



TERMS AND CONDITIONS

1. Services Generally

- a. This Agreement governs the use of the Canto digital asset management software and associated services (collectively, the "**Services**"), as further described in the Order to which this Agreement is attached (the "**Order Form**").
- b. Canto will provide (i) the implementation services described on the Order Form ("Implementation Services"); and (ii) the support services described on Exhibit A to this Agreement ("Support Services").
- c. The Services may interoperate with various third-party platforms and applications as determined by Canto from time to time ("**Add-Ons**"). Continued interoperation of the Services with any Add-Ons is dependent upon the availability of each such application and Canto may cease to provide such functionality if access to any Add-On is not available to Canto on commercially reasonable terms. Canto makes no representations or warranties with respect to the Add-Ons.

2. Right of Use Registration and Accounts

- a. Subject to the terms of this Agreement, Canto grants Customer, during the term of the Order Form, a world-wide, non-exclusive, non-transferable right to access and use the Services for Customer's internal business purposes. Customer will not resell, rent, lease, transfer, lend, timeshare, assign, display or permit others to access or use the Services except as explicitly permitted under this Agreement.
- b. Customer may allow its employees, consultants, contractors or agents ("**Customer's Users**") to access and use the Services subject to the limitations specified on the Order Form, solely on Customer's behalf and for the benefit of Customer, provided that: (i) Customer's Users are aware of and comply with this Agreement; and (ii) Customer assumes full responsibility for all acts and omissions of Customer's Users in connection with the use of the Services.
- c. Customer's Users must complete the registration process by providing complete and accurate information, including a valid email address. The Services have different levels of access and permissions for various User roles, including account administrator, contributor, consumer, and guest. Customer is responsible for maintaining the confidentiality of its logins and account and for all activities that occur under its logins and account, including the activities of Customer's Users. If Customer or Customer's Users become aware of any unauthorized use of the Services or Customer's Users' accounts, Customer will contact Canto immediately at info@canto.com.
- d. Canto retains all right, title and interest in and to the Services except for the rights granted to Customer pursuant to this Agreement.
- e. The Parties acknowledge that the Services may collect and aggregate certain de-identified information and data regarding the use and operation of the Services by Customer. Customer agrees that Canto may utilize such information and data as well as any Customer suggestions, enhancement requests or other recommendations (collectively, "**Feedback**") for any lawful business purpose, without a duty of accounting to Customer so long as such Feedback does not

identify Customer or any Customer Content. No compensation shall be paid with respect to Canto's use of Feedback.

- f. Customer acknowledges and agrees that (a) the Services automatically learn and improve as a result of processing images and data ("Machine Learning"), and (b) that Canto is and will be the sole and exclusive owner of all right, title and interest in and to the improvements to Services resulting from Machine Learning and any and all intellectual property rights in and to any of such improvements.

