**General Terms and Conditions**

**For Customers**

Revision Date: March 2, 2023

These General Terms and Conditions when incorporated by a Statement of Work, Scope, Schedule, Exhibit, Proposal or Quote (“**SOW**”) shall govern the services to be provided and defined in the SOW (“**Services**”) and constitute the full agreement (collectively the “**Agreement**”) between the Customer (named in the SOW) and Toppan Merrill Corporation, an Ontario corporation located at One Adelaide Street East, Suite 3000, Toronto, Ontario M5C 2V9, or its affiliate or subsidiary (collectively, “**Toppan Merrill**”) (each a “**Party**” and collectively “**Parties**”) named in the SOW. In the event of a conflict between the Terms and Conditions and any SOWs, the SOW shall govern.

**1. Pricing; Payment Terms; Taxes.**

 (a) Fees. Customer shall pay to Toppan Merrill the fees set forth in any SOW (the “**Fees**”). If the Customer is represented by an advisor in furtherance of the project described in the SOW, Customer shall pay all costs incurred by such advisor for the performance of the Services.

 (b) Payment. Customer shall pay all Fees owing under this Agreement and any SOW within thirty (30) days of receipt of an invoice from Toppan Merrill. Interest may be added to all past due invoices in accordance with local laws. Any dispute of payment of Fees by Customer shall be submitted in writing, within thirty (30) days of receipt of invoice, to Toppan Merrill with reasonably sufficient detail outlining the dispute, or are otherwise accepted and owed by Customer.

 (c) Change Orders. If the scope of the Services changes, the Parties shall agree to update the SOW, in writing, based upon revised Services, deadlines, Fees, or other matters. Charges for optional or additional services already quoted or described or otherwise anticipated in the SOW will not require a change order.

 (d) Taxes. Customer shall have sole responsibility for applicable taxes. Unless Customer provides Toppan Merrill a sales and use tax exemption certificate prior to Toppan Merrill issuing an invoice for Services, Toppan Merrill shall include applicable sales and use taxes on the invoice for Services, and in addition to responsibility for Fees, Customer shall be responsible for remittance of applicable taxes to Toppan Merrill.

**2. Termination.**

 (a) Termination for Convenience. Notwithstanding 2(b), a SOW may not be terminated during a specific Term defined by the SOW. Thereafter, unless otherwise specified in a SOW, a SOW may be terminated by either Party with ninety (90) days written notice to the other Party.

 (b) Termination for Cause. This Agreement and any underlying SOW may be terminated for cause upon written notice by either Party of the other Party’s material breach of this Agreement (failure to pay any Fees due is a material breach) and continuance of such breach without cure for thirty (30) days.

(c) Effect of Termination. Upon termination or expiration of a SOW, Customer shall (i) promptly discontinue using all Services and Toppan Merrill IP (as defined below) and (ii) within thirty (30) days of receipt of invoice, pay all Fees for Services performed up to the date of termination and all fees and expenses associated with transferring Services to another provider designated by Customer.

(d) Early Termination. If Customer has agreed to a specific Term defined in the SOW and receives a discount or price break for the Term, and then decides to terminate early, Customer shall be responsible to pay the lessor of (1) repayment of the discount; or (2) payment for the full term at the discounted price.

**3. Ownership.**

(a) Customer Ownership. Customer owns and has sole responsibility for the accuracy, quality, integrity, and appropriateness of all original data, content and information provided to Toppan Merrill in conjunction with the Services, and, when paid for, Customer will own all modified content and information as specified under the SOW (collectively the “**Content**,” which, together with the Customer’s trademarks or logos, are referred to as the “**Customer Material**”).

(b) Toppan Merrill Ownership. All materials, methodologies, workflows, websites and software that Toppan Merrill uses or creates in providing the Services, and any intellectual property rights therein, are solely owned by Toppan Merrill (“**Toppan Merrill IP**”).

**4. Customer Requirements.**

(a) License to Customer Material. Customer grants to Toppan Merrill a license to the Customer Material only to the extent necessary for Toppan Merrill to provide the Services for Customer.

(b) Use of Customer Name. Customer grants to Toppan Merrill, and its affiliated companies, permission to use Customer’s name in its published client list and company logo for use in published materials including the Toppan Merrill website, sales collateral, proposal materials and presentations.

