**MASTER SOFTWARE AND SERVICES AGREEMENT**

 This Master Agreement (“**Agreement**”) is effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 (the “**Effective Date**”) by and between Assima, Inc., a Delaware corporation, having its principal place of business at 3348 Peachtree Rd NE #700 Atlanta, GA 30326 (“**Assima**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_ corporation, having its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Customer**”).

The terms and conditions of this Agreement will apply to all software, services, and work product Assima provides to Customer during the term of this Agreement. This Agreement hereby incorporates by reference the attached General Terms and Conditions (the “**General Terms and Conditions**,” or “**GTC**”) and each schedule agreed upon by the parties that contains the specific terms and conditions applicable to the types of software or services Assima will provide to Customer (each, a “**Schedule**”). The Schedule or Schedules the parties have agreed upon as of the Effective Date are indicated below and attached to this cover page, along with the GTC.

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| --- |
| **SCHEDULE NAME** |
| Software Subscription |
| Professional Services Schedule |
| Hosted Technology Services Schedule |

|  |  |
| --- | --- |
| **Assima, Inc.**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

From time to time, the parties may agree upon additional terms and conditions that relate to software or services Assima will provide to Customer after the Effective Date of this Agreement. The parties will set forth such additional terms and conditions in one or more additional Schedules that reference this Agreement and contain the specific terms and conditions applicable to such products or services. The parties will sign an amendment to incorporate each such Schedule into this Agreement. Each Schedule agreed upon by the parties, whether on the Effective Date or by a subsequent amendment, shall constitute a part of this Agreement.

IN WITNESS WHEREOF, the parties, through their respective duly authorized officers, have executed this Agreement effective as of the Effective Date.

**General Terms and Conditions**

**ARTICLE 1 DEFINITIONS**

## **Affiliate.** The term “**Affiliate**” means any entity that controls, is controlled by, or is under common control with a party. For purposes of this Agreement, "control" means possessing, (i) directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise; or (ii) the ownership of, or the power to vote, at least thirty percent (30%) of the voting stock, shares or interests of such entity. An entity that otherwise qualifies under this definition will be included within the meaning of “Affiliate” even though it qualifies after the execution of this Agreement. Such entity shall be deemed to be an “Affiliate” only so long as such relationship with the applicable party exists.

## **Agreement**. The term “**Agreement**” means this Master Agreement, the Schedules hereto, any Ordering Documents, and any applicable attachments, exhibits or duly executed amendments thereto. Any reference to “Agreement” includes reference to any of the transaction documents listed herein as may be applicable.

## **Assima Materials.** The term “**Assima Material or Assima Materials**” means any works, materials, software, documentation, methods, apparatus, systems and the like, and all rights and proprietary interests therein, that existed (a) prior to and independent of performance of any obligation hereunder, (b) created or acquired by Assima during the term but outside the scope of this Agreement, or (c) owned by a third party. For purposes of clarity, Software, Configurations, Hosted Technology Services and all related documentation are Assima Materials.

## **Author(s).** The term “**Author(s)”** means a User that has the rights to use the Software to create content.

## **Confidential Information.** The term “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party includes the terms and conditions of this Agreement (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

## **Configuration.** The term “**Configuration**” means modification or extension of Assima’s computer programs.

## **Delivery Date.** The term “**Delivery Date**” means the date specified in the applicable Order on which Assima will deliver Software, or provide a Service, to Customer.

## **Documentation.** The term “**Documentation**” means the user, operations and training manuals, as well as any specifications reviewed by Customer, concerning the Software, Hosted Technology Services, and applicable Work Product, as further described herein.

## **End Users(s).** The term “**End User(s)**” means an individual who is authorized to access the Software to consume its content.

## **Error.** The term “**Error**” means a material nonconformity of Software from its Documentation or other material defect, malfunction or deficiency.

## **Hosted Technology Services**. The term “**Hosted Technology Services**” means the hosted Assima technology solution, software and related services made available to Customer as part of a Software subscription and specifically set forth in an Order.

## **Intellectual Property Rights.** The term “**Intellectual Property Rights”** means all of the following in any jurisdiction throughout the world and whether existing now or in the future: (a) patents and patent disclosures; (b) copyrights and copyrightable works; (c) trademarks, service marks, trade dress, trade name, logos, and other designations a party uses in connection with its business (whether registered or unregistered); (d) trade secrets and know-how; (e) mask work rights; (f) moral rights; (g) rights of publicity; (h) any other proprietary or intellectual property rights; and (i) registrations and applications for any of the rights listed in in this section.

## **Maintenance Services.** The term “**Maintenance Services**” means the technical support services provided by Assima or its affiliates to support Customer’s use of the Software. Maintenance includes error-corrections, patches, bug fixes and Updates. It also includes updates to the Documentation. Support through the Support Centre, including telephone consultation. Support services are provided Monday – Friday between the hours of 9am to 5pm EST. Maintenance Services do not include the supply of products which are sold as new, upgrades and separate products or separately priced options. Nor do Maintenance Services include support for operating systems or other third-party programs. The maintenance process is further described in the applicable Schedule and Ordering Document and any attachments thereto.

## **Order or Ordering Document.** The term “**Order**” or “**Ordering Document**” means, Statement of Work, Statement of Services, or other ordering document Customer or any of its Affiliates issues for purposes of acquiring Software or Services under this Agreement. With respect to Software and Services acquired for a particular project, such Software and Services may be combined onto one or more Ordering Documents with the project name referenced therein. A project summary shall accompany any combined orders submitted for a project.

