or a portion thereof based on a Claim covered by Cheetah's indemnification obligations under Section 10.1 above, then Cheetah may, at its sole expense and option, either: (a) obtain for Customer the right to use the allegedly infringing portions of the Cheetah Services; (b) modify the allegedly infringing portions of the Cheetah Services so as to render them non-infringing without substantially diminishing or impairing their functionality; or (c) replace the allegedly infringing portions of the Cheetah Services with non-infringing items of substantially similar functionality. If Cheetah determines that the foregoing remedies are not commercially reasonable, then either Party may terminate this Agreement, and in such case, Cheetah will promptly provide a prorated refund to Customer for any prepaid fees received by Cheetah under this Agreement that correspond to the unused portion of the Term. The remedies set out in Section 10.1 and Section 10.4 are Customer's sole and exclusive remedies for any actual or alleged infringement of any third-party intellectual property rights based on the Cheetah Services.

## **11. LIMITATIONS OF LIABILITY.**

**11.1 Exclusion of Damages.** UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE NATURE OF THE CLAIM, SHALL EITHER PARTY (OR THEIR RESPECTIVE AFFILIATES) BE LIABLE TO THE OTHER PARTY FOR LOSS OF PROFITS, SALES OR BUSINESS, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION, WORK STOPPAGE OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, COVER, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH LOSSES; PROVIDED, HOWEVER, THAT THE LIMITATION SET FORTH IN THIS SECTION 11.1 SHALL NOT APPLY TO EITHER PARTY'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**11.2 Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR ANY

OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER FOR THE APPLICABLE CHEETAH SERVICE(S) GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY; PROVIDED, HOWEVER, THAT THE LIMITATION SET FORTH IN THIS SECTION 11.2 SHALL NOT APPLY TO CUSTOMER'S PAYMENT OBLIGATIONS OR LIABILITY RELATED TO EITHER PARTY'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## 12. CONTRACTING ENTITY, GOVERNING LAW AND VENUE.

**12.1 General.** The Parties agree to the following country-specific provisions for governing law, venue, and notice for all claims and disputes arising out of or relating to this Agreement. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the following laws based on the Customer Billing Address reflected on the Order Form.

(a) *European Union, Middle East, or Africa (other than France and Germany).* The Cheetah contracting party is Marketing Technology Partners UK Limited. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). The provisions of the U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement. Notice shall be addressed to: Marketing Technology Partners UK Limited, 11th Floor, Whitefriars Lewins Mead, Bristol, United Kingdom, BS1 2NT, Attention: General Counsel.

(b) *United Kingdom.* The Cheetah contracting party is Marketing Technology Partners UK Limited. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). The provisions of the U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement. Notice shall be addressed to: Marketing Technology Partners UK Limited, 11th Floor, Whitefriars Lewins Mead, Bristol, United Kingdom, BS1 2NT, Attention: General Counsel.

(c) *France.* The Cheetah contracting party is CM Marketing Technology Partners France Sarl. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of France. Each party irrevocably agrees that the courts of Paris, France shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). The provisions of the U.N. Convention on Contracts for the International Sale of

Goods are expressly excluded and do not apply to this Agreement. Notice shall be addressed to: 6 CM Marketing Technology Partners France Sarl, 3 ter avenue Edouard Vaillant – 92100 Boulogne-Billancourt, Attention: General Counsel.

(d) *Germany.* The Cheetah contracting party is Cheetah Digital Germany GmbH. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of Germany. Each party irrevocably agrees that the courts of Düsseldorf, Germany shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). The provisions of the U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement. Notice shall be addressed to: Cheetah Digital Germany GmbH, Speditionstr. 1, 40221 Düsseldorf, Attn: General Counsel.

(e) *Australia, Asia or the Pacific region (except Japan).* The Cheetah contracting party is Marketing Technology Partners UK Limited. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter for formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). The provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement. Notice shall be addressed to: Marketing Technology Partners UK Limited, 11th Floor, Whitefriars Lewins Mead, Bristol, United Kingdom, BS1 2NT, Attention: General Counsel.

(f) *Japan.* The Cheetah contracting party is Cheetah Digital Co, Ltd. This Agreement is governed by the laws of Japan, and both Cheetah and Customer agree to submit to the non-exclusive jurisdiction of the courts of Tokyo, Japan. Any legal action arising under this Agreement must be initiated within two years after the cause of action arises. Notice shall be addressed to: 1-3-6 Kita aoyama Minato-ku Tokyo, Japan, Attn: General Counsel.

(g) *United States of America.* The Cheetah contracting party is Cheetah Digital, Inc. This Agreement is governed by the laws of the State of New York, U.S.A., without reference to its choice of law rules to the contrary. The Parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in New York, NY, for the purposes of adjudicating any dispute arising out of this Agreement. To the extent permitted by law, choice of law rules, the United Nations Convention on Contracts for the International Sale of Goods, and the Uniform Computer Information Transactions Act as enacted shall not apply. Notwithstanding the foregoing, either Party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such Party's intellectual property rights. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement. Notice shall be addressed to: Cheetah Digital, Inc., 72 West Adams Street, Suite 800, Chicago, IL 60603, Attn: General Counsel.