3. Use Restrictions; Customer Content

- a. Customer will not: (i) use the Services in any manner that is not permitted under the terms of this Agreement or in violation of applicable law; (ii) permit any third party to access the Services, except for Customer's Users; (iii) use the Services to store or transmit any viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs, or otherwise engage in unfair, unlawful or deceptive practices; (iv) upload or provide any Customer Content that is defamatory, offensive, abusive, obscene, of menacing character, or that violates the privacy or intellectual property rights of any third party; (v) interfere with or disrupt the integrity or performance of the Services; (vi) attempt to gain unauthorized access to the Services or the Services' related systems and networks, or systematically access the Services using 'bots' or 'spiders'; (vii) decompile, reverse engineer or undertake any similar efforts with respect to the Services; (viii) create any derivative works of the Services; (ix) copy, modify, frame or mirror the Services; or (x) use the Services to develop or offer a service that is similar to the Services. The above restrictions apply to the Services in whole and to any portion thereof.
- b. All digital files and information uploaded by or on behalf of Customer or Customer's Users into the Services ("**Customer Content**") are the sole and exclusive property of Customer. Customer grants Canto a right and license to access and use the Customer Content solely for purposes of providing, developing and supporting the Services pursuant to this Agreement. From time to time, Canto may request to use Customer Content as reference materials for purposes of internal testing and improving the Services' analytical processes and techniques, including internal algorithm development and improvement by means of training of the Services' artificial intelligence/machine learning systems underpinning the Services. If Customer permits such use, the improvements and enhancements to the Services resulting from use of the Customer Content may be made available to Canto's customers generally.
- c. Customer will not upload to the Services any Customer Content that constitutes or encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate applicable laws and regulations including laws and regulations governing privacy, mass email, spam, export control, consumer protection, unfair competition, false advertising, harassment, anti-competitive activities, misappropriation, libel, defamation, obscene content and incitement.
- d. Canto respects the intellectual property rights of others and Canto will handle any third-party request for removal of Customer Content from the Services that is alleged to infringe copyrights of any third party, in accordance with Canto's DMCA Copyright Policy, available at: <https://www.canto.com/dmca-policy/>.
- e. As part of the Services and except as provided below, the Customer Content is regularly backed up on a daily basis and each such backup is retained for 30 days (the "Data Retention Period"). The backup data will be erased after 30 days. During the Data Retention Period, Customer may retrieve such backup data by downloading a copy through the Services or by submitting a request in writing to canto-support@canto.com. Notwithstanding the foregoing, if Customer accesses and uses the "MerlinOne Digital Asset Management Services" as stated on the applicable Order Form, the foregoing does not apply, and Customer acknowledges that the Services are provided from a redundant location but no backups are retained by Canto at any time.

4. Fees, Costs and Taxes

- a. In consideration for the right to use the Services, Customer will pay fees in the amount and in accordance with the payment terms set forth in the Order Form (the "**Services Fees**"). Except as explicitly provided under this Agreement, Services Fees are not refundable. The Service Fees set forth in the applicable Order Form are subject to adjustment beginning with the commencement of each Renewal Term. Customer assumes all responsibilities and costs associated with Customer's use of the Services, including, without limitation, any required equipment and Internet access fees and backup expenses.
- b. Customer is responsible for any applicable sales, use, value-added, or excise taxes, and any other similar taxes, duties or charges of any kind (excluding taxes on Canto's income) imposed by any federal, state, or local governmental entity on any amounts payable by Customer under this Agreement or any Order Form whether or not such taxes are collected by Canto. Canto may include on the applicable invoice a separate charge for such taxes and will remit taxes collected, if any, to the appropriate taxing authority.
- c. If any invoiced amount is not received by Canto by the applicable due date then, without limiting Canto's rights or remedies, those amounts may accrue late interest at a rate of one and a half percent (1.5%) per month or the highest rate permitted by applicable law, whichever is lower, commencing on the date that payment was due.

5. Representations and Warranties

- a. Authorization. Each Party represents, warrants and covenants to the other Party that it has the requisite legal power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement.
- b. By Customer. Customer represents, warrants and covenants that Customer has obtained all rights and permissions necessary to provide the Customer Content to Canto for use as permitted under this Agreement.
- c. By Canto. Canto represents, warrants and covenants that: (i) the Services will be free of material programming errors and will operate in accordance with and conform to the documentation provided as part of the Services in all material respects; (ii) the Implementation Services and Support Services will be performed by qualified personnel in a professional manner consistent with industry standards and in compliance with the terms of this Agreement, the applicable Order Form and all applicable federal, state and local laws, rules and regulations; (iii) it uses best commercially reasonable efforts to ensure that no malicious code, including any viruses, disabling code, time bombs or Trojan horses ("Viruses") are coded or introduced into the Services as made available by Canto to Customer in accordance with the terms of this Agreement; and (iv) the Services will be Available for use at least 99.8% of the time, measured on a monthly basis, excluding Scheduled Downtime. "Scheduled Downtime" shall be defined as: a) any downtime that the Parties agree to in advance; or b) downtime during regularly scheduled maintenance that occurs between 11pm and 3am local time daily. "Available" means that the Services can be accessed by Customer except during: (i) Scheduled Downtime; and (ii) downtime caused by circumstances beyond Canto's control, including without limitation, Customer modifications, force majeure, general Internet outages, failure of Customer's infrastructure or connectivity, computer and telecommunications failures and delays not within Canto's control.
- d. OTHER THAN AS PROVIDED IN THIS SECTION 5, CANTO MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. Confidentiality.

