

SUBSCRIPTION AGREEMENT

UPDATED: 5th December 2019

This Subscription Agreement, together with its incorporated terms and conditions (“**Agreement**”) is between Assimil8 and you (individual or entity) that has downloaded or otherwise procured the Subscription Service (as defined below) for use as an end user (“you” and “your”).

This Agreement incorporates by this reference all of the numbered clauses below (“**Main Body**”) as well as the terms and conditions of all Order Forms and SOWs signed by authorised representatives of both parties and the Support Guide. In the event of any conflict between terms and conditions in this Agreement, the following order of precedence will apply: (1) any Order Form (solely with respect to that Order); (2) any SOW (solely with respect to that SOW); (3) the Main Body; (4) the Support Guide; and (5) any other incorporated document.

- A. BY ACCESSING OR USING ALL OR ANY PORTION OF THE ASSIMIL8 SUBSCRIPTION SERVICE, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS PUBLISHED ON ASSIMIL8’S WEBSITE AT <https://assimil8.com/legal/> (OR SUCCESSOR URL).
- B. YOU AGREE THAT:
 - a. THIS AGREEMENT IS ENFORCEABLE IN THE SAME MANNER AS ANY WRITTEN AGREEMENT SIGNED BY YOU AND IS LEGALLY BINDING BETWEEN YOU AND ASSIMIL8 LTD. OR THE APPLICABLE ASSIMIL8 AFFILIATE (“ASSIMIL8”).
 - b. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT ACCESS OR USE THE SUBSCRIPTION SERVICE. IF YOU WISH TO USE THE SUBSCRIPTION SERVICE AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATE ORGANISATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORISED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT AND AUTHORITY TO DO SO.

1. Definitions.

- 1.1. “**Affiliate**” means, with respect to a party, any legal entity (such as a corporation, partnership, or other legal entity) that controls, is controlled by, or is under common control with such party. For purposes of this definition, “control” means the legal power to direct or cause direction of the general management of the corporation, partnership, or other legal entity. Affiliates are “**Your Affiliates**” and Affiliates of Assimil8 are “**Assimil8 Affiliates**.”
- 1.2. “**Authorised User**” means those uniquely identified individuals who are authorised by you to access and use the Subscription Service.
- 1.3. “**Authorised Partner**” means a third-party reseller authorised by Assimil8 to sell access to the Subscription Service and related Professional Services.
- 1.4. “**Claim**” means any suit, claim, action, or demand, in each case solely to the extent brought by an unaffiliated third party.
- 1.5. “**Confidential Information**” means: (a) the Subscription Service (which is Assimil8’s Confidential Information); (b) any information of a party that is disclosed in writing or orally and designated confidential at time of disclosure (and, for oral disclosures, summarised in writing within 30 days of initial disclosure and delivered in written summary form to receiving party), or that, due to the nature of the information or circumstances of disclosure, receiving party should reasonably understand to be disclosing party’s confidential information; and (c) the terms of this Agreement, any Order Form, any SOW, and any amendment or

attachment to any of these (which will be deemed Confidential Information of both parties). As an example only and not by way of limitation, Assimil8's Executable Code, Source Code, software product, Documentation, and any idea, algorithm, or trade secrets of Assimil8 in the software product or Documentation will be deemed to be Assimil8's Confidential Information.