(h) *All other locations.* The Cheetah contracting party is Marketing Technology Partners UK Limited. This Agreement is governed by the laws of the State of New York, U.S.A., without reference to its choice of law rules to the contrary. The Parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in New York, NY, for the purposes of adjudicating any dispute arising out of this Agreement. To the extent permitted by law, choice of law rules, the United Nations Convention on Contracts for the International Sale of Goods, and the Uniform Computer Information Transactions Act as enacted shall not apply. Notwithstanding the foregoing, either Party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such Party's intellectual property rights. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement. Notice shall be addressed to: Marketing Technology Partners UK Limited, 11th Floor, Whitefriars Lewins Mead, Bristol, United Kingdom, BS1 2NT, Attention: General Counsel.

**12.2 Manner of Giving Notice.** Any notice required or permitted to be given in accordance with this Agreement will be effective only if it is in writing, received by the recipient and sent by the sender using: (a) certified or registered mail (return receipt requested); or (b) a nationally recognized overnight courier, to the appropriate Party at the applicable address set forth above or as otherwise agreed upon in an Order Form.

**12.3 English.** To the extent permitted by law, the English version of this Agreement is binding, and other translations are for convenience only.

## 13. GENERAL.

**13.1 Relationship.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

**13.2 Assignability.** Neither Party may assign its rights or obligations under this Agreement without the other Party's prior written consent. Notwithstanding the foregoing, either Party may assign its rights and obligations under this Agreement to an Affiliate as part of a reorganization, or to a purchaser of its business entity or substantially all of its assets or business to which rights and obligations pertain without the other Party's consent. Other than the foregoing, any attempt by either Party to transfer its rights or obligations under this Agreement will be void.

**13.3 Subcontracting.** Cheetah may subcontract any portion of the Cheetah Services under this Agreement to an Affiliate or a third party without the prior written consent of Customer, provided that Cheetah remains fully responsible to Customer for the provision of the Cheetah Services.

**13.4 Force Majeure.** In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision (including, without limitation, for causes due to war, fire, earthquake, flood, hurricane, riots, acts of God, telecommunications outage not caused by the obligated Party, or other similar causes) ("**Force Majeure Event**"), the affected Party's performance will be excused and the time for performance will be extended for the

period of delay or inability to perform due to such occurrence; provided that the affected Party: (a) provides the other Party with prompt notice of the nature and expected duration of the Force Majeure Event; (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such Force Majeure Event; (c) provides periodic notice of relevant developments; and (d) provides prompt notice of the end of such Force Majeure Event. Obligations to pay are excused only to the extent that payments are entirely prevented by the Force Majeure Event.

**13.5 Waiver.** The waiver by either Party of any breach of any provision of this Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such Party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

**13.6 Severability.** If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.

**13.7 Third Party Beneficiary.** There are no third-party beneficiaries under this Agreement. Nothing in this Agreement shall create or confer any rights or other benefits whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise in favor of any person other than the parties to this Agreement.

**13.8 Entire Agreement; Conflicts.** This Agreement is the final, complete, and exclusive expression of the agreement between the Parties regarding the Cheetah Services provided under this Agreement. This Agreement supersedes and replaces, and the Parties disclaim any reliance on, all previous oral and written communications (including any confidentiality agreements pertaining to the Cheetah Services under this Agreement), representations, proposals, understandings, undertakings, and negotiations with respect to the subject matter hereof and apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing. This Agreement may be changed only by a written agreement signed by an authorized agent of each Party. In the event of a conflict between this Agreement and any SOW or Order Form, the terms of this Agreement shall govern unless such terms of this Agreement are expressly named and superseded in the applicable SOW or Order Form.

## Exhibit A

### **Acceptable Use Policy**

1. The terms of this Acceptable Use Policy (“AUP”) shall apply to Customer’s use of the Cheetah Software. Any capitalized term used in this AUP, but not otherwise defined herein, shall have the meaning specified in the Master Services Agreement.
2. Any violations of this AUP shall be deemed a material breach of the Master Services Agreement and any applicable Order Form by and between the Parties.
3. Customer shall not, and shall not permit a third party to, use the Cheetah Software to:
  - (i) distribute, upload, or send any unlawful, defamatory, abusive, fraudulent, hateful, or obscene material, or any material that would infringe or misappropriate the intellectual property rights of a third party;
  - (ii) mislead anyone regarding the origin or sender of any message sent (e.g., by creating a false or misleading identity, phone number or email address);
  - (iii) create or send any unsolicited commercial message in violation of the CAN-SPAM Act or any other applicable law, rule or regulation prohibiting spam and/or unsolicited commercial messages;
  - (iv) create or send any messages to individuals who have requested to be removed from Customer’s mailing list;
  - (v) create or send unsolicited messages to recipients with whom Customer has no pre-existing relationship (this includes, without limitation, the creation or sending of unsolicited messages based on third party lists, list rentals, and/or e-appendes);
  - (vi) knowingly or intentionally distribute viruses or any other harmful or destructive code;
  - (vii) participate in, or permit, multilevel marketing or pyramid schemes;
  - (viii) engage in or run any gambling operations; or
  - (ix) create or send any SMS, MMS, or any other text messages or push notifications in violation of the Do-Not-Call Implementation Act, or the Telephone Consumer