(c) Content. Customer will (i) use reasonable efforts to provide Toppan Merrill with clear and legible copies of the Content in the best possible condition; (ii) cooperate with Toppan Merrill in correcting any problems associated with Content; (iii) either retain a complete set of documents delivered to Toppan Merrill or hold Toppan Merrill harmless for any loss or damage incurred to documents during shipment, storage or use; (iv) report promptly to Toppan Merrill any problems or errors that Customer observes or discovers with the Content; and (v) notify Toppan Merrill, in writing, of all court orders restricting the use, distribution or disposition of the Content delivered to Toppan Merrill.

**5. Representations and Warranties.**

 (a) General Representations. Each Party represents and warrants that (i) it has full power and authority to enter into and perform its obligations under this Agreement; (ii) it will comply with all applicable laws; and (iii) it will use up-to-date, generally accepted virus detection devices and procedures to ensure that any electronic data transmitted to Toppan Merrill will not contain a virus or other harmful component.

 (b) Toppan Merrill Representations. Toppan Merrill represents and warrants that (i) the Services will be rendered using sound, professional practices and in a competent and professional manner; (ii) will be provided as described in the applicable SOW, including any specifications therein; and (iii) it has obtained all necessary permissions, software licenses and authority for the Toppan Merrill IP.

 (c) Customer Representations. Customer represents and warrants that (i) it has obtained all permissions and consent required by law to transfer the Content so that Toppan Merrill may lawfully use and process in accordance with this Agreement; (ii) it has delegated authority to its advisors in providing instructions in connection with the Services, and Toppan Merrill has no duty to verify such instructions with Customer; and (iii) it will not use the Services for any fraudulent or unlawful purposes, nor allow others to do so.

 (d) Disclaimer of Warranties. except as expressly stated in this agreement OR ANY SOW, the services are provided as-is, without any express or implied warranties, including, without limitation, any warranty of fitness for a particular purpose, non-infringement or merchantability.

 (e) Exclusive Remedy. Customer’s exclusive remedy for Toppan Merrill’s breach of 5(b)(ii) is the prompt and conforming reperformance of the Services subject to the breach.

**6. Confidentiality**.

 (a) “**Confidential Information**” means non-public information of a Party, including but not limited to Customer Material (including personal data controlled by the Customer), inventions, copyright, trade secrets, marketing plans, programs, source code, data and other documentation, customer and shareholder information, and other information related to the business of that Party that would be reasonably understood to be confidential and/or proprietary. The term Confidential Information does not include: (i) information that was in the receiving Party’s possession or was known to it prior to its receipt from the disclosing Party; (ii) information that is or becomes publicly available without the fault of the receiving Party; (iii) information that is or becomes rightfully available on an unrestricted basis to the receiving Party from a source other than the disclosing Party; or (iv) information that was independently developed by the receiving Party.

 (b) Each Party acknowledges that the other Party owns or possesses valuable Confidential Information. Each Party shall hold such Confidential Information of the other Party in strict confidence and will not make any disclosures without the written consent of the disclosing Party, except as needed in furtherance of the Services, and will take all reasonable steps to maintain the confidentiality of all Confidential Information. Upon termination of the Agreement, all copies of any Confidential Information of one Party in the possession of the other Party shall be destroyed or returned to the disclosing party. Notwithstanding the provisions of this Section 6(b), neither Party is obligated to immediately erase Confidential Information contained in an archived computer system backup made in accordance with such party’s security or disaster recovery procedures, provided that such archived copy will remain fully subject to these obligations of confidentiality until such destruction or erasure.

 (c) If a Party is compelled by court order, subpoena, or other requirement of law to disclose Confidential Information, the Party will provide the other Party with prompt notice (unless such notice is prohibited by law) so that the Party may, at its option and expense, seek a protective order or other remedy. In no event will the compelled Party disclose Confidential Information not expressly required by an order.

 (d)  All Content is stored in the European Union or United States. Any personal data within the Content is protected by the Privacy Regulations including but not limited to the General Data Protection Regulations (“**GDPR**”); the California Consumer Privacy Act; California Privacy Rights Act; and the Massachusetts Privacy Law. Toppan Merrill shall process and use personal data only for and on behalf of Customer, for the purpose of performing Services, as per the instructions of Customer, and in accordance with the law.