- 1.1. **"Data Protection Legislation"** means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)
- 1.2. **"Documentation"** means the then-current, published installation and operating instructions, user manuals, and help files made available by Assimil8 to you intended for use in connection with the Subscription Service.
- 1.3. **"Effective Date"** means the date of your first Order Form or the initial delivery date of credentials to access the Subscription Service (whichever is earlier).
- 1.4. **"Executable Code"** means the fully compiled version of a software program that can be executed by a computer and used by an end-user without further compilation.
- 1.5. **"Intellectual Property Rights"** or **"IPR"** means all registered and unregistered intellectual property or other proprietary rights worldwide, including patent, trademark, service mark, copyright, trade secret, know-how, moral right, and any other intellectual and intangible property rights, including all continuations, continuations in part, applications, renewals, and extensions of any of the foregoing, whether registered or unregistered.
- 1.6. **"Law"** means all applicable laws, rules, statutes, decrees, decisions, orders, regulations, judgments, codes, and requirements of any government authority (federal, state, local, or international) having jurisdiction.
- 1.7. **"Order Form"** means an ordering document signed by the authorised representatives of you and Assimil8 that specifies: (a) Subscription Service access purchased, its price, and its Subscription Term; and (b) the scope and price of Professional services purchased (if any).
- 1.8. **"Professional Services"** means consulting, implementation, configuration, integration, or training services provided by Assimil8 or its authorised service providers.
- 1.9. **"Source Code"** means the human-readable version of a software program that can be compiled into Executable Code.
- 1.10. **"SOW"** means a statement of work that describes the scope of Professional Services signed by authorised representatives of you and Assimil8.
- 1.11. **"Subscription Service"** means the Assimil8 software-as-a-service offering ordered by you under an Order Form.
- 1.12. **"Subscription Term"** means the period of authorised access to and use of the Subscription Service, as set forth in an Order Form.
- 1.13. **"Support"** means technical support and maintenance for the software, as set forth in the Support Guide.
- 1.14. **"Support Guide"** means the Assimil8 Support and Maintenance Program Guide at <http://www.Assimil8.com/legal/>.
- 1.1. **"UK Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2. **“Your Data”** means electronic data uploaded by or for you or your agents, employees, or contractors, and processed in the Subscription Service.

2. **Orders.**

If you have purchased from an Authorised Partner of Assimil8, see Clause 2.5 (Reseller Orders) below.

2.1. **Assimil8 Orders.** If you have signed an Order Form directly with Assimil8, then Assimil8 will provide the Subscription Service or Professional Services identified in an Order Form or SOW pursuant to the terms of this Agreement. Upon execution by you and Assimil8, each Order Form is non-cancellable and, except as otherwise provided in this Agreement, non-refundable. Prices stated in each Order Form are final, and Professional Services are separately ordered from (and not required for use of) the Subscription Service. Support is purchased as part of the licenced Subscription Service as set forth in an Order Form.

2.2. **Affiliate Orders.** Your Affiliates may separately enter into Order Forms or SOWs that reference this Agreement with Assimil8 or an Assimil8 Affiliate. Except as otherwise expressly stated in an Order Form, each such Affiliate’s Order Form will be governed by this Agreement, and Your Affiliate will be deemed a party to this Agreement and will be treated as you under the terms of this Agreement for the purposes of that Order Form. If Your Affiliate resides in a different country than you, such Affiliate’s Order Form may include modifications particular to international transactions (e.g., tax rates and governing law).

2.3. **Invoices and Payment.** Assimil8 will issue the initial invoice to you corresponding with each Order Form on or shortly following the signed Order Form being received by Assimil8 and prior to the Subscription Services being provided. Each Subscription Term is a non-divisible, continuous commitment, regardless of the invoice schedule, and pricing is based on a purchase of the entire Subscription Term. Unless otherwise indicated in an Order Form, fees for Professional Services performed on a fixed fee basis are invoiced at the time of availability of the Assimil8 software as provided in this Clause 2.3, and fees for Professional Services performed on a time and materials basis are invoiced monthly in arrears. You will pay each invoice in full, within 10 days after the invoice date. Late payments will accrue interest at a rate of 1.5% per month or the legal maximum under the Late Payment of Commercial Debts regulations, whichever is greater. You will cure a delinquency in payment of any amounts owed under this Agreement within 30 days from the date of Assimil8’s delinquency notice. Assimil8 may suspend the Subscription Service or delivery of Professional Services while any payment is delinquent in addition to other rights and remedies (including, without limitation, termination as set forth herein), without liability until the delinquency is paid in full. You will make payments free of any currency controls or other restrictions, by check or wire transfer, to the address or bank account designated by Assimil8. You may not reduce any amount payable to Assimil8 under this Agreement due to any counterclaim, set-off, adjustment, or any other claim you might have against Assimil8 or any other party. All terms of this Clause 2 apply except as may be expressly stated otherwise in the applicable Order Form, SOW, or elsewhere in this Agreement.

2.4. **Taxes.** All payments, fees, and other charges payable by you to Assimil8 under this Agreement are exclusive of VAT and other taxes, levies, tariffs, duties, value-added taxes, export and import fees, withholding, and all other taxes or government assessments (collectively, **“Taxes”**). You will pay all Taxes arising out of the transactions contemplated by this Agreement (except Taxes based on Assimil8’s net income, property, or employees) or will provide Assimil8 with a tax exemption certificate acceptable to the applicable taxing authorities.