Protection Act, 47 U.S.C. § 227, et seq. and its implementing regulations adopted by the Federal Communications Commission (47 CFR § 64.1200) or any other applicable law, rule, or regulation in connection with spam and/or telemarketing, phone, or text-based consumer marketing.

## Exhibit B

### **Data Security Policy**

This Data Security Policy includes Cheetah's data security controls and forms part of the Master Services Agreement between Cheetah and Customer to reflect the parties' agreement with regard to the protection of Customer Data (as defined in the Master Services Agreement).

**1. Organizational Controls.** Cheetah will maintain a comprehensive information security program that contains administrative, technical, and physical safeguards appropriate to the complexity, nature, and scope of its activities, and the sensitivity of its information assets. Such safeguards will include the elements set forth below and will be reasonably designed to:

- (a) Achieve the security and confidentiality of Customer Data;
- (b) Protect against any anticipated threats or hazards to the security or integrity of Customer Data;
- (c) Protect against unauthorized access to or use of Customer Data that could result in substantial harm or inconvenience to Customer; and
- (d) Provide reasonable assurances to Customer of the ongoing effectiveness of controls.

**2. Access control to premises and facilities.** A security function exists to grant, adjust, and revoke physical access to facilities where Customer Data resides or can be accessed. The exterior of the Cheetah facility will be physically secure to prevent the public from unauthorized entry. No signs outside the facility show that Customer Data is processed or stored at the facility. Exterior doors will close automatically and be alarmed for unauthorized entry.

**3. Access control to systems.** All personnel who access the Cheetah systems are uniquely identified and authenticated. Cheetah employs the principle of least privilege in granting access. Cheetah maintains and updates a record of personnel authorized to access the Cheetah systems. Cheetah deactivates authentication credentials that have not been used for a period of time.

**4. Access control to Customer Data.** Cheetah maintains a record of security privileges of individuals having access to Customer Data. Cheetah employs the principle of least privilege in granting access. Cheetah maintains and updates a record of personnel authorized to access Cheetah systems that contain Customer Data. Cheetah deactivates authentication credentials that have not been used for a period of time.

**5. Disclosure control.** All the Customer Data will be protected when in storage. Cheetah's Information Security Department will approve all cryptographic devices, algorithms, key lengths, and key management systems designed to ensure adherence to industry standards and interoperability. Cheetah will maintain commercially reasonable and available encryption key management systems designed to protect encryption keys against unauthorized use or

disclosure.

**6. Input and Job control.** Cheetah will utilize a managed approach to security designed to ensure that Customer Data is protected through the entire life cycle, from creation, transformation and use, storage and destruction regardless of the storage media. Specific controls will be implemented according to the classification of the Customer Data designed to protect the confidentiality and integrity of the Customer Data. Control components will be used to specify access control requirements, encryption, labelling, and disclosure for both internal and external parties, shipping and handling, and destruction.

**7. Availability/Business Continuity control.** Cheetah uses a variety of industry standard systems to protect against loss of Customer Data due to power supply failure or line interference. Cheetah will implement and maintain a business continuity plan that includes a recovery strategy and procedures, estimated recovery time for products and services, and Customer notification procedure. Cheetah will test its business continuity plan as often as required to reasonably ensure a successful recovery in the time allotted in the event an actual recovery is required.

**8. Segregation control.** Cheetah maintains controls designed to provide adequate segregation of duties among the Cheetah personnel, including access to systems and networks. Duties are assigned in such a manner that a person will not have the opportunity to conceal their errors or irregularities. Segregation of duties shall be maintained among and/or within the following functions: computer operations, network management, system administration, development, change management, and security administration.

**9. Logging and Monitoring.** Audit logs will capture access to Customer Data; new user adds; attempts to change security configurations; system start up, back up, and shut down; and invalid login attempts. Audit logs will be retained in a protected state (i.e. encrypted or locked) and will be reviewed regularly.

**10. Malware Defense.** Cheetah employs anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks.

**11. Security Training and Awareness.** Cheetah will require all Cheetah personnel to participate in security training and awareness sessions at least annually. Training will be tracked so that compliance and testing occurs and the materials are understood.