## **Professional Services.** The term “**Professional Services**” means implementation, consulting, training, and other similar services provided by Assima under this Agreement.

## **Personnel.** The term “**Personnel**” means the employees, contractors, subcontractors, and agents of Assima who provide Services or otherwise perform Assima’s obligations under this Agreement.

## **Representatives**. The term “**Representatives**” means each party’s officers, directors, employees, vendors, attorneys, accountants, agents and independent subcontractors (and their employees) and other representatives (each, a “**Representative**”).

## **Services.** The term “**Services**” means the Maintenance Services, Professional Services, and other services identified in an Order.

## **Software.** The term “**Software**” means the computer software programs identified in an Order and licensed to Customer. The term “Software” also includes any Updates and other copies of software Assima provides in the course of performing Services, as well as any third-party software embedded or incorporated within, or delivered with, the Software specified in the applicable Order. Configuration or any other modification or addition to the Software made by Assima for use by Customer shall be deemed a component of the Software upon creation.

## **Statement of Work** or **SOW.** The terms “**Statement of Work**” or “**SOW**” mean a document signed by the parties that describes Professional Services purchased by Customer from Assima under this Agreement. Each Statement of Work shall provide the level of detail required to complete the applicable work effort and shall specify the specific Professional Services and deliverables Assima shall provide, as well the mutually agreed upon fees for such Services and deliverables. Assima shall complete the Services described in each Statement of Work in accordance with the terms and conditions, scope, Documentation, schedules, and time and place of performance set forth in such SOW, as well as the terms and conditions set forth in this Agreement.

## **Subscription(s).** The term “**Subscription(s)**” means the combination of Software Licenses and Maintenance Services, for the Subscription Term.

## **Subscription Term**. The term “**Subscription Term**” means the specific period of time during which a Software is licensed to the customer on a subscription basis as stated in an Order. The Subscription Term will automatically renew for successive periods equivalent to the immediately preceding period (each period when in effect referred to as the Subscription Term), unless either party notifies the other in writing no less than ninety (90) days prior to the expiration of the then current Subscription Term.

## **Update** The term “**Update**” means any major or minor version release, revision, work-around, substitution, error-correction, change, enhancement, amendment, replacement or modification to the relevant licensed Software.

## **User(s).** The term “**User(s)**” means an individual who is authorized to use the Software, either to create or consume content. Users include both the Authors and End Users. Unless otherwise stated in an Ordering Document, Users must be employees of Customer or otherwise designated by Customer to use the Software on its behalf.

## **Work Product.** The term “**Work Product**”means all works, materials, documentation, methods, apparatus, systems and the like prepared, developed, conceived, or delivered to the Customer as part of the Professional Services, and all tangible embodiments thereof. Software and Assima Materials are not considered Work Product.

# ORDERS, DELIVERY, AND IMPLEMENTATION

## **Orders.** To purchase Software or Service from Assima, Customer will issue an Order that references this Agreement and will submit such Order to Assima. Once an Order is accepted, Assima agrees to furnish Customer with the Software and Services specified on each duly approved Order in consideration of Customer’s payment of the fees set forth in such Order.

## **Delivery.** Assima shall deliver the licensed Software to Customer via digital delivery, by the Delivery Date, and as otherwise set forth in the applicable Order.

## **Change Order.** In addition to any change order requirements that may be set forth in an Ordering Document, in the event either party desires to change an Ordering Document, the following procedures will apply:

## (a) the party requesting the change will deliver a Change Order in writing to the other party. The Change Order will describe the nature of the change, the reason for the change, and the effect the change will have on the scope of work, which may include changes to deliverables and/or Services, and the delivery schedule.

## (b) The parties will review and evaluate the proposed Change Order and negotiate in good faith the changes and charges, if any, required to implement the Change Order. If the parties agree to the proposed Change Order, the parties’ authorized Representatives will execute the Change Order, indicating their acceptance of the changes. Said Change Order will be incorporated into, and made a part of, the applicable Ordering Document upon execution.

## **Implementation/Integration.** If applicable and to the extent agreed upon by the parties, Assima shall provide implementation or integration services for the Software and Services at the applicable Customer site in accordance with the dates and designated responsibilities described in the applicable Order.

## **Training.** At Customer’s option and to the extent agreed upon by the parties, Assima will provide Customer training in the use and operation of the Software or Service as set forth in an applicable Order. Any applicable fees associated with this training shall be set forth in the Order. Additional training shall be available at mutually agreeable prices.

# PAYMENT TERMS

## **Fees.** Fees for Software and Services are as set forth on the applicable Schedule or Order and Customer agrees to pay such fees pursuant to the terms set forth under in the relevant Order and this Agreement.

## **Expenses.** Approved expenses paid or incurred by Assima will be charged on a pass-through basis at Assima’s cost. Assima will provide Customer with documentation evidencing all approved expenses. Assima will follow, and will cause its Representatives to follow, the policies set forth in Customer’s expense reimbursement policy as is provided in advance in writing to Assima.

## **Invoices.** Assima shall submit invoices to Customer in advance of the Subscription Term in accordance with the applicable Order and shall submit all invoices to the address listed on the Order. Customer shall pay all undisputed portions of each invoice within thirty (30) days of receipt at the location listed on the applicable Order. Customer agrees to pay a late payment penalty on any amount unpaid after thirty (30) days of 2% of the unpaid amount due for each month or fraction thereof, or such lesser amount as may be the maximum amount permitted by law, until paid.