2.5. **Reseller Orders.** If you order Subscription Service subject an agreement with an Authorised Partner (**“Reseller Purchase Agreement”**) and not Assimil8, then notwithstanding anything

to contrary in this Agreement: **(a)** your use of the Subscription Service is subject to any additional terms in the Reseller Purchase Agreement, including any limitations on use of the Subscription Service in conjunction with third-party applications; and **(b)** Clauses 2.1 to 2.4 will not apply to your Reseller Purchase Agreement with the Authorised Partner, provided that you agree to pay the Authorised Partner the fees agreed in the Reseller Purchase Agreement associated with the Subscription Service, and any Professional Services purchased, and you have no direct payment obligations to Assimil8 for such purchase. Any licensing, support, warranty, and other terms provided for the Subscription Service and Professional Services, if any, shall be exclusively as stated in this Agreement, and any additional or conflicting terms offered by the Authorised Partner shall be of no effect between you and Assimil8. Notwithstanding anything in this Agreement to the contrary: (i) the Reseller Purchase Agreement does not modify any of the terms of this Agreement; and (ii) the Reseller Purchase Agreement is between you and the Authorised Partner and is not binding on Assimil8. Assimil8 may terminate this Agreement (including your right to use the Assimil8 software) in the event Assimil8 fails to receive payment for your use of the Assimil8 software from the Authorised Partner or if you breach any term of this Agreement.

3. Access and Restrictions.

- 3.1. **Subscription Service.** Subject to the terms of this Agreement and payment of all fees due, Assimil8 authorises you to access and use the Subscription Service during the Subscription Term stated in the applicable Order Form, solely for use by Authorised Users for your internal business purposes in accordance with the Documentation.
- 3.2. **Authorised Users.** Authorised Users will receive unique username and password credentials to access the Subscription Service. Credentials may not be shared between Authorised Users and you must ensure that all Authorised Users keep user credentials strictly confidential. Each Authorised User's access rights may be further specified in the applicable Order Form. You may permit your contractors and Affiliates to access the Subscription Service as Authorised Users in accordance with this Agreement, provided that you will remain liable for the acts and omissions of your contractors and Affiliates as if they were you under this Agreement.
- 3.3. **Technical Support.** During the Subscription Term, Assimil8 will provide Support for the Subscription Service pursuant to the Support Guide.
- 3.4. **Restrictions.** You will not (and have no licence to): (a) use the Subscription Service or Documentation except as permitted in this Agreement; (b) disassemble, decompile, port, reverse compile, reverse engineer, translate, or otherwise attempt to separate any of the components of the Subscription Service or reconstruct any Subscription Service, or attempt to derive or obtain any source code, structure, algorithms, processes, techniques, technologies, know-how, or ideas embodied by, underlying, or contained in the Subscription Service; (c) sell, licence, sublicense, rent, lease, encumber, lend, distribute, transfer, host, manage for third parties, or otherwise provide a third party with access to the Subscription Service except as expressly set forth in an Order Form; (d) alter, modify, or create derivative works of the Subscription Service (including the underlying source code) in any way, including through customisation, translation, or localisation; (e) remove or alter any trademark, logo, copyright, or other proprietary notices, legends, symbols, or labels in the Subscription Service or Documentation; (f) publicly disseminate performance information from any source related to the Subscription Service; (g) use the Subscription Service to develop a product that is competitive with the Subscription Service or other Assimil8 product offerings; (h) enable access to the Subscription Service for a greater number of Authorised Users than the sum quantity of subscriptions or credentials purchased in the applicable Order Form; (i) reassign subscription access rights or credentials between Authorised Users so frequently as to enable a single subscription to be shared among multiple users; or (j) use

it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation. You will not cause, encourage, or permit any other person or entity under its control from taking any actions that you are prohibited from taking under this Agreement.

