

# iSPOT END USER LICENSE AGREEMENT (EULA)

UPDATED: 5<sup>th</sup> December 2019

This iSpot End User Licence Agreement (“**Agreement**”) is between Assimil8 and the individual or entity that has downloaded or otherwise procured the licenced Software (as the term is defined below) for use as an end user (“**you**” and “**your**”).

BY INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE:

- A. 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 INSTALL THE SOFTWARE. IF YOU WISH TO USE THE SOFTWARE 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.
  - c. THE SOFTWARE IS LICENCED AND NOT SOLD TO YOU.
  - d. YOUR LICENCE TO USE, COPY OR CHANGE THE SOFTWARE IS SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.
  - e. YOU MAY NOT ACCESS THE SOFTWARE IF YOU ARE A DIRECT COMPETITOR OF ASSIMIL8, EXCEPT WITH ASSIMIL8’S PRIOR WRITTEN CONSENT.
  - f. YOU MAY NOT ACCESS THE SOFTWARE FOR PURPOSES OF MONITORING ITS AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

## 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 Partner**” means a third-party reseller Authorised by Assimil8 to sell Software licences and related Professional Services.
- 1.3. “**Confidential Information**” means **(a)** the Software (which is Assimil8’s Confidential Information); **(b)** any information of a party that is disclosed in writing or orally and designated confidential at the time of disclosure (and, for oral disclosures, summarised in writing within 30 days of initial disclosure and delivered in written summary form to the receiving party), or that, due to the nature of the information or circumstances of disclosure, the receiving party should reasonably understand to be the 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

- 1.4. **“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)
- 1.5. **“Documentation”** means the then-current, published installation and operating instructions, user manuals, and help files and a description of the Software and Professional Services, made available by Assimil8 online via [www.assimil8.com](http://www.assimil8.com) or such other web address notified by Assimil8 to you from time to time intended for use in connection with the Software.
- 1.6. **“Effective Date”** means the date of your first Order Form or the initial delivery date of the Software.
- 1.7. **“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.
- 1.8. **“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.
- 1.9. **“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.
- 1.10. **“Licence Term”** means the period of authorised use of the Software as set forth in an Order Form.
- 1.11. **“Order Form”** means an ordering document signed by you and Assimil8 or an Authorised Partner that specifies: **(a)** Software licences purchased, their prices, and their Licence Term; and **(b)** the scope and price of Professional Services purchased (if any).
- 1.12. **“Professional Services”** means consulting, implementation, configuration, integration, or training services provided by Assimil8 or its Authorised service providers.
- 1.13. **“Software”** means any computer code provided by Assimil8 to you under this Agreement pursuant to an Order Form.
- 1.14. **“SOW”** means a statement of work that describes the scope of Professional Services signed by you and Assimil8 or an Authorised Partner.
- 1.15. **“Source Code”** means the human-readable version of a software program that can be compiled into Executable Code.
- 1.16. **“Support”** means technical support and maintenance for the Software, as set forth in the Support Guide.
- 1.17. **“Support Guide”** means the Assimil8 Support and Maintenance Program Guide at <https://assimil8.com/legal/>.
- 1.18. **“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.

1.19. “**Your Data**” means all data of any kind or nature that is loaded on the Software by or on your behalf.

## 2. Orders.

***If you have purchased from an Authorised Partner of Assimil8, see Clause 2.4 (Reseller Orders) below.***

2.1. **Assimil8 Orders.** If you have signed an Order Form directly with Assimil8, then Assimil8 will provide the Software 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) Software. Support is purchased as part of the licenced Software as set forth in an Order Form.

2.2. **Invoices and Payment.** Assimil8 will issue the initial Software invoice to you corresponding with each Order Form on or shortly following the signed Order Form being received by Assimil8 and prior to the Software being made available for download. Each Licence Term is a non-divisible, continuous commitment, regardless of the invoice schedule, and pricing is based on a purchase of the entire Licence 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 Software as provided in this Clause, 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. Assimil8 may suspend the delivery of Professional Services while any payment is delinquent. 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 other claim you might have against Assimil8, any other party, or otherwise.

2.3. **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.

