

General Terms and Conditions

Revision Date: October 25, 2018

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 (“Services”) and constitute the full agreement (collectively the “Agreement”) between the Customer and 2646999 Ontario Inc., an Ontario corporation located at One Adelaide Street East, Suite 3000, Toronto, Ontario M5C 2V9, or its affiliate or subsidiary (collectively, “Merrill”) (each a “Party”) 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 Merrill the fees (the “Fees”) set forth in any SOW. 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 30 days of receipt of an invoice from Merrill. Interest may be added to all past due invoices in accordance with local laws.

(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 quoted in the SOW will not require a change order.

(d) Taxes. Amounts payable by Customer under this Agreement are exclusive of all applicable taxes. If applicable law requires Customer to withhold amounts on payments owed to Merrill pursuant to this Agreement, Customer shall (i) effect such withholding and remit such amounts to the appropriate taxing authorities, and (ii) ensure that, after such deduction or withholding, Merrill receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Merrill would have received and retained in the absence of such required deduction or withholding.

2. Termination.

(a) Termination for Convenience. A SOW may be terminated by either party with 90 days’ written notice.

(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 Merrill IP (as defined below) and (ii) within 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.

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

4. Customer Requirements.

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

(b) Content. Customer will (i) use reasonable efforts to provide Merrill with clear and legible copies of the Content in the best possible condition; (ii) cooperate with Merrill in correcting any problems associated with Content; (iii) either retain a complete set of documents delivered to Merrill or hold Merrill harmless for any loss or damage incurred to documents during shipment, storage or use; (iv) report promptly to Merrill any problems or errors that Customer observes or discovers with the Content; and (v) notify Merrill, in writing, of all court orders restricting the use, distribution or disposition of the Content delivered to 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 Merrill will not contain a virus or other harmful component.

(b) Merrill Representations. Merrill represents and warrants that (i) the Services will be rendered using sound, professional practices and in a competent and professional manner; and (ii) it has obtained all necessary permissions, software licenses and authority for the 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 Merrill may lawfully use and process in accordance with this Agreement; and (ii) it has delegated authority to its advisors in providing instructions in connection with the Services, and 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, 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.

6. Confidentiality.

(a) "Confidential Information" means proprietary 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. 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.

(d) Any personal data within the Content is protected in accordance with applicable data protection laws.

7. Limitation of Liability. NEITHER 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 MERRILL UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT, UNDER WARRANTY, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID OR PAYABLE TO 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.

8. Hosting Terms. The following provisions apply to the extent that the Services include hosting Customer's Content on an Internet-based platform (the "Website"):

(a) Website Users.

(i) Definitions. The Website users (“Users” or “Reviewers”) are those individuals authorized by Customer in writing, and enabled by Merrill or Customer, to access the Content on the Website. “Managers” are those Reviewers who are authorized by Customer to upload and manage Content, invite other Managers and Reviewers and access reports.

(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 unlimited 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 Merrill Privacy Policy included in the Website and which may be amended from time to time by Merrill in its sole discretion.

(b) Service Level Agreements.

(i) Scheduled Maintenance. Merrill performs periodic maintenance on the Website for system upgrades, maintenance, and backup procedures (“Scheduled Maintenance”). Advanced notice is provided on the Website’s log-in screen. Scheduled Maintenance is limited to the period of 10:00 p.m. Saturdays to 5:00 a.m. Sundays (all such times being United States Central Standard Time) and will not exceed four (4) hours per calendar month.

(ii) Availability Guarantee. Aside from Scheduled Maintenance, Merrill guarantees that the Website will be available at least 99.5% of the time, measured on a twelve (12) month basis beginning on the Effective Date of this Agreement, and at least 98.5% of the time measured on a calendar month basis (collectively, the “Availability Guarantee”).

(iii) Exceptions. No period of inoperability will be included in calculating the Availability Guarantee to the extent that such downtime is due to (x) failure of Customer or its Users’ and Reviewers’ internet connectivity; or (y) internet or other traffic problems other than problems arising in or from networks required to be provided or controlled by Merrill.

(iv) Service Credits. If Merrill fails to meet the Availability Guarantee during the Term, Customer may (x) terminate this Agreement in accordance with Section 2(b); and (y) require Merrill to deliver, as soon as commercially practicable, the Content on the Website to Customer’s designee, if Customer makes such request within five (5) days of Merrill’s failure to meet the Availability Guarantee; or (z) request that Merrill provide Customer the credits described in the table below, provided Customer makes such request within twenty (20) days after Merrill’s failure to meet the Availability Guarantee.

Actual Percentage the Website is Available	Credit
98.5% or more	None
97% to less than 98.5%	10% of Monthly Fees
96% to less than 97%	25% of Monthly Fees
95% to less than 96%	50% of Monthly Fees
Less than 95%	100% of Monthly Fees

(c) Customer Acknowledgment. Merrill will not be liable for a breach of this Agreement if a third-party gains access to Merrill’s proprietary Website(s) or databases as long as 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) Merrill will terminate Customer’s and all Users’ access to the Website(s).

(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, Merrill will have no obligation to preserve or return the Content.

(iii) Merrill will permanently delete all Content and all cached files maintained by Merrill on its hosting system. Upon termination or expiration of the SOW, Merrill’s obligations to host Content on the Website 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 Merrill (collectively "Aggregated Content"), Customer hereby grants to 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. 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, Merrill may assign its rights, interests and obligations in this Agreement or any SOW pertaining thereto to any parent, subsidiary or affiliate of Merrill, or to a successor of the assets or stock of Merrill or the assets of any of its business units. Upon obtaining Merrill's prior written consent, Customer may assign its rights, interests and obligations in this Agreement to any parent, subsidiary or affiliate of Customer.

(e) Independent Contractors. Customer and Merrill are acting hereunder as independent contractors. Merrill shall not be considered or deemed to be an agent, employee, joint venture or partner of Customer. 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 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. If 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, understandings and negotiations, whether written or oral, between the parties regarding the subject matter herein. Merrill rejects the inclusion of any different or additional terms proposed by Customer, unless expressly agreed to in writing.