- a. **"Confidential Information"** means non-public business, financial and technical information, including any data and business-related information provided by Customer to Canto, the Services and all elements and functionality details related thereof, the terms of this Agreement and any third party information that the disclosing Party is obligated to keep confidential, that is either marked as "confidential" or "proprietary" or which, under the circumstances, should be understood to be confidential.
- b. Confidential Information does not include information which: (i) is or becomes generally available to the public other than as a result of wrongful disclosure by the receiving Party; (ii) is or becomes available to the receiving Party on a non-confidential basis by a third party that rightfully possesses the Confidential Information and has the legal right to make such disclosure; or (iii) is developed independently by the receiving Party without use of the disclosing Party's Confidential Information and by persons without access to such information.
- c. The receiving Party will use measures at least as protective as those it uses for its own confidential information, but no less than reasonable measures, to keep confidential and not to disclose to any third party any Confidential Information of the disclosing Party, except to those of the receiving Party's personnel, including external advisors, consultants, insurers and investors, who need to know such Confidential Information, who are informed of the confidential nature of the Confidential Information and who agree to be bound by terms of confidentiality at least as protective as those in this Agreement or are bound to confidentiality already by mandatory professional rules (e.g. attorney at law, tax advisors, auditors). The receiving Party will not use any Confidential Information, directly or indirectly, for any purpose other than as necessary to perform its obligations and exercise its rights under this Agreement. Each Party is responsible for any breach of the confidentiality of the other Party by its personnel, which for purposes of Customer will include, without limitation, Customer's Users.
- d. If the receiving Party becomes legally compelled to disclose any Confidential Information, it will provide the disclosing Party with prompt prior written notice to the extent legally permitted and assistance, at the disclosing Party's expense, in obtaining a protective order.
- e. Upon termination of the Agreement, the receiving Party will make all reasonable efforts to either: (a) promptly return to the disclosing Party any Confidential Information disclosed under this Agreement, and any copies thereof, or (b) destroy any documents, electronic records, software or other instruments that contain all or any portion of Confidential Information and will certify in writing to the disclosing Party that such Confidential Information has been returned or destroyed, except that the receiving Party may retain a minimum number of copies of the disclosing Party's Confidential Information under appropriate confidentiality and security arrangements: (i) in backups, until the backup retention cycle deletes the Confidential Information; (ii) as required under applicable laws; and (iii) for legal and administrative proceedings.

7. Indemnification

- a. By Canto. Canto shall, at its expense, defend Customer from or settle any claim, proceeding, or suit brought by a third party ("Claim") against Customer (i) to the extent (a) that the Services infringe or misappropriate any intellectual property right of such third party or (b) arising out of Canto's gross negligence or willful misconduct, and (ii) will indemnify Customer from all damages, costs, and attorneys' fees finally awarded and unappealable against Customer as a result of such Claim. Canto shall have no obligation under Section 7(a) to the extent any Claim arises out of or is based upon: (i) Customer's use of the Services not in compliance with this Agreement or the Documentation; (ii) Customer's combination of the Services with software, hardware, system, data, or other materials not supplied or authorized by Canto (unless expressly permitted by the Documentation) without Canto's prior written authorization; or (iii) the Customer Content. In the event an infringement or misappropriation Claim involving the Services is brought or threatened, or

is likely to be brought or threatened in Canto's reasonable opinion, Canto may, at its sole option and expense: (x) procure for Customer the right to continue to use the Services, (y) modify the Services in a manner that does not materially degrade the Service's functionality, or (z) terminate the affected Services and, with respect to termination of the Services, refund the unearned portion of the Fees previously paid. Notwithstanding anything else herein, the foregoing indemnification obligations are Canto's only obligations and liability, and Customer's exclusive remedy, in respect of any infringement or misappropriation Claim.