2.4. **Reseller Orders.** If you received Software under 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 Software is subject to any additional terms in the Reseller Purchase Agreement, including any limitations on use of the Software in conjunction with third-party applications; and **(b)** Clauses 2.1, 2.2 and 2.3 will not apply to such agreement, provided that you agree to pay the Authorised Partner the fees agreed in the Reseller Purchase Agreement associated with the Software licenced, 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 Software and Professional Services 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

Software) in the event Assimil8 fails to receive payment for your use of the Software from the Authorised Partner or if you breach any term of this Agreement.

### 3. Support and Maintenance.

3.1. **Program.** During the Licence Term, Assimil8 will provide Support for the Software pursuant to the Support Guide.

3.2. **No Data Processing.** To enable Assimil8 to provide technical assistance in connection with Support, you may elect to provide Assimil8 with temporary remote access to view your Software environment pursuant to instructions you provided to Assimil8 and subject to the confidentiality provisions of Clause 6 (*Confidentiality*) of this Agreement. The parties agree that Assimil8 does not want or need, and you will not transmit to Assimil8 or require that Assimil8 receive, Your Data.

### 4. Licence; Permitted Use; Restrictions.

4.1. **Software.** Subject to the terms and conditions of this Agreement and payment of all fees due, during the applicable Licence Term Assimil8 grants to you a limited, revocable, non-exclusive, non-sublicensable, non-transferable, worldwide licence to install, use, and execute the Software on a hardware device or in a software environment Authorised by Assimil8 in the Documentation (or in a separate writing provided by Assimil8 to you), to the extent expressly specified in the applicable Order Form (including with regard to number of copies of the Software and permitted memory cache or other licensing metric), and solely during the Licence Term and solely for your internal business operations. Notwithstanding the foregoing, to the extent that Software is identified in an Order Form as “non-production,” “beta,” “test,” “pre-release,” “sandbox,” or any other non-production designation, then such Software will be used solely in a non-production environment. To the extent that you grant access to the Software to any third party (including Your Affiliate), you will be wholly responsible for compliance with this Agreement as if such third party were you.

4.2. **Restrictions.** You and your Affiliates will not (and have no licence to): **(a)** use the Software 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 Software or reconstruct any Software, 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 Software; **(c)** sell, licence, sublicense, rent, lease, encumber, lend, distribute, transfer, or provide a third party with access to the Software, on a hosted basis, as a managed service provider, or otherwise (except as expressly set forth in an Order Form); **(d)** alter, modify, or create derivative works of the Software (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 Software or Documentation; or **(f)** publicly disseminate any performance or security vulnerability test (including penetration test) results or analysis related to or derived from the Software. 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.

4.3. **Open Source Software.** Software may use or include one or more of the open source software components listed in the Assimil8 open source attribution file, which Assimil8 will make available to you on request. The open source attribution file contains open source licence disclosures and pertinent terms.

### 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 Software and Documentation, regardless of the form or media in or on which the original or

other copies may subsequently exist. Except for the limited licences expressly granted in this Agreement, Assimil8 reserves all, and does not grant any other, rights (express, implied, by estoppel, through exhaustion, or otherwise). The Software is licenced and not sold.

5.2. **Feedback.** Assimil8 encourages you to provide suggestions, proposals, ideas, recommendations, or other input regarding the Software (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.

5.3. **Marketing.** 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, nor use the other party’s logo, trademarks and service marks, without the other party’s prior written approval.

## 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 Assimil8 to purge archived backup media). 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 or Law, 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.

## 7. Warranties.

7.1. **Software.** Assimil8 warrants that the Software will, under normal use, substantially conform to the specifications in the Documentation for 30 consecutive days from the date of the initial download. To submit a warranty claim, you must request Support and reference this Clause 7.1. Assimil8 will use commercially reasonable efforts to cause the Software to conform to the specifications in the Documentation at no charge to you, or if Assimil8 determines such remedy to be impracticable, either party may terminate this Agreement and the applicable Order Form and you will receive a refund of any unused prepaid Software fees covering the remaining Licence Term following the effective date of termination. This warranty will not apply to: **(a)** use of the Software other than as described in the Documentation; **(b)** modification or use of an unsupported version of the Software by anyone but Assimil8; or **(c)** failure caused by a product not provided or expressly approved by Assimil8 or its agents. **This Clause 7.1 sets forth your sole and exclusive rights and remedies (and Assimil8's entire liability) in relation to the warranty in this Clause 7.1.**