## **Taxes.** Customer agrees to pay any sales taxes, VAT and/or any other taxes applicable to the transactions contemplated under this Agreement provided that Assima separately lists such taxes on applicable invoices. In no event shall Customer be responsible for any taxes based on the net income of Assima. Assima shall be solely responsible for reporting, withholding, and paying all its employment-related taxes, payments, or withholdings, including federal, state, and local income taxes, social security, Medicare, unemployment or disability deductions, and withholdings.

## **Billing Disputes.** If Customer disputes an invoice, Customer shall pay the undisputed portion but shall not be obligated to pay the disputed portion until the parties have resolved the disputed amount through prompt, good-faith negotiations to resolve such disputed amount, and such non-payment shall not be deemed a breach by Customer of this Agreement.

# WARRANTY

Assima makes the following representations, warranties, and covenants to Customer and its Affiliates:

## **Ownership and Non-infringement.** Assima is the lawful owner or licensee of the Software and the materials used in the performance of the Services, and represents and warrants that: (i) it has and will have all rights, titles, licenses, intellectual property rights, permissions and approvals necessary in connection with the license grant to the Software hereunder; and (ii) the Software does not infringe, violate, trespass or in any manner constitute the unauthorized use or misappropriation of any intellectual property right of any third party.

## **Harmful Code.** Assima represents and warrants that the Hosted Technology Services, Software and Work Product (as applicable) do not and will not contain any computer code designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of Customer’s systems, applications or equipment (referred to as “viruses” or “worms”).

## **Warranty Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, WHETHER EXPRESS, OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

# INDEMNIFICATION

## **Assima Indemnification**. Assima, at its expense, will indemnify, defend and hold harmless Customer and its Affiliates and any of their officers, directors, employees, agents, vendors and other representatives (collectively, the “**Indemnified Parties**”) from and against any and all claims, actions, suits, damages, awards, costs (including reasonable attorney fees), expenses and liabilities incurred in connection with any third party claims that the authorized use of the Software and Services or any portion or use thereof infringes or violates any third party’s patent, copyright, trademark, license or other proprietary right.

### **Continued Operation.** In the event the Software or Services are deemed to be infringing, Assima shall either procure, at its own expense, the right for Customer to continue using the Software or Service or shall replace or modify the Software or Service with functionally equivalent technology so that it becomes non-infringing. If neither of the foregoing alternatives is feasible without undue expense, (i) with respect to Software, Assima shall terminate the applicable Order and refund Customer for any fees paid in advance by the Customer for a period that has not yet accrued; (ii) with respect to a Service, Assima shall terminate the applicable Order and refund any pre-paid unused portion of the fees for such Services. The remedies listed in this Section shall be the sole remedy and Assima’s entire liability for breach of the warranty of non-infringement.

### **Limitations.** Assima’s obligations under this Section shall not apply, nor shall Assima have any liability for any claim of infringement based on: (i) modifications of the Software or Services by Customer or its Affiliates or any third party at the direction of Customer or its Affiliates; (ii) the combination, operation, or use of the Software or Services with non-Assima authorized programs, data or documentation if such infringement would have been avoided by the use of the Software or Services without combination with such programs, data or documentation, (iii) Customer’s failure to incorporate updates, error-corrections, patches, bug fixes and Updates if such infringement would have been avoided by such incorporation.

## **Customer Indemnification**. Customer, at its expense, will indemnify, defend and hold harmless Assima and its Affiliates and any of their officers, directors, employees, agents, vendors and other representatives (collectively, the “Indemnified Parties”) from and against any and all claims, actions, suits, damages, awards, costs (including reasonable attorney fees), expenses and liabilities incurred in connection with any third party claims (i) that the Software or Services once modified by Customer or its Affiliates or any other third party in a manner not specified in the applicable Documentation or otherwise authorized by Assima infringes or violates any third party's copyright, patent, trade secret, trademark, intellectual property or other proprietary rights.

## **Right to Participate.** The Indemnified Party receiving notice of a claim will promptly notify the other (the "**Indemnifying Party**") of any and all such claims and will reasonably cooperate with the Indemnifying Party with the defense and/or settlement thereof, which defense and/or settlement shall be controlled by the Indemnifying Party, provided that, if any settlement requires an affirmative obligation of, results in any ongoing liability to or prejudices or detrimentally impacts the Indemnified Party in any way and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement shall require the Indemnified Party's written consent (not to be unreasonably withheld or delayed) and the Indemnified Party may have its own counsel in attendance at all proceedings and substantive negotiations relating to such claim.

# LIMITATIONS OF LIABILITY

Notwithstanding anything to the contrary in this Agreement, neither party shall, regardless of the form of action or legal theory, be liable to the other for any special, consequential, incidental, exemplary, punitive or indirect damages, whether or not these damages were foreseeable. For greater certainty, and without limiting the generality of the foregoing, neither party shall be liable to the other for any damages relating to loss of profits, loss of data, loss of revenues, loss of business opportunities, interruption of use of data, inaccuracy of data, corruption of data, procurement of substitute goods, services or technology, whether or not the other party or its agents were aware, or should have been aware, of the possibility of these damages. In no event shall either party's total liability, regardless of the form of action or legal theory, exceed the amount that said party has actually received from the other party during the preceding 12 months.