- b. By Customer. Customer shall, at its expense, defend Canto from or settle any Claim against Canto, its Affiliates, licensors and suppliers arising out of: (i) Customer's breach of Section 3(a), (ii) third party claims that Customer Content infringes on any third party's intellectual property rights; or (iii) Customer's gross negligence or willful misconduct. Customer will indemnify Canto from all damages, costs, and attorneys' fees finally awarded and unappealable against Canto or its Affiliates as a result of any such claim.
- c. Indemnification Procedures. Each party seeking indemnification hereunder shall provide the other party with: (i) prompt written notice of any Claim for which indemnification is sought; (ii) complete control of the defense and settlement of such claim; and (iii) reasonable assistance and cooperation in such defense at the indemnifying party's expense. Notwithstanding the foregoing, the indemnifying party may not enter into a settlement of a claim that involves a remedy other than the payment of money by the indemnified party (which amounts must be subject to indemnification by the indemnifying party) without the indemnified party's written consent.

8. Limits of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY OTHER PERSON FOR (I) ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE, (HOWEVER ARISING, UNDER ANY THEORY OF LIABILITY) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SERVICES OR THE AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) DIRECT DAMAGES IN EXCESS OF THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER UNDER THE AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM RESULTING IN SUCH DAMAGES AROSE. THE FOREGOING LIMITATIONS AND EXCLUSIONS DO NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, OR CUSTOMER'S FAILURE TO REMIT ALL FEES PROPERLY DUE AND OWING UNDER THE AGREEMENT.

9. Term and Termination; Suspension

- a. This Agreement commences as of the Effective Date and will continue in effect for so long as there are any then current Order Forms. Each Party may terminate the Agreement and the Order Forms then in effect, if the other Party breaches the Agreement and does not cure such breach within thirty (30) days after receiving a written notice from the non-breaching Party. If this Agreement (and any Order Form) is terminated under this Section 9(a) by Customer following breach by Canto, Customer will receive a pro-rated refund of the unearned pre-paid Services Fees. If this Agreement or any Order Form is terminated under this Section 9(a) by Canto following breach by Customer, Customer will also pay all amounts to become due and owing under the applicable Order Form. Upon termination for any reason Customer's access to and use of the Services will terminate immediately.
- b. Canto may suspend the provision of the Services, if (i) one or more of Customer's payments are ten (10) days or more past due and Canto has notified Customer of Customer's payment default; or (ii) if Canto believes that a suspension is necessary to avoid substantial harm to Customer, Customer's Users, to other Canto customers, to Canto or to any of its affiliates and contractors, or to a third party, including as a result of a third party infrastructure or communications failures or disruptions, or due to malicious attacks on the Services' systems, or to cure a material breach, or

as required by laws, by a court of law or by a governmental authority or agency. Canto will use all reasonable efforts to provide Customer with reasonable advance notice of the need for any such suspension, and at least 5 days for you to cure any breach that is the cause for such suspension. Any suspension made pursuant to this section will only be in effect for as long as necessary to address the issues giving rise to the suspension.

10. Governing Law Jurisdiction and Dispute Resolution

- a. This Agreement, the Services and any Claim, cause of action or dispute arising out of or related thereto, will be governed solely by the laws of the State of Georgia, without giving effect to any conflicts of law principles.
- b. Prior and as a condition to initiating any legal action, the Parties will attempt in good faith to resolve any dispute related to this Agreement first by direct communications between the persons responsible for administering this Agreement and next by negotiation between executives with authority to settle the dispute. Either Party may give the other Party a written notice of any dispute not resolved in the normal course of business. Within five (5) business days after delivery of the notice, the receiving Party will submit to the other Party a written response. The notice and the response will include a statement of each Party's position and a summary of arguments supporting that position and the name and title of the executive who will represent that Party. Within five (5) business days after delivery of the disputing Party's notice, the executives of both Parties will meet at a mutually acceptable time and place, including by phone or video conference, and thereafter as often as they reasonably deem necessary, to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