**7. Limitation of Liability and Indemnity.**

1. Limitation of Liability. NEITHER TOPPAN MERRILL NOR CUSTOMER SHALL BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS INCLUDING: DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT; LOSS OF REVENUE; LOSS OF CUSTOMER’S DATA; OR LOSS OF USE OF CUSTOMER’S MATERIAL, EQUIPMENT OR SYSTEMS. CUSTOMER EXPRESSLY AGREES THAT UNLESS OTHERWISE STATED HEREIN, THE REMEDIES PROVIDED IN THIS AGREEMENT ARE EXCLUSIVE AND THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF TOPPAN MERRILL, UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT, UNDER WARRANTY, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID OR PAYABLE TO TOPPAN MERRILL UNDER THE APPLICABLE SOW FOR THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. FOR BREACHES OF CONFIDENTIALITY, A PARTY’S LIABILITY SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS ($500,000). THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO A PARTY’S BREACH OF THE OWNERSHIP PROVISIONS CONTAINED IN THIS AGREEMENT NOR TO A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
2. Customer Indemnity. CUSTOMER SHALL, AT ITS OWN EXPENSE, INDEMNIFY, DEFEND, AND HOLD HARMLESS TOPPAN MERRILL FROM AND AGAINST ANY AND ALL ACTIONS, PROCEEDINGS, DAMAGES, LIABILITIES, CLAIMS, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEY’S FEES) ARISING FROM CLAIMS OF WHICH DATA/PROPERTY PROVIDED BY CUSTOMER HEREUNDER INFRINGE THE PATENT, COPYRIGHT, TRADEMARK RIGHTS, OR CONSTITUTE THE MISAPPROPRIATION OF TRADE SECRETS, OF ANY THIRD PARTY. THE OBLIGATIONS UNDER THIS CLAUSE WILL SURVIVE THE CANCELLATION, EXPIRATION, TERMINATION, OR COMPLETION OF THIS AGREEMENT AND/OR THE SERVICES PROVIDED.
3. Toppan Merrill Indemnity. TOPPAN MERRILL SHALL, AT ITS OWN EXPENSE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CUSTOMER FROM AND AGAINST ANY AND ALL ACTIONS, PROCEEDINGS, DAMAGES, LIABILITIES, CLAIMS, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEY’S FEES) ARISING FROM CLAIMS OF WHICH THE SERVICES INFRINGE THE PATENT, COPYRIGHT, TRADEMARK RIGHTS, OR CONSTITUTE THE MISAPPROPRIATION OF TRADE SECRETS, OF ANY THIRD PARTY. THE OBLIGATIONS UNDER THIS CLAUSE WILL SURVIVE THE CANCELLATION, EXPIRATION, TERMINATION, OR COMPLETION OF THIS AGREEMENT AND/OR THE SERVICES PROVIDED.

**8. Hosting Terms.** The following provisions apply to the extent that the Services include hosting Customer’s Content in applications on an internet-based platform (the “**Platform**”):

(a) Platform Users.

(i) Definitions. The Platform users (each a “**User**”) are those individuals authorized by Customer, whether enabled by Toppan Merrill, to access the Content in a Toppan Merrill application via the Platform.

(ii) Number. Customer agrees that it will not exceed the number of Users allowed by the SOW, provided that if no such number is specified, the number of Users will be fifty (50) and will not allow User account to be used by more than one individual authorized User.

(iii) Obligations. Users must consent to the Terms of Use and the Toppan Merrill Privacy Notice included on the Platform and which may be amended from time to time by Toppan Merrill, at its sole discretion.

 (b) Scheduled Maintenance. Toppan Merrill performs periodic maintenance on the Platform and its applications for system upgrades, maintenance, and backup procedures (“**Scheduled Maintenance**”). Advanced notice of Scheduled Maintenance will be provided on the Platform.

 (c) Customer Acknowledgment. Toppan Merrill will not be liable for a breach of this Agreement if a third-party gains access to Toppan Merrill’s Platform or applications as long as Toppan Merrill uses commercially reasonable measures to protect them from unlawful access and is otherwise complying with its obligations under this Agreement.