4. Customer Data.

- 4.1. **General.** You are solely responsible for the accuracy and content of all Your Data. You represent and warrant to Assimil8 that: (a) you have sufficient rights in Your Data to authorize Assimil8 to process, distribute and display Your Data as contemplated by this Agreement and the Documentation; and (b) your use of the Subscription Service and Your Data is at all times compliant with your privacy policies and all applicable laws, regulations and conventions, including without limitation those related to data privacy, international communications and the exportation of technical or personal data.
- 4.2. **Responsibility for Security and Integrity of Your Data.** Assimil8 shall, in the performance of Professional Services or Support, comply with its Privacy Policy relating to the privacy and security of Your Data available at <https://assimil8.com/privacy-policy/> or such other website address as may be notified to you from time to time, and such document may be amended from time to time by Assimil8 in its sole discretion. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. You are solely responsible for adequately duplicating, documenting, and protecting Your Data, and Assimil8 assumes no liability for your failure to do so. The parties acknowledge that if Assimil8 processes any personal data on your behalf when performing its obligations under this agreement, you are the controller and Assimil8 is the processor for the purposes of the Data Protection Legislation and the personal data may be transferred or stored outside the EEA or the country where you are located in order to carry out the Services and the Supplier's other obligations under this agreement. Without prejudice to the generality of this clause 4, you will ensure that you have all necessary appropriate consents (if required) and any relevant third parties to allow Assimil8 to process the personal data.
- 4.3. **Protected Health Information (Applicable to United States Persons).** You shall not upload to the Subscription Service or publish thereon any patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended) (“HIPAA”), or any similar federal or state laws, rules or regulations (“**Health Information**”) and acknowledges that Assimil8 is not a Business Associate as that term is defined in HIPAA. Assimil8 will have no liability under this Agreement for Health Information, notwithstanding anything to the contrary herein.
- 4.4. **Payment Card Data.** You will not upload to the Subscription Service or publish thereon any payment card information and you acknowledge that the Subscription Service is not compliant with the Payment Card Industry Data Security Standards.
- 4.5. **Data Backup.** The Subscription Service does not replace the need for you to maintain regular data backups or redundant data archives. ASSIMIL8 HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF YOUR DATA.

5. Intellectual Property.

- 5.1. **Ownership.** As between the parties, Assimil8, Assimil8 Affiliates, and its and their suppliers and licensors own all right, title, and interest in and to all IPR in (and in all copies of) the Subscription Service and Documentation, regardless of the form or media in or on which the original or other copies may subsequently exist. Except for the access and use rights granted in this Agreement, Assimil8 reserves all, and does not grant any other, rights (express,

implied, by estoppel, through exhaustion, or otherwise). The Subscription Service to which you are granted access is not sold, even if Assimil8 makes reference to words such as “sale” or “purchase” in the applicable Order Form or other documents.

5.2. **Your Ownership.** As between the parties, you and your licensors will retain all right, title, and interest in and to all IPR in Your Data. You hereby grant to Assimil8 a royalty-free, fully-paid, non-exclusive, non-transferrable (except as set forth in Clause 12.3 (Assignment)), worldwide, right to use Your Data solely to provide and support the Subscription Service.

5.3. **Feedback.** Assimil8 encourages you to provide suggestions, proposals, ideas, recommendations, or other input regarding the Subscription Service (collectively, “**Feedback**”). To the extent that you provide such voluntary Feedback to Assimil8, Assimil8 may use it for any purpose without obligation of any kind.

6. Confidentiality.

6.1. **Use of Confidential Information.** For the term of this Agreement, and surviving expiration or termination of this Agreement for up to three (3) years after disclosure of the Confidential Information, the party receiving Confidential Information (the “**receiving party**”) from the other party (the “**disclosing party**”) will use it solely to perform the rights and obligations provided under this Agreement, and not for any other purpose without the disclosing party’s prior written consent. Subject to Clause 6.2 (*Exceptions*), the receiving party will hold in confidence, and not disclose to any third party, any of the disclosing party’s Confidential Information. The receiving party will use at least the same degree of care in handling the disclosing party’s Confidential Information as it uses to protect its own Confidential Information, but no less than reasonable care. The receiving party will notify disclosing party immediately on becoming aware of any unauthorised use or release of the disclosing party’s Confidential Information. The receiving party may disclose the disclosing party’s Confidential Information to those of its Affiliates, directors, advisors, employees, or contractors (collectively, “**Representatives**”) who have a need to know such Confidential Information to perform under or in relation to this Agreement, but only if such Representatives are subject to a binding, written agreement no less protective of disclosing party than the confidentiality terms of this Agreement. The receiving party will, at the disclosing party’s request or on termination of this Agreement, return all originals, copies, and summaries of Confidential Information and other tangible materials and devices provided to receiving party as Confidential Information, or at the disclosing party’s option, certify destruction of same (although nothing in this sentence may be construed to require either party to purge copies automatically archived in backup media that are not readily accessible for further use or review). Nothing under this Agreement or trade secret Law may be construed to restrict or limit Assimil8’s right to perform (or assign any personnel to perform) Professional Services for any other party or to use any information incidentally retained in the unaided memories of its personnel providing Professional Services.