11. General Provisions

- a. **Modifications to the Services.** Canto may, either partially or in its entirety modify, adapt or change the Services, or any of its features, user interface and design, the extent and availability of the content of the Services and any other aspect related thereto, through updates and upgrades, provided that Canto will not materially decrease the overall functionality of the Services during the term of any then current Order Form. Canto will notify Customer at the same time and in the same manner as Canto notifies its customers generally about substantial changes in the Services.
- b. **Notice.** Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or overnight courier, return receipt requested, to the appropriate party at the address set forth on Order Form and with the appropriate postage affixed. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section. Notices are deemed given two (2) business days following the date of mailing or one business day following delivery to a courier.
- c. **Assignment of Rights.** Each Party may assign to a third party its rights and obligations under this Agreement in the event of a merger with or acquisition of all or substantially all of a Party's assets by that third party, provided that the third party undertakes the assigning Party's entire rights and obligations under this Agreement. Other assignments of rights and obligations under this Agreement are null and void without the prior written consent of the other Party.
- d. **Relationship Between the Parties.** Neither this Agreement, nor any terms and conditions contained herein, will be construed as creating a partnership, joint venture, agency, or franchise relationship between the Parties.

- e. **No Third-Party Beneficiaries.** This Agreement is not intended to and will not be construed to give any third party any interest or rights, including, without limitation, third party beneficiary rights, with respect to or in connection with any provision under this Agreement.
- f. **Force Majeure.** Neither Party will be liable for any default or delay in the performance of its obligations under this Agreement: (a) if and to the extent such default or delay is caused by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, war, terrorism, rebellions or revolutions, or any other similar cause beyond the reasonable control of such Party; and (b) provided the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. The affected Party will promptly notify the other Party of the circumstances causing its delay or failure to perform and of its plans and efforts to implement a work-around solution. For as long as such circumstances prevail, the Party whose performance is delayed or hindered will continue to use all commercially reasonable efforts to recommence performance without delay.
- g. **Complete Terms and Severability.** This Agreement constitutes the entire and complete agreement between Customer and Canto concerning any use of, or in connection with the Services. No terms issued by Customer or appearing on any other document provided by Customer including without limitation any invoice, order, purchase order or acknowledgment form will have any force or effect or otherwise be binding on the Parties. If any provision of this Agreement is held invalid or unenforceable, that provision must be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the Parties and the remaining provisions will remain in full force and effect.
- h. **Publicity.** Canto may include identification (including the logo) of Customer as a customer on Canto's website and marketing materials provided that identification of Customer is no more prominent than the identification of Canto's other customers and is otherwise consistent with Canto's practice of identifying its customers on Canto's website and in its marketing materials at the time. .
- i. **Amendments.** This Agreement may be amended only by a written instrument executed by duly authorized representatives of the Parties.
- j. **Waiver.** The failure of either Party to enforce any provision of this Agreement, unless waived in writing by such Party, will not constitute a waiver of that Party's right to enforce that provision or any other provision of this Agreement.
- k. **Prevailing Party.** Should it become necessary to take any action to enforce the terms of this Agreement, the prevailing Party is entitled to recover its actual and reasonable attorney's fees and costs including any reasonable attorney's fees associated with obtaining, enforcing or collecting upon any judgment as well as any subsequent appeal.
- l. **Survival.** Those provisions that by their nature are intended to survive termination or expiration of this Agreement will so survive.

Exhibit A
Canto Service Level Agreement

Incident Response & Resolution Times:

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Severity	Description	Response time*	Resolution time
Urgent (Critical)	Product is down and not accessible or slowed down to such a degree that logging in or working with the product leads to constant timeouts.	1 hour	4 hours after issue verification
High	A crucial part of the product (upload, download, search, sharing, API) is not accessible or slowed down to such a degree that using it leads to constant timeouts.	2 hours	24 hours after issue verification
Medium	A crucial part of the product (upload, download, search, sharing, API) is degraded with a workaround being available or one of our addons is not accessible or slowed down to such a degree that using it leads to constant timeouts.	4 hours	Canto will resolve the issue in the next scheduled release
Low	All other requests.	8 hours	Canto will consider including the request in one of its future releases

*Response time subject to Canto business hours (8am-5pm CET in Europe and 8am-5pm PT in the US) including a personal response from one of our support agents.