# TERM AND TERMINATION

## **Term.** This Agreement is effective as of the Effective Date and will continue until terminated in accordance with this Article 7 (“**Termination**”). Each executed Schedule and Ordering Document will commence on either (i) the date of commencement as specifically set forth therein, or (ii) if no such date is listed, the date of final execution of such Schedule or SOW; and will continue until such Schedule or SOW is terminated in accordance with this Article or the terms therein. In the event of termination, customer shall remain liable for all fees incurred under any Schedules or SOW’s according to the terms and conditions therein and this Agreement.

## **Termination**.

### **By Assima**. Assima may terminate this Agreement or an Order if Customer commits a material breach, including failure to pay amounts when due, and fails to cure such breach within thirty (30) days following written notice from Customer, or such shorter time as may be set forth in a Schedule.

### **By Customer**. Customer may terminate this Agreement or an Order if Assima commits a material breach of this Agreement and fails to cure such breach within thirty (30) days following written notice from Customer.

### **Mutual Termination**. Either party may terminate this Agreement if the other party (i) becomes insolvent; (ii) files a petition in bankruptcy or an involuntary petition in bankruptcy is filed against a party and is not dismissed within 30 days of such filing; (iii) makes an assignment for the benefit of its creditors; or (iv) is subject to the appointment of a trustee, receiver or other custodian for such party or such party's property. Exercise of the right to terminate under this Article must be accomplished by giving the other party prior written notice designating the termination date (which termination date shall be not less than fifteen (15) days following such notice).

### **Termination Assistance.** Upon termination or expiration of this Agreement or all or part of any Order, Assima shall immediately deliver to Customer all fully paid Work Product (in a form reasonably agreed to by the parties), including works in progress. After termination or expiration of the Agreement, provided the cause for termination is not the result of Customer’s failure to timely pay invoices, Assima shall reasonably cooperate with Customer in its, or another’s efforts on Customer’s behalf, to complete any Services, Work Product or deliverables set forth in a terminated Order, and to provide for an orderly transition of the terminated Services to Customer or its designee (“**Transition Services**”). The parties shall agree upon an Order that specifies the scope and anticipated schedule of such Transition Services and the fees payable by Customer for such Transition Services.

# INDEPENDENT CONTRACTOR

Assima acknowledges that it is acting as an independent contractor, and that nothing in this Agreement will be construed to create an agency or employment relationship between Customer and Assima or its Representatives. Assima is not authorized to enter into contracts or agreements on behalf of Customer or to otherwise create obligations of Customer to third parties. Neither Assima nor any of its Representatives are Customer employees for any purpose. Assima agrees that all such Representatives will be informed that they are employees solely of Assima, or its agent or subcontractor if applicable. Assima agrees that with regards to its employees, it is solely responsible for payment of all applicable workers’ compensation, disability benefits, national insurance, and for withholding and paying such employment taxes and income withholding taxes as required with.

# INSURANCE

## **Coverages.** Assima will obtain and maintain in full force and effect during the term of this Agreement, the insurance coverage in the minimum amounts and on the terms set forth in an Exhibit hereto or such other amounts as may be set forth in an Order.

# MISCELLANEOUS

## **Non-Solicitation.** Neither party shall, during the term of this Agreement nor for a period of six months after termination, solicit for employment or utilize the services of, whether as employee or independent contractor, any person who is or has been employed by other party during the term of this Agreement without the prior written consent of that party. An employee’s or former employee’s response to an employment advertisement of general circulation shall not be deemed to be a solicitation for employment.

## **Remedies**. Each party acknowledges that a breach of certain of its obligations under this Agreement (including each party’s confidentiality obligations set forth in this Agreement), other than any payment obligations hereunder, may result in irreparable and continuing damage to the other party for which monetary damages may not be sufficient, and agrees that the other party will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or all other equitable relief, and such further relief as may be proper from a court of competent jurisdiction.

## **Assignment; Successors and Assigns.** Neither party may assign this Agreement, in whole or in part, to any third party without the prior written consent of the other party; provided however, that either party may assign this Agreement, without the need to obtain the consent of the other party, to an Affiliate or to a successor in interest (whether by merger, acquisition, or sale of assets) to substantially all of the business of that party to which this Agreement relates; provided that the assignee provides written notice to the other party within a reasonable time of completing such assignment. An assignee of either party authorized under this section shall have all of the rights and obligations of the assigning party set forth in this Agreement. Any attempted assignment made in violation of the terms of this Section shall be null and void and of no force or effect. All terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

## **Publicity.** At a mutually agreed upon time, the parties shall work together in good faith to develop a case study. Neither party shall issue any press release, success story, or make any other public announcement or communication regarding the transactions contemplated by this Agreement without the prior written approval of the other.

## **Security Policies.** While working at or visiting the premises of the other party, or connecting to the systems of the other party, Assima and Customer agree that their respective employees (and in the case of Assima, all Personnel) shall comply with all (a) internal rules and regulations of the other party, including security procedures, provided that the other party provides or otherwise communicates such rules and regulations to the visiting party; and (b) all applicable federal, state, and local laws and regulations applicable to the location where such persons are working or visiting.

## **Headings; Construction.** The headings of this Agreement are for convenience only and shall not be read to define or limit the intent of the provision following such headings. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation” or the phrase “but not limited to”. The word “will” shall be construed to have the same meaning and effect as the word “shall,” and vice versa.

