

**ASIMILY, INC.**  
**END USER LICENSE AGREEMENT**

**THIS END USER LICENSE AGREEMENT** (together with all Schedules attached hereto, the “*Agreement*”) is entered into on the date set forth in the Order (the “*Effective Date*”) by and between Asimily, Inc., a Delaware corporation (“*Asimily*”) and the Ordering Activity under GSA Schedule contracts identified in the Order (“*Customer*”).

In consideration of the mutual agreements and covenants herein contained, and intending to be legally bound thereby, Asimily and Customer agree as follows:

1. **DEFINITIONS.** The following definitions apply to this Agreement:

1.1 “*Acceptance*” means the earliest to occur of the commencement of operational use or availability for operational use by Customer of the Software.

1.2 “*Documentation*” means the user manual and relevant release notes generally made available by Asimily for use with the Software.

1.3 “*Error*” means the material failure of the Software to conform to its functional specifications as described in the Documentation. Failures resulting from Customer’s negligence or improper use, alteration, or damage of the Software, or Customer’s use of the Software with any hardware or software not identified as compatible by Asimily, will not be considered Errors.

1.4 “*Intellectual Property Rights*” means, collectively, the following worldwide intangible legal rights, whether or not filed, perfected, registered, or recorded, and whether now or hereafter existing, filed, issued, or acquired: (a) patents, patent applications, provisional patent applications and patent rights, including any and all continuations, continuations-in-part, divisions, reissues, reexaminations, or extensions thereof; (b) rights associated with works of authorship, including copyrights, copyright applications, copyright registrations, moral rights, and all derivative works thereof; (c) rights relating to, and the protection of, trade secrets and confidential information; (d) rights associated with trademarks, service marks, logos, trade dress, trade names, and service names; and (e) any rights analogous to those set forth in the preceding clauses and any other proprietary rights relating to intangible property.

1.5 “*Order*” means the purchase order, invoice or proof of entitlement issued by Asimily.

1.6 “*Software*” means the object code versions of the computer program modules specified the Order and provided by Asimily.

1.7 “*Update*” means the object-code version of any bug fix or patch to correct any Error in the Software.

2. **LICENSE TERMS AND CERTAIN OBLIGATIONS**

2.1 **License.** Subject to the terms of this Agreement, Asimily hereby grants, and Customer hereby accepts, a nonexclusive, nontransferable, and nonassignable license to: (a) use the Software solely for Customer’s own internal business operations; and (b) use and reproduce

the Documentation to the extent reasonably required to support the licensed use of the Software. There are no implied licenses under this Agreement, and any rights in or to the Software or Documentation not expressly granted to Customer under this Section 2.1 are reserved by Asimily.

**2.2 Limitations.** Customer may not: (a) modify, adapt, alter, translate, localize, port, or create derivative works of the Software; (b) merge the Software with other software other than as approved in writing by Asimily; (c) sublicense, lease, rent, loan, or otherwise transfer or distribute the Software to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software; (e) remove, alter, or obscure any confidentiality or proprietary notices (including copyright and trademark notices) of Asimily or its suppliers on the Software; or (f) allow third parties to access or use the Software (such as in a time-sharing arrangement) or operate the Software as part of a service bureau or otherwise for the use or benefit of third parties.

**2.3 Certain Customer Obligations.** At all times, Customer shall:

(a) supply and take full responsibility for all computer hardware, system software (including changes to Customer's host computer system necessary to interface with the Software), and auxiliary software necessary or appropriate for the licensed use of the Software;

(b) ensure that its personnel are capable in the use of the computer hardware and system software to be used with the Software;

(c) use the Software in accordance with the Documentation, Asimily's instructions and all applicable laws and regulations;

(d) provide telecommunications connections (including cost of data transmission) to equipment containing the Software in order to assist Asimily's support (as provided in this Agreement) of Customer's use of the Software;

(e) employ appropriate back-up procedures for data storage in order that any loss of data caused by an error in the Software will not adversely affect Customer; and

(f) provide Asimily with access to Customer's facility, personnel, records and equipment as necessary for Asimily to install the Software.

### **3. MAINTENANCE**

**3.1 Delivery of Updates.** Whenever Asimily makes any Update generally available, without additional charge, Asimily will make such Update available to Customer without additional charge.

**3.2 Error Correction.** Asimily will provide the following services for Errors of which Asimily is notified by Customer:

<b>Error</b>	<b>Situation</b>	<b>Asimily Response</b>	<b>Customer Response</b>
Critical Impact	Significant loss or degradation of solution where no known workaround is available.	1 <sup>st</sup> call response in 4 business hours.  Continuous effort on a 24x7 basis  Notification to Asimily senior team members	Allocation of resources to sustain effort on a continuous 24x7 basis  Rapid access and response from change control authority
Moderate Impact	Moderate loss of degradation of service but work can reasonably continue in an impaired manner.	1 <sup>st</sup> call response in 8 business hours or less.  Effort during business hours only	Allocation of resources to sustain continuous effort during business hours  Rapid access and response from change control authority within 8 business hours
Minimum Impact	Substantially functioning with minimum or 2 impediments to service.	1 <sup>st</sup> call response within 4 business days or less.  Effort during business hours only	Accurate information on case.  Responsiveness within 2 business days

Error correction is subject to verification and reproduction of the Error by Asimily, and Customer’s reasonable assistance in same. Error correction may include a temporary work-around, patch, or bypass supplied by Asimily, or implementation of a computer or operational routine by Customer, to diminish or avoid the effect of the Error. Asimily is not responsible for correcting Errors in other than the most current Update made available to Customer.