6.2. **Exceptions.** The receiving party’s obligations under this Clause 6 (Confidentiality) will not apply, and the receiving party will have no further obligations, with respect to any of the disclosing party’s Confidential Information that is: **(a)** generally known to the public at the time of disclosure or becomes generally known through no wrongful act of receiving party; **(b)** rightfully in the receiving party’s possession, or otherwise rightfully known by the receiving party, at the time of disclosure by the disclosing party and not subject to a confidentiality obligation; **(c)** required to be disclosed by the receiving party to comply with a court order, Law, or government regulations, but only if the receiving party promptly notifies disclosing party to enable the disclosing party to seek a protective order or other appropriate remedy, and takes commercially reasonable and lawful actions to avoid or minimise the extent of, and to obtain confidential treatment for, any such disclosure; or **(d)** independently

developed by the receiving party without use of, reference to, or reliance on the disclosing party's Confidential Information.

6.3. **Publicity.** Neither party will issue any press releases or announcements, or any marketing, advertising, or other promotional materials, related to this Agreement or referencing the other party without the other party's prior written approval.

7. **Disclaimer of Warranties.** TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, ASSIMIL8 (ON ITS OWN BEHALF AND ON BEHALF OF ITS SUPPLIERS AND LICENSORS) AND ASSIMIL8 AFFILIATES: **(A)** DO NOT MAKE, AND EXPRESSLY DISCLAIM, ANY AND ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SUBSCRIPTION SERVICE AND PROFESSIONAL SERVICES (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF ASSIMIL8 KNOWS OR SHOULD HAVE KNOWN SUCH PURPOSE), PERFORMANCE, AND NON-INFRINGEMENT; **(B)** PROVIDE THE SUBSCRIPTION SERVICE AND PROFESSIONAL SERVICES "AS IS" AND "AS AVAILABLE"; AND **(C)** WITHOUT LIMITING THE FOREGOING CLAUSES (A) AND (B), MAKE NO (AND EXPRESSLY DISCLAIM) ANY WARRANTY THAT THE SUBSCRIPTION SERVICE, PROFESSIONAL SERVICES, AND ANY USE OF EITHER, WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, COMPATIBLE WITH ANY PARTICULAR ENVIRONMENT, OR FREE FROM DEFECTS, VIRUS, OR ERRORS (OR THAT ANY ERRORS WILL BE CORRECTED).

8. **Limitations of Liability.**

8.1. **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, ASSIMIL8'S TOTAL, CUMULATIVE LIABILITY ARISING IN ANY WAY OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, WILL BE LIMITED TO DIRECT DAMAGES INCURRED IN REASONABLE RELIANCE IN AN AMOUNT NOT EXCEEDING: **(A)** FOR ANY GIVEN CLAIM, THE AMOUNTS PAID OR PAYABLE BY YOU UNDER THIS AGREEMENT FOR THE SUBSCRIPTION SERVICE AND PROFESSIONAL SERVICES GIVING RISE TO THE CLAIM DURING THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE MOST RECENT EVENT GIVING RISE TO THE LIABILITY.

8.2. **Exclusions.** TO THE EXTENT PERMITTED BY LAW, NEITHER ASSIMIL8 NOR YOU WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, MULTIPLE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER INDIRECT DAMAGES, OR FOR DAMAGES RELATING TO: **(A)** LOSS OR INACCURACY OF, OR DAMAGE TO, DATA; **(B)** LOST REVENUE OR PROFITS; **(C)** LOSS OF BUSINESS; **(D)** DAMAGE TO GOODWILL; **(E)** WORK STOPPAGE; **(F)** IMPAIRMENT OF OTHER ASSETS; **(G)** PURE ECONOMIC LOSS; OR **(H)** INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED AND WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH THEY ARE SOUGHT, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION, FORESEEABLE OR NOT, AND WITHOUT REGARD TO WHETHER A PARTY HAS BEEN ADVISED SUCH DAMAGES ARE POSSIBLE.