7.2. **Professional Services.** Assimil8 warrants that it will perform Professional Services in a professional manner using reasonable care and skill in accordance with industry standards. You will notify Assimil8 of any material breach within 30 days after performance of the non-conforming Professional Services. On receipt of such notice, Assimil8 will use commercially reasonable efforts to re-perform the Professional Services in substantial conformance with these warranty requirements, and if Assimil8 is unable to correct the reported non-conformity after two attempts, either party may terminate the applicable Order Form for Professional Services or SOW and you will receive a refund of any unused fees you have pre-paid for the Professional Services purchased thereunder. **This Clause 7.2 sets forth your exclusive rights and remedies (and Assimil8's entire liability) in relation to the warranty in this Clause 7.2.**

7.3. **Disclaimers.** EXCEPT FOR THE LIMITED WARRANTIES UNDER SECTIONS 7.1 (SOFTWARE) AND 7.2 (PROFESSIONAL SERVICES) AND 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 SOFTWARE, SUPPORT, 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 SOFTWARE, SUPPORT, 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 SOFTWARE AND ANY USE THEREOF, 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. **Your Responsibility.** Except as expressly and specifically provided in this Agreement; (a) you assume sole responsibility for the choice of Software and Professional Services you have purchased, and any results obtained from the use of the Software or Professional Services and Documentation, and for conclusions drawn from such use. Assimil8 shall have no liability for any actions taken by Assimil8 at your direction; and (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

8.2. **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 SOFTWARE 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.

- 8.3. **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.
- 8.4. **Applicability.** The provisions of Clauses 8.1 (*Your Responsibilities*), 8.2 (Limitation of Liability) and 8.3 (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.
- 8.5. **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.
- 8.6. **Remedies.** You acknowledge that the Software contains valuable trade secrets and proprietary information of Assimil8, Assimil8 Affiliates, and its and their suppliers and licensors, that any actual or threatened breach of Clause 4.2 (*Restrictions*) or Clause 6 (*Confidentiality*) will constitute immediate, irreparable harm to Assimil8, Assimil8 Affiliates, and its and their suppliers and licensors, for which monetary damages would be an inadequate remedy, that Assimil8 and Assimil8 Affiliates shall, in the event of such a breach, be entitled to equitable relief, including injunctive relief, without the posting of any bond, in addition to any other remedies. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.
- 8.7. **Inspections.** You will maintain records sufficient to verify the amounts owing to Assimil8 hereunder for the prior three years. You will permit Assimil8 or its Affiliates or representatives to review your relevant records and inspect your facilities to ensure compliance with this Agreement. Assimil8 will give you at least two (2) business days' advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with your normal operations.

## 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 Clause 9 (*Third-Party Claims*), if a Claim is brought against you, or your subsidiaries, Affiliates, agents, licensees, or successors, or any agents, directors, officers, or employees of any of them, Assimil8 will defend the Claim (including by paying litigation costs and reasonable attorneys' fees) and pay any settlement or any adverse final judgment to the extent arising from the Claim. "**Claim**" means any suit, claim, action, or demand, in each case solely to the extent brought by an unaffiliated third party that, if true as alleged, reflects that: **(a)** the Software provided under, and used in accordance with, this Agreement, infringes any IPR of such third party; or **(b)** Assimil8's personnel, when onsite at your premises, caused death, bodily harm, or damage to tangible personal property due to their negligence or wilful misconduct.
- 9.2. **Mitigation.** If any Claim alleges any part of the Software infringes any third-party IPR, Assimil8 may: **(a)** contest the Claim; **(b)** obtain permission from the claimant for your continued Software use; **(c)** avoid such Claim by replacing or modifying the Software with substantially similar software; 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 licence to the affected Software on 60 days' prior notice and refund to you any prepaid licence fees covering that part of the applicable Licence Term for such Software remaining after the effective date of termination.
- 9.3. **Limitations.** Assimil8 will have no obligation or liability for any Claim to the extent arising in whole or in part from: **(a)** any Software that: **(i)** is or was used in accordance with your written specifications or instructions, each to the extent set forth or referenced in a SOW, and such specifications or instructions are the source of the alleged infringement; **(ii)** was modified by any party other than Assimil8 (including you), if the alleged infringement relates to such modification; **(iii)** is or was combined or integrated with other products (hardware or software), processes, or materials (including your Data or other products provided by you or any third party) where the alleged infringement relates to, and would not have arisen but for, such combination; or **(iv)** is an unsupported version; **(b)** your continued use of the Software after expiration or termination of this Agreement or the corresponding Order Form (or continued use of the original Software after Assimil8's provision of a replacement software under Clause 9.2(c) (*Mitigation*)); or **(c)** a claim 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 Software 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 Software), 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).