## **Authority.** Each party has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

## **Force Majeure**. No party shall be liable for any delay or failure to perform under this Agreement if such delay or failure is due to any contingency beyond its reasonable control including acts of God, war, explosion, fire, flood, strike, or civil disturbance. The party experiencing any delay or failure as a result of any such contingency shall: (a) provide prompt written notice thereof to the other party; (b) use reasonable commercial efforts to either remedy the delay or failure or to establish a workaround plan to remedy the delay or failure in a manner which minimises the disruption to the other party and then forthwith proceed to implement and complete such workaround plan; and (c) use reasonable commercial efforts to eliminate the contingency causing the delay or failure.

## **No Construction against Drafter.** If an ambiguity or question of intent arises with respect to any provision of this Agreement, the Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Agreement.

## **Governing Law.** This Agreement will be governed by, and construed in accordance with, the laws of the United States, without regard to its choice of laws principles. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the AAA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be New York, New York.

## **Compliance with Law.** The parties shall comply with all applicable laws and regulations in the performance of their respective obligations under this Agreement.

## **Notices.** Each party shall provide any notice required or permitted under this Agreement in writing to the addresses described in this Agreement or to such other address a party may identify to the other party in a written notice. Each notice shall be effective from the date delivered personally, sent by email or sent by certified or registered mail or overnight delivery by an established national delivery service.

## **Counterparts.** The parties may sign this Agreement in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument. Any signed copy of this Agreement reproduced and transmitted (in counterparts or otherwise) via email, facsimile or other process that accurately transmits the original document will be considered an original document and be sufficient to bind the parties to its terms and conditions.

## **Severability.** If a court of competent jurisdiction should find any provision in this Agreement to be invalid or unenforceable, such holding shall not affect the validity and enforceability of the remaining provisions of this Agreement and the parties or the court will in good faith modify the invalid or unenforceable provision to the extent required to allow its enforcement in a manner that most closely represents the intentions of the parties in entering into this Agreement.

## **Order of Precedence.** If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of a Schedule or Order, or between the terms and conditions of a Schedule and the terms and conditions of an Order, the terms of such documents will be interpreted according to the following order of precedence: (a) this GTC; (b) the terms and conditions of the applicable Schedule; and (c) the terms and conditions of the applicable Order; provided, however, that if a Schedule or Order specifically references a section of this GTC, or an Order specifically references a section of an applicable Schedule, and states that it is the intent of the parties to override the terms of such section, then the specific term of the Schedule or Order, as applicable, shall take precedence and prevail, but only with respect to the Software or Services specified in such Schedule or Order and not with respect to any other Software or Services or any other Schedule or Order.

## **Survival of Rights and Obligations.** Any provision of this Agreement which, by its nature, would survive termination or expiration of this Agreement will survive any such termination or expiration.

## **Entire Understanding; Amendments.** This Agreement constitutes the entire understanding of the parties with respect to its subject matter. It replaces and supersedes all prior or contemporaneous written and oral agreements with respect to its subject matter. Any amendment or modification of any of the provisions of this Agreement or any right, power or remedy hereunder shall not be effective unless made in writing and signed by all parties.

## **No Waiver.** The failure or delay of a party at any time to require performance of any term or condition of this Agreement will not affect such party’s right to enforce such term or condition, or any other provision of this Agreement, at a later time. Each waiver will only be effective if stated in a writing signed by an authorized representative of both parties.

## **SOFTWARE SUBSCRIPTION**

**1. DEFINITIONS**

In addition to the terms defined elsewhere herein and/or in the Agreement, the following terms as used in this Schedule shall have the meanings set forth below:

1.1 “**Properly Trained Individual**” means a person who has been trained by Assima or by a trainer who has been trained by Assima to provide such training.

1.2 “**Subscription Fees**” means the fees payable for a Subscription License and the Maintenance Services associated therewith for the applicable Software.

1.4 “**Scope of Use**” means the purpose for which Customer is allowed to use the Software and any restrictions or limitations on Customer’s right to use the licensed Software, as more fully described in the applicable Order. Unless specifically described in the applicable Order, the Scope of Use shall be for non-commercial internal use only.

 1.5 “**Subscription License**” means a license under which Customer has the right to use the Software only for the Subscription Term.

 1.6 “**Subscription Term**” means the specific period of time during which a Subscription License is valid. The Subscription Term will automatically renew for successive periods equivalent to the immediately preceding period (each period when in effect referred to as the Subscription Term), unless either party notifies the other in writing no less than ninety (90) days prior to the expiration of the then current Subscription Term.

# LICENSE GRANT & RESTRICTIONS

2.1 **License of Software Under Orders.** Assima and customer will execute, upon mutual agreement, consecutively numbered orders for customer's subscription to the software (if on a project basis, such orders may be combined orders for software and services). If any of the terms or conditions of this agreement conflict with any of the terms or conditions of any order, unless otherwise provided therein, the terms or conditions of such order will control solely with respect to the licensed software and services under such order.

2.2 **Grant of License**. Assima hereby grants to Customer a non-transferable, non-exclusive, non-sublicensable, worldwide license to use, and to permit its authorized third-party service providers to use on Customer’s behalf, the Software, including the Documentation in accordance with the terms of an Order. Each license is for use by a Properly Trained Individual on one computer. If expressly stated in the relevant Order, the Software may be licensed for use by named third parties. Any use by any third party as permitted in this Section or the relevant Order will be subject to any applicable terms and conditions contained in this Agreement. All rights not expressly granted hereunder are reserved to Assima.