8.3. **Applicability.** The provisions of Clauses 8.1 (Limitation of Liability) and 8.2 (Exclusions) do not apply to: **(a)** infringement, misappropriation, or other violation by a party of the other party's IPR; **(b)** breach by a party of its obligations under Clause 6 (Confidentiality) (but excluding claims or liability related to Your Data); or **(c)** payments to a third party arising from obligations under Clause 9 (Third-Party Claims). These limitations and exclusions do, however, apply to and protect Your Affiliates, Assimil8 Affiliates, and their respective suppliers and licensors.

8.4. Death; Personal Injury and Fraud. As provided by Law, nothing in this Agreement is intended or may be construed to limit a party's liability in an action in tort (separate and distinct from a cause of action for a breach of this Agreement) for death or personal injury caused by either party's negligence or for a party's fraud or fraudulent misrepresentation.

9. Third-Party Claims.

This Clause 9 (*Third-Party Claims*) states Assimil8's entire liability and your exclusive remedy for third-party claims and third-party actions.

9.1. Obligation. Subject to the limitations in this Assimil8 will: (a) defend you and Your Affiliates, and its and their officers, directors, and employees against any Claim to the extent alleging that the Subscription Service accessed or used in accordance with this Agreement infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret; and (b) pay any settlement amount or any court-ordered award of damages to the extent arising from such Claim.

9.2. Mitigation. If any Claim alleges any part of the Subscription Service infringes any third-party IPR, Assimil8 may: (a) contest the Claim; (b) obtain permission from the claimant for your continued use of the Subscription Service; (c) avoid such Claim by replacing or modifying your access to and use of the Subscription Service with a substantially similar Subscription Service; or, if Assimil8 determines in its sole discretion (after the exercise of commercially reasonable efforts to perform in accordance with the foregoing options (a), (b), or (c)) that options (a), (b), and (c) are not commercially practicable, then (d) terminate your access to the affected Subscription Service on 60 days' prior notice and refund to you any prepaid subscription fees covering that part of the applicable Subscription Term for such Subscription Service remaining after the effective date of termination.

9.3. Limitations. Assimil8 will have no obligation or liability for any Claim: (a) if the Subscription Service involves modification by any party other than Assimil8 (including you), if the alleged infringement relates to such modification; (b) if the Subscription Service involves combining or integrating Assimil8 products with other products, processes or data not provided or authorised by Assimil8 and where the alleged infringement would not have arisen but for such combination; (c) if you are using an unsupported version of Assimil8 software Subscription Service; (d) arising from your unauthorised use of Assimil8 software; (e) based on IPR owned by you or Your Affiliates.

9.4. Customer Obligation. You will: (a) defend Assimil8 and Assimil8 Affiliates, and its and their officers, directors, and employees against any Claim to the extent alleging that Your Data or a modification to the Subscription Service made to your specifications or otherwise made by or on behalf of you by any person other than Assimil8 or a person acting at Assimil8's direction (but only if the Claim would have been avoided by use of the unmodified Subscription Service), infringes any patent, copyright, or trademark, misappropriates any third-party trade secret, or violates any third party privacy rights; and (b) pay any settlement amount or any court-ordered award of damages, under the foregoing subclause (a) to the extent arising from such Claim.

9.5. Process. The obligations of Assimil8 and you under Clause 9 (*Third-Party Claims*) are expressly conditioned on the indemnified party: (a) notifying the indemnifying party promptly of any actual or threatened Claim; (b) giving the indemnifying party sole control of the defence of such Claim and any related settlement negotiations; and (c) cooperating and, at indemnifying party's reasonable request and expense, assisting in such defence. The indemnifying party will not stipulate, acknowledge, or admit fault or liability on the indemnified party's behalf, or publicise any settlement, without the indemnified party's prior written consent (which will not be unreasonably withheld or delayed). This Clause 9 (*Third-Party*

Claims) states each party's entire liability and the other party's exclusive remedy for third-party claims and third-party actions.

10. Term and Termination.

10.1. **Term and Termination.** This Agreement begins on the Effective Date and continues until terminated under its terms. Subject to the remaining provisions of this clause 10.1, this Agreement cannot be terminated by you at any time following execution of an Order Form and the Assimil8 software being made available to you by Assimil8 for download until the expiration of that Order Form or any others in effect between the parties at that time. Either party may suspend performance or terminate this Agreement in its entirety following the expiration of an Order Form, on 30 days' prior written notice. The foregoing provisions are subject to either party being permitted to terminate the Agreement immediately on written notice (a) if the other 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 60 days of its commencement or an assignment for the benefit of creditors; or (b) immediately on written notice if the other materially breaches this Agreement and has not cured the breach within 30 days after notice of the breach. In addition, either party may terminate an Order Form or SOW immediately on written notice if the other party materially breaches this Agreement or the applicable Order Form or SOW and has not cured the breach within 30 days after receiving notice of the breach from the nonbreaching party. A breach by a party of its obligations with respect to Professional Services shall not by itself constitute a breach by that party of its obligations with respect to the Subscription Service even if the services are enumerated in the same Order Form.