(d) Termination. The following will occur upon termination or expiration of a SOW or this Agreement:

(i) Toppan Merrill will terminate Customer’s and all Users’ access to the Platform or applications, as applicable.

(ii) If, within sixty (60) days of termination or expiration of the SOW, invoices are not paid in full or are not reasonably disputed in writing, Toppan Merrill will have no obligation to preserve or return the Content.

(iii) Toppan Merrill will permanently delete all Content and all “cached” files maintained by Toppan Merrill on the Platform or applicable applications. Upon termination or expiration of the SOW, Toppan Merrill’s obligations to host Content on the Platform or application, as applicable, will cease.

(iv) All remaining copies of any Confidential Information of one Party, then in the possession of the other Party, shall, at the direction of such Party, be destroyed or returned to the disclosing Party.

**9. General.**

 (a) Governing Law. This Agreement will be construed and enforced in accordance with the laws of the Province of Ontario, Canada, without giving effect to the principles of conflicts of law, and not with reference to the 1980 U.N. Convention on contracts for the international sale of goods or any local implementation of that convention.

 (b) Analytics. Upon anonymizing Content by removing all references to numeric values, proper names, addresses, and locations (“**Anonymized Content**”) and incorporating such Anonymized Content with or into similar information derived or obtained from other customers of Toppan Merrill (collectively “**Aggregated Content**”), Customer hereby grants to Toppan Merrill a non-exclusive, fully paid, world-wide and irrevocable license to use Aggregated Content exclusively for enhancing features and functionality of the Services.

 (c) Restricted Parties. **Toppan Merrill reserves the right to prohibit Services to any company or individual from a sanctioned or embargoed country or restrict access or use of Services to any restricted Party based on any government list.**

 (d) Assignment. This Agreement is binding upon and for the benefit of the Parties and their respective successors and assigns. It is agreed and understood that without obtaining prior written consent (i) Toppan Merrill may assign its rights, interests and obligations in this Agreement or any SOW pertaining thereto to any parent, subsidiary or affiliate of Toppan Merrill, or to a successor of Toppan Merrill’s assets or stock, and (ii) Customer may assign its rights, interests and obligations in this Agreement to any parent, subsidiary or affiliate of Customer.

 (e) Independent Contractors. Customer and Toppan Merrill are acting hereunder as independent contractors. Toppan Merrill shall not be considered or deemed to be an agent, employee, joint venture or partner of Customer. Toppan Merrill’s personnel shall not be considered employees of Customer, shall not be entitled to any benefits that Customer grants its employees and have no authority to act or purport to act on Customer’s behalf. Neither Customer nor Toppan Merrill has the right, and shall not seek, to exercise any control over the other Party. Each Party shall be solely responsible for hiring, firing, promoting, demoting, rates of pay, paying, taxes, benefits and other terms and conditions in regard to its own personnel.

 (f) Notices. Wherever provision is made in this Agreement for the giving, service or delivery of any notice, such notice shall be in writing and shall be given using a method providing for proof of delivery.

(g) Force Majeure. An extraordinary event or circumstance beyond the reasonable control of either Party, including, an “act of God” such as earthquake, hurricane, tornado, tsunami; war; strike; riot; epidemic or pandemic; act of government, public health emergency, and/or any health condition that requires either Party to the agreement to materially discontinue its operations, by law or otherwise shall be considered a (“**Force Majeure**”) If a delay or failure of a Party to comply with any obligation set forth in this Agreement is caused by Force Majeure, that obligation (other than the obligation to pay money when due and owing) will be suspended during the continuance of the Force Majeure condition and will not be considered a breach of this Agreement. A Party whose performance is suspended hereunder shall give prompt written notice of any event of Force Majeure and such Party’s best reasonable estimate of when such event will abate.

(h) No Accounting or Legal Services. Customer acknowledges and agrees that the Services are principally information management services and that none of the Services constitute or are intended to constitute the rendering of professional accounting or legal advice services.

(i) Entire Agreement. This Agreement, together with any applicable SOWs, constitutes the entire agreement between the parties and supersedes all previous agreements, promises, proposals, representations, understanding and negotiations, whether written or oral, between the parties regarding the subject matter herein. Toppan Merrill rejects the inclusion of any different or additional terms proposed by Customer, unless expressly agreed to in writing.