2.3 **Restrictions.** Customer and its authorized users will not (i) copy, distribute, reproduce, use or allow access to the Software except as explicitly permitted under this Agreement; (ii) update, upgrade, enhance, create derivative works from, modify, customize, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software, or (iii) remove, obscure, or alter Assima's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software.

2.4 **Orders by Affiliates**. Affiliates of customer may execute orders under this agreement, provided however, customer shall require such affiliates to comply with the terms and conditions of this agreement and customer shall be liable for and indemnify assima for any claim resulting from the acts and omissions of its affiliates in regards to their compliance with this agreement. For purposes of affiliate executed orders, the affiliate will be considered customer as that term is used throughout this agreement.

# DELIVERY, TRAINING AND INTEGRATION

3.1 **Delivery.** On or before the relevant date for delivery of the Software as set forth in the applicable Order (“**Delivery Date**”), Assima will deliver to Customer the Software together with the relevant Documentation by making the Software and Documentation available on the Assima Support Center site and delivering the activation link via email.

3.2 **Training and Integration**. If requested, and pursuant to the terms and conditions in the applicable Order, Assima or its Representatives will provide training and/or integration services to Customer in the use, operation and maintenance of the Software. All training will be conducted as specified in the relevant Order.

# MAINTENANCE AND SUPPORT

Maintenance Services are included at no additional cost during the Subscription Term. Maintenance Services will commence upon the date specified in the relevant Order and continue for the Subscription Term. Assima’s obligation to provide Maintenance Services is conditioned upon Customer’s applying error-corrections, patches, bug fixes and Updates within three months of release by Assima. Maintenance Services are limited to modules of Assima’s Software that are intended to operate with third party programs that have been placed on maintenance status by their vendor.

# OWNERSHIP

Assima Software is licensed and not sold. Nothing in this Agreement or any Order shall be construed as the conveyance by Assima of any proprietary interest in, or to, the Software. For the avoidance of doubt, Configuration or any other modification or addition to the Software made by Assima for use by Customer is and will remain the property of Assima and shall be deemed a component of the Software upon creation. If applicable, the Configuration process shall be more fully described in the Ordering Document.

# TERMINATION

6.1 **Termination of a Software License**. Assima may terminate Customer’s license to any Software in the event of Customer’s material breach of this Schedule which breach has not been cured within ten (10) business days of receiving notice of such breach from Assima, or such longer period agreed upon by the parties, as long as Customer continues working in good faith to cure such breach.

6.2 **Disposition of Software upon Termination for Cause.** If Assima notifies Customer that it will terminate a Software license pursuant to this Section, the rights granted to Customer under this Schedule with respect to such Software shall immediately cease, and Customer shall promptly discontinue use of and destroy all copies of the Software in its possession or under its control, other than as necessary for archival purposes.

**PROFESSIONAL SERVICES SCHEDULE**

## **STATEMENT OF WORK**

Assima shall perform the Professional Services and deliver the Work Product described in each Statement of Work in accordance with the terms and conditions of such Statement of Work and the Agreement. Each Statement of Work shall specify the scope of the Professional Services Assima will provide under such Statement of Work, the fees for the Professional Services, as well as such other terms and conditions upon which the parties may agree, to the extent such terms and conditions are in addition to or different from the terms of this Schedule. The parties (or their respective Affiliates) may from time to time mutually agree to enter into additional Statements of Work. Each Statement of Work shall incorporate by reference the Agreement and, when signed by an authorized representative of each party, will be deemed part of the Agreement between Customer and Assima.

## **PERSONNEL**

2.1 **Single Point of Contact; Key Personnel**. Each party shall assign a single point of contact to manage such party’s performance of the Services under each SOW (each a “**Project Manager**”). Whenever this Agreement or a Statement of Work requires approval, authorization, or communication to Customer or Assima, a party shall contact the other party’s Project Manager.

2.2 **Qualification of Personnel.** Assima shall assign Personnel that possess the appropriate knowledge, skills, expertise, and training to perform the Services in accordance with this Agreement and the applicable SOW. For each individual included in its Personnel, Assima shall, to the extent permissible under applicable law, conduct a security background check that includes investigation and identification of all criminal convictions and criminal charges pending against such individual during the immediately preceding five (5) years. At Customer’s expense, Assima shall perform such other types of verification as Customer reasonably requests. At the request of Customer, Assima shall deliver a written certification to Customer that it has performed, and the subject individual has passed, the verification procedures set forth in this Section. In addition, Assima shall be responsible for obtaining all necessary work authorizations for its Personnel at no charge to Customer.

2.3 **Selection and Replacement of Assima Personnel.** Customer shall have the right to interview and accept or reject any of the following Personnel before Assima assigns them to perform Professional Services under a SOW: (a) Assima’s Project Manager; (b) Personnel who will perform Services on-site at a Customer location for more than two (2) weeks; and (c) other Personnel Customer reasonably determines will be instrumental to the success of the Services under such SOW. If Customer determines in good faith that the continued assignment of any Personnel is not in the best interest of Customer, then, as long as such request is not for unlawful reasons, Assima shall replace such Personnel with other Personnel of suitable ability and qualifications at no additional charge to Customer.