## 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 Software being made available to you by Assimil8 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 written notice of the breach.

10.2. **Effect.** On termination of this Agreement for any reason: **(a)** all licences granted by Assimil8 immediately terminate; **(b)** you will immediately discontinue use of all Software; **(c)** you will destroy all copies of Software and Documentation in its possession, custody, or control; and **(d)** if requested, you will certify such return or destruction to Assimil8 in writing. Within 30 days after the effective date of proper termination for Assimil8's material breach, Assimil8 will refund any prepaid fees received by Assimil8 covering that part of the Licence Term for the affected Software, if any, remaining after such effective date. If termination is for your breach, all remaining amounts are accelerated and deemed due and payable as of the termination date.

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. **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 11 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 11, 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. Assimil8's access to Your Data in the performance of Professional Services or Support is subject to the following terms: **(a)** you are solely responsible for both the duration and configuration of the scope of access to Your Data; **(b)** you are solely responsible for access control management and must ensure that any access to Your Data that you grant to Assimil8 is limited to read-only access (unless otherwise required to perform Professional

Services or Support); **(c)** you will not grant Assimil8 access to any non-Assimil8 environment; **(d)** Assimil8 may only access Your Data through your secure workstations or networks that are provided, monitored, managed, configured, supported and maintained by you; **(e)** you must provide unique user credentials to any Assimil8 resource that requires access to Your Data as described herein; **(f)** such credentials noted above will be solely managed by you and you will be responsible for any consumption generated from the supplied credentials; and **(g)** you will limit access to any of Your Data that is unencrypted or contains personal data and, if such access is granted, you shall use reasonable efforts to mask any personal or sensitive data.

- 11.3. **High Risk Activity.** You shall use the Software within the intended business purposes described in the Documentation, and not for any purpose that requires fail-safe performance including, but not limited to, stock trading, financial transaction processing such as credit card processing, electronic funds transfer, and check clearing, management of hazardous facilities or applications for which failure could result in death, personal injury, or severe physical or environmental damage ("**High Risk Activity**"). Assimil8, its licensors and suppliers expressly disclaim all warranties of fitness for any such use and you shall release and hold Assimil8, its licensors and suppliers harmless from liability arising out of the use of the Software for High Risk Activity.
- 11.4. **Export Compliance.** Each party will comply with local and foreign export control Law, including U.S. export control Law. The Software 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 Software 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 Software 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 Software or any of them.
- 11.5. **U.S. Government Use.** The Software provided under this Agreement is commercial computer software developed exclusively at private expense. Unless otherwise set forth in this Agreement, use, duplication, and disclosure by civilian agencies of the U.S. Government will not exceed those minimum rights set forth in FAR 52.227-19(c) or successor regulations. Use, duplication, and disclosure by U.S. Department of Defense agencies is subject solely to the software licence terms contained in this Agreement, as stated in DFARS 227.7202 or successor regulations. U.S. Government rights will apply only to the specific agency and program for which the Software is obtained.
- 11.6. **Licence Review.** Upon reasonable notice to you, you agree to grant Assimil8 access to the Software to verify your use. You will reasonably cooperate with Assimil8 and will promptly pay directly to Assimil8 any underpayments revealed by such review.

## 12. General.

- 12.1. **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.
- 12.2. **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 12.2 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.

- 12.3. **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.
- 12.4. **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.
- 12.5. **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 12.5 promptly notifies the other party and resumes performance promptly when conditions allow it to do so.
- 12.6. **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 software embedded in the Software will be subject to Clause 8 (*Limitations of Liability*).
- 12.7. **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.
- 12.8. **Construction.** 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 subclause (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 12.3 (*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.

12.9. **Entire Agreement.** This Agreement, any SOW and the Order Form 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), click-through agreements and embedded end-user license agreements, regarding its subject matter. Purchase orders issued by you will be effective solely to specify the quantities of Software 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 Software 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.