10.2. **Effect.** On termination or expiration of the Subscription Service, you will stop accessing and using, and Assimil8 will stop providing, the Subscription Service and all related rights granted to you in this Agreement will terminate immediately, automatically, and without notice. Assimil8 will, within 30 days after the effective date of termination by you for Assimil8's breach, refund to you any prepaid fees received by Assimil8 covering that part of the Subscription Term for the affected Subscription Service, if any, remaining after the effective date of termination. Within 30 days after the effective date of termination by Assimil8 for your breach, You will pay all remaining amounts, if any, payable under this Agreement for the Subscription Term applicable to the terminated Subscription Service regardless of the due dates specified in the Order Form.

10.3. **Survival.** Except as otherwise provided in this Agreement, the following will survive termination of this Agreement: Clauses 1 (*Definitions*), 2.2 (*Invoices and Payment*), 2.3 (*Taxes*), 4.2 (*Restrictions*), 5 (*Intellectual Property*), 6 (*Confidentiality*), 7.3 (*Disclaimers*), 8 (*Limitations of Liability*), 9 (*Third-Party Claims*), 10 (*Term and Termination*), 11 (*Proper Conduct*), and 12 (*General*).

11. Proper Conduct.

11.1. **Compliance with Law.** Each party will comply with all Law in its performance of this Agreement.

11.2. **Export Compliance.** Each party will comply with local and foreign export control Law, including U.S. export control Law. The Subscription Service is subject to U.S. Export Administration Regulations ("**EAR**") and you will comply with EAR. Without limiting the foregoing, you represent and warrant that: **(a)** you are not located in, and will not use any Subscription Service from, any country subject to U.S. export restrictions (currently including Cuba, Iran, North Korea, Sudan, Syria, and Crimea Region); **(b)** you will not use the Subscription Service in the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems; and **(c)** you are not prohibited from participating in U.S.

export transactions by any federal agency of the U.S. government. In addition, you are responsible for complying with any local Law that may impact your right to import, export, or use the Subscription Service or any of them.

11.3. **U.S. Government Use.** The Subscription Service provided under this Agreement is for the use of commercial computer software (as defined in Federal Acquisition Regulation (“**FAR**”) 2.101 for civilian agency purchases and Department of Defense (“**DOD**”) FAR Supplement (“**DFARS**”) 252.227-7014(a)(1) for defence agency purchases) and Assimil8 services are commercial items. If the software is licenced or services acquired by or on behalf of a civilian agency, Assimil8 provides the software, its documentation, and any other technical data subject to this Agreement consistent with FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data). If software is licenced or services acquired by or on behalf of any DOD agency, Assimil8 provides the software, its documentation, and any other technical data subject to this Agreement consistent with DFARS 227.7202-3. If this is a DOD prime contract or DOD subcontract, the DOD agency you may acquire additional rights in technical data under DFARS 252.227- 7015(b). This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data.

12. General.

12.1. **Use Verification.** Assimil8 may remotely review your use of the Subscription Service, and on Assimil8’s written request, you will provide reasonable assistance to verify your compliance with the Agreement, and access to and use of the Subscription Service. If Assimil8 determines that you have exceeded your permitted access and use rights to the Subscription Service, Assimil8 will notify you and within 30 days thereafter you shall either: (a) disable any unpermitted use, or (b) purchase additional subscriptions commensurate with your actual use.

12.2. **Waiver; Amendment.** No delay or failure by either party to exercise any right under this Agreement will waive that or any other right. A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorised representative of the waiving party. Any amendment to this Agreement must be in writing and signed by authorised representatives of both parties.