## **CUSTOMER MATERIALS; WORK PRODUCT**

3.1 **Customer Materials.** Any Customer materials, including hardware, software, equipment, designs, reports, manuals, documents, and specifications, whether tangible or intangible (and any reproductions of such materials) which Customer provides to Assima for use in providing Professional Services pursuant to a Statement of Work (exclusive of Assima Materials) (collectively “**Customer Materials**”) shall remain the sole property of Customer. Assima shall not remove any Customer Materials from Customer’s premises without the prior written consent of an authorized representative of Customer. If Assima removes any Customer Materials, Assima shall return such Customer Materials to Customer upon the earlier of (a) Customer’s request or (b) the termination or expiration of the Statement of Work for which Assima used such Customer Materials. While any Customer Materials are in Assima’s possession, custody or control, Assima shall: (i) maintain all Customer Materials in good condition at Assima’s expense, (ii) hold such Customer Materials at Assima’s risk, and (iii) insure such Customer Materials against all forms of loss or damage at Assima’s expense in an amount equal to the replacement cost. Assima agrees that it shall, both during and after the termination or expiration of the Agreement, (a) use the Customer Materials only for the purpose of providing Professional Services to Customer under the Agreement; (b) not, directly or indirectly, reproduce any Customer Materials; (c) distribute or disclose Customer Materials only to Personnel who have a need to know the information included in such Customer Materials in connection with the performance of Assima’s obligations and the exercise of Assima’s rights under the Agreement and the applicable SOW; and (d) hold in confidence and prevent the unauthorized copying, use or disclosure of all Customer Materials.

3.2 **Assima Materials.** This Agreement does not restrict or deprive Assima of any of its rights or proprietary interests in any Assima Materials. If Work Product includes Assima Materials, Assima grants Customer an irrevocable, unrestricted, non-exclusive, paid-up, perpetual, worldwide license to use, duplicate, modify, sublicense, distribute, display and otherwise engage such Assima Materials, but only to the extent such Assima Materials form an indivisible part of the Work Product and only for the purpose of providing the Customer with the full use and/or benefit of the Work Product.

3.3 **Assignment of Rights.**  Unless specifically set forth in the applicable Statement of Work, Assima shall assign to Customer, and Customer shall exclusively own, all rights, title, and interest, including all Intellectual Property Rights included in all Work Product (but excluding any Assima Material that is included in any Work Product subject to the license set forth above). Work Product that are works of authorship shall be considered “works made for hire” and all Intellectual Property Rights inherent in such works shall be owned exclusively by Customer, and Customer shall be, pursuant to the United States Copyright Act, 17 U.S.C. §101 et seq., as amended from time to time, the “author” of such work. If any such Work Product may not be considered a “work made for hire” under applicable law, Assima shall assign and transfer, to Customer, without further consideration, the exclusive right, title, and interest in and to such Work Product, including all inherent Intellectual Property Rights, in all jurisdictions throughout the world, and Assima waives all moral rights in such Work Product.

3.4 **Further Assurances.** Assima will, and will cause its Representatives to, give Customer or Customer’s designee all reasonable assistance and execute all documents necessary to assist with enabling Customer to prosecute, perfect, register or record its rights in any Work Product.

**HOSTED TECHNOLOGY SERVICES SCHEDULE**

**1.** **DEFINITIONS**

In addition to the terms defined elsewhere herein and/or in the Agreement, the following terms as used in this Schedule shall have the meanings set forth below:

* 1. “**Aggregate Data**” means all aggregate and statistical information or analyses collected by Assima relating to Customer’s use of the Hosted Technology Services.
	2. “**AUP**” means Assima’s acceptable use policy as Assima may amend from time to time.
	3. “**Authorized User**” means an employee of Customer who is an authorized User under an Order and has been assigned a unique username-password combination to access and use the Hosted Technology Service.
	4. “**Customer Content**” means all data, software and information, including, without limitation, text, software, scripts, video, sound, music, logos, trademarks, graphics and images in electronic form created, uploaded or transferred in connection with the Hosted Technology Services by Customer.
	5. “**PII**” means information that can be used to identify, contact, or locate a single person or that can be used with other sources to uniquely identify a single individual.

**2. HOSTED TECHNOLOGY SERVICES**

2.1 **Access to the Hosted Technology Services.** Subject to the term and conditions of this Agreement, Assima hereby grants Customer and its Authorized Users the right to access and use Assima’s Hosted Technology Services as part of a subscription for Software as set forth in an Order. The Hosted Technology Services description, authorized use, number of users, hosting term, and fees shall be set forth in the Order to the Agreement. Customer may permit its third-party contractors to exercise any of the rights granted above, provided: (1) the contractors and/or subcontractors exercise such rights as contemplated under the Agreement and this Schedule solely in the course of providing services to Customer; and (2) Customer ensures that each contractor and/or subcontractor fully complies with the terms and conditions of this Schedule and the Agreement.

2.2 **Documentation.** The Documentation for the Hosted Technology Services describe the functions and features of the Hosted Technology Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that the Authorized User can become self-reliant with respect to access and use of the Hosted Technology Services. Customer may reproduce and use the Documentation solely as necessary to support its use of the Hosted Technology Services.

2.3 **License Grant to Plug-In**. Assima hereby grants to Customer a non-transferable, non-exclusive, worldwide license to use the required plug-in associated with use of the Hosted Technology Services for the Subscription Term. The restrictions set forth in this Agreement and any Schedule with respect to restrictions on Assima’s licensed Software shall apply to this license grant.

2.4 **Accounts**. Assima will establish in the Hosted Technology Services any necessary accounts for Authorized Users. Authorized Users will have the ability to manage Customer's accounts, and view and create reports relating to Customer's use of the Hosted Technology Services, as further described in the applicable Ordering Document. Customer is fully responsible for all activities that occur under Customer's accounts and for maintaining up-to-date and accurate information (including without limitation valid contact information) with respect to all accounts.

2.5 **Audit Rights of Assima**. Customer is responsible for designating Authorized Users not to exceed the stated End User capacity set forth in the Order. Assima shall have the right to (i) request from Customer its certification of compliance with the permitted number of Authorized Users for an Order, and (ii) at its expense, to audit the books and records of Customer related to activities of user capacity.

2.6 **Ownership**. Assima retains all right, title and interest in and to the Hosted Technology Services, including without limitation all software used to provide the Hosted Technology Services and all graphics, application and user interfaces, logos, and trademarks reproduced through the Hosted Technology Services. This Agreement does not grant Customer any license or Intellectual Property Rights in or to the Hosted Technology Services or any of its components, except to the limited extent that this Agreement specifically sets forth Customer license rights to associated licensed plug-in’s or trademarks. Customer recognizes that the Hosted Technology Services and its components are protected by patent, copyright, trademark and other laws.

2.7 **Renewal**. Timing for the renewal of the Hosted Technology Service and invoicing of Hosting Fees shall follow those set forth in connection with the Subscription set forth in an applicable Order.

# CUSTOMER’S RESPONSIBILITIES AND RESTRICTIONS

# 3.1 Customer Policies. Customer is responsible for (i) the manner in which the hosted technology service is used, including the policies and procedures customer establishes to protect the security of its own data, computer network and other facilities; (ii) customer’s choice of equipment, software and online content; and (iii) all other matters related to customer’s use of the hosted technology services.

# 3.2 Unauthorized Access. Customer shall take commercially reasonable steps to prevent unauthorized access to the Hosted Technology Service, including without limitation by protecting its passwords and other log-in information. Customer shall notify Assima immediately of any known or suspected unauthorized use of the Hosted Technology Service or breach of its security and shall use best efforts to stop said breach.

3.3 **Compliance with Laws**. In its use of the Hosted Technology Service, Customer shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Content.

3.4 **Restrictions.**  Customer will not attempt to interfere with or disrupt the Hosted Technology Service. Customer shall not: (i) reverse engineer, disassemble, reconstruct or decompile the Hosted Technology Services; or (ii) rent, lease, or provide access to the Hosted Technology Services on a service bureau basis. Customer will use the Hosted Technology Services solely for authorized and legal purposes. Customer shall, at all times comply in all material respects with the technical requirements of the Hosted Technology Services, including security and other protocols.

**4. THIRD-PARTY HOSTING**

4.1 **Required Notice of Maintenance**. Unless otherwise stated in an Order, Assima shall provide no less than five (5) calendar day’s prior written notice to Customer of all non-emergency maintenance to be performed on the Hosted Technology Services. For emergency maintenance, Assima shall provide as much prior notice as commercially practicable to Customer. Customer acknowledges that Assima’s third-party hosting providers may provide Updates or repairs that are typically scheduled at least twenty-four (24) hours in advance and occur during off peak hours in the time zone where the data center is located. Assima shall provide as much prior notice as commercially practicable to Customer of such maintenance windows.

4.2 **Third Party Hosting**. Customer acknowledges that Assima utilizes third-party hosting services in connection with its operation of the Hosted Technology Services. Except as otherwise specified on an Order, the Hosted Technology Services (including data storage), shall be provided solely from within the continental Unites States and on computing and data storage devices residing therein. Customer is not a third-party intended beneficiary under any third-party agreements of Assima.

4.3 **Access**. Customer agrees to provide Assima with the access and support required to allow Assima to implement, maintain and provide the Hosted Technology Services including related support services. The parties will work together to assess processes and procedures required for initial setup and Customer will provide timely input and approval where required by Assima in connection with Assima’s release testing process for Updates to the Hosted Technology Service.

**5. CUSTOMER CONTENT AND PRIVACY**

5.1 **License to Customer Content**. Subject to the terms and conditions of the Agreement, Customer hereby grants Assima a limited, royalty-free, non-transferable (except as expressly permitted under this Agreement), non-exclusive, revocable license, during the Subscription Term, to reproduce, display, publicly perform, and distribute any Customer Content provided by Customer for the sole purpose of providing the Hosted Technology Services to Customer. Customer reserves all rights not expressly granted hereunder. Customer represents and warrants that Customer shall have all approvals, licenses and permissions from Customer’s Client’s to allow Assima to perform its obligations hereunder.

5.2 **Use of Customer Content**. Assima will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Content, including measures for preventing access, use, modification or disclosure of Customer Content by Assima personnel except (i) as necessary to facilitate the Hosted Technology Services, and prevent or address service or technical problems, (ii) as compelled by law, or (iii) as Customer may expressly permit in writing.

5.3 **Data Accuracy**. Assima shall have no responsibility or liability for the accuracy of data uploaded to the Hosted Technology Services by Customer, including without limitation Customer Content and any other data uploaded by any users. Customer is solely responsible for maintenance, integrity, retention, security and backup of Customer Content.

5.4 **Data Deletion**. Upon request by Customer made within ten (10) days after the effective date of termination or expiration of this agreement, Assima will make Customer Content (specifically, the database and data repository folder) available for export or download. After that 10-day period, Assima will have no obligation to maintain or provide Customer Content, and will thereafter delete or destroy all copies of such data in Assima’s systems or otherwise in Assima’s possession or control, unless legally prohibited.