12.3. **Assignment.** You will not assign, delegate, or otherwise transfer this Agreement, or any of its rights or duties under it, to a third party without Assimil8’s prior written consent. Assimil8 may assign, delegate, or otherwise transfer this Agreement, or any of its rights or duties under it, to a third party. Any purported transaction in breach of this Clause 12.3 is material and is void. Assimil8 is, however, deemed to have consented to any such assignment, delegation, or transfer by you to: **(a)** an Affiliate; or **(b)** any entity that acquires all or substantially all of its capital stock or assets related to this Agreement through purchase, merger, consolidation, or otherwise, but only if such entity is not a direct competitor of the non-assigning party. Subject to the foregoing, this Agreement will bind and benefit the parties, their successors, and permitted assigns.

12.4. **Notices.** All notices and other communications under this Agreement will be: **(a)** in writing; **(b)** in English; and **(c)** deemed given when delivered (or the first business day after delivery with confirmation of receipt, for notices permitted by email). Notices under this Agreement will be sufficient only if: **(i)** personally delivered; **(ii)** delivered by a major commercial rapid delivery courier service with tracking capabilities; **(iii)** mailed by pre-paid first-class post or recorded delivery post, to a party at the address stated in this Agreement (or at such address as the recipient has notified the other party of, before notice was sent); or **(iv)** sent via email, if the recipient’s email address is provided in this Agreement (but email will not be sufficient for notices regarding a Claim or alleged breach). All notices except for ordinary business communications will be cc’d to the address stated in this Agreement.

- 12.5. **Dispute Resolution.** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). In any such suit, action, or proceeding, the prevailing party may recover its reasonable attorneys' fees, costs, and other expenses, including those on appeal or in a bankruptcy action.
- 12.6. **Force Majeure.** Neither party will be responsible for any delay or failure in its performance of any obligation under this Agreement (other than payment) due to causes beyond its reasonable control, but only if the party invoking this Clause 12.6 promptly notifies the other party and resumes performance promptly when conditions allow it to do so.
- 12.7. **Relationship.** The parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, agency, or other relationship. Neither party has any right or authority to assume or create any obligation of any kind, express or implied, in the other party's name or on its behalf. There are no third-party beneficiaries to this Agreement. Assimil8's licensors will have no liability of any kind under this Agreement. Assimil8's liability with respect to any third-party Subscription Service embedded in the Subscription Service will be subject to Clause 8 (*Limitations of Liability*).
- 12.8. **Severability.** If any part of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that part will be deemed reformed to effectuate the parties' intentions, and the rest of this Agreement will remain in full force and effect.
- 12.9. **Execution and Construction.** This Agreement is effective only when executed by facsimile, via electronic signature service, or in counterparts, which together will be deemed the entire agreement. Such execution requirement is, without limitation, a material term. Clause headings are intended solely for convenience and will not affect the meaning of this Agreement. This Agreement will be interpreted according to its plain meaning without presuming it should favour either party. Unless stated or context requires otherwise: **(a)** all internal references are to this Agreement and its parties; **(b)** first-level clause references (e.g., "as provided in Clause 1") includes all subordinate subclauses (e.g., 1.1, 1.2, etc.) within that clause; **(c)** all monetary amounts are expressed and, if applicable, payable, in British pounds sterling; **(d)** "days" means calendar days; **(e)** "may" means that the applicable party has a right, but not a concomitant duty; **(f)** "partner," if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership; **(g)** "notify" means to give notice under (and "notice" means a notice that complies with) Clause 12.4 (*Notices*); **(h)** "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured; **(i)** URLs are understood to also refer to successors, localisations, and information or resources linked from within websites at such URLs; **(j)** lists of examples following "including", "e.g.", "such as", "excludes", "for example", or similar words are deemed to include "without limitation"; **(k)** the word "or" is deemed to be an inclusive "or"; and **(l)** a party's choices under this Agreement are in its sole discretion. Any translation of the English-language version of this Agreement is for convenience only, and the English-language version will govern.
- 12.10. **Entire Agreement.** This Agreement sets forth the complete and exclusive agreement between the parties relating to its subject matter and supersedes all prior oral and written agreements, understandings, and communications (including any requests for quote, requests for information, requests for proposal, or the like), and click-through agreements regarding its subject matter. Purchase orders issued by you will be effective solely to specify the quantities of Subscription Service and Professional Services ordered, and, to the extent

such purchase orders are based on Assimil8's Order Forms, the price. Invoices issued by Assimil8 will be effective solely to specify the charges for the Subscription Service and Professional Services. All other terms and conditions printed or included on, or referenced in, such purchase orders, invoices, and other ordering documents or correspondence, that purport to add to or modify the terms of this Agreement are expressly rejected by Assimil8 and will be of no force or effect.