3.3 **Treatment of Software Delivered under Maintenance Services.** All software delivered to Customer as part of maintenance services will be deemed to be Software for the purposes of this Agreement.

#### 4. FINANCIAL TERMS

4.1 **License Fees.** Customer will pay the amounts set forth on the Order in accordance with the GSA Schedule Pricelist (the “*License Fee*”) to the party designated in such Order after “Bill To:” (such party, the “*Payee*”). If Customer licenses the Software through an authorized Asimily reseller (a “*Reseller*”), all terms related to pricing, billing, invoicing and payment (“*Payment Terms*”) set forth in this Agreement shall not apply. For the avoidance of doubt, all such Payment Terms shall be as agreed to between Customer and Reseller.

4.2 **Payment Terms.** Payment of the License Fee will be made in U.S. dollars to the Payee and will be due and payable as described in the applicable Order.

4.3 **Taxes.** Asimily shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

## 5. PROPRIETARY RIGHTS

5.1 **Asimily Ownership.** The Software and Documentation (and all copies of either of the foregoing, however made), and all Intellectual Property Rights therein, are and will remain the exclusive property of Asimily.

6. **Disclaimer of Warranties.** ASIMILY WARRANTS THAT THE SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE ACCEPTANCE, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED “AS IS” AND WITHOUT WARRANTY OF ANY KIND. ASIMILY HEREBY EXCLUDES AND DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, RESULTS, EFFORTS, OR QUIET ENJOYMENT. THERE IS NO WARRANTY THAT THE SOFTWARE IS ERROR-FREE, WILL FUNCTION WITHOUT INTERRUPTION, OR IS SUFFICIENTLY DOCUMENTED TO BE USABLE BY CUSTOMER. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF THE PERFORMANCE OR USE OF THE SOFTWARE AND DOCUMENTATION. TO THE EXTENT THAT ASIMILY MAY NOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO REPRESENTATIONS OR WARRANTIES (INCLUDING ANY REPRESENTATIONS, WARRANTIES, OR OTHER STATEMENTS THAT MAY HAVE BEEN MADE ORALLY OR IN WRITING) AND IS RELYING SOLELY UPON ITS OWN JUDGMENT AND EXPERTISE, AS TO THE SUITABILITY OF THE SOFTWARE AND DOCUMENTATION FOR CUSTOMER’S USE.

## 7. CONFIDENTIALITY

7.1 **Confidential Information.** Each party (the “*Disclosing Party*”) may from time to time during the term of this Agreement disclose to the other party (the “*Receiving Party*”) certain information regarding the Disclosing Party’s business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information (“*Confidential Information*”). The Disclosing Party will mark all Confidential Information in tangible form as “confidential” or “proprietary” or with a similar legend. The Disclosing Party will identify all Confidential Information disclosed orally as confidential at the time of disclosure. Regardless of whether so marked or identified, however, the Software, Documentation, and any information that the Receiving Party knew or reasonably should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party, will be considered Confidential Information of the Disclosing Party.

7.2 **Protection of Confidential Information.** The Receiving Party will use any Confidential Information of the Disclosing Party solely for purposes of this Agreement and will

disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature, and with no less than reasonable care.

**7.3 Exceptions.** The Receiving Party's obligations under Section 7.2 with respect to any Confidential Information of the Disclosing Party will terminate prospectively if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that (if permitted by law) the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. Asimily recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by Asimily.

**7.4 Confidentiality of Agreement.** Neither party will disclose any terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors under a duty of confidentiality except: (a) as required by law; (b) pursuant to a mutually agreeable press release; or (c) in connection with a proposed merger, financing, or sale of such party's business (provided that any third party to whom the terms of this Agreement are to be disclosed signs a confidentiality agreement reasonably satisfactory to the other party to this Agreement). Notwithstanding the foregoing, Asimily may identify Customer as a user of the Software.

## **8. INDEMNIFICATION**

**8.1 Asimily's Obligation.** For any claim brought against Customer by a third party that the Software infringes upon any U.S. copyrights or misappropriates any trade secrets recognized as such under the Uniform Trade Secret law ("**Infringement Claim**"), Asimily will pay those costs and damages finally awarded against Customer for the Infringement Claim or those amounts payable by Customer under a settlement of the Infringement Claim.

**8.2 Cure.** If Software becomes, or in Asimily's opinion is likely to become, the subject of an Infringement Claim, Asimily may, at its option and expense, either: (a) procure for Customer the right to continue exercising the rights licensed to Customer in this Agreement; (b) replace or modify the Software so that it becomes non-infringing; or (c) terminate this Agreement by written

notice to Customer and, in connection therewith, refund to Customer the unamortized portion of the License Fees paid by Customer to Asimily based upon a five (5)-year straight-line depreciation with a commencement date as of the date of Acceptance.

8.3 **Exclusions.** Asimily will have no obligation under this Section 8 or otherwise with respect to any Infringement Claim based upon: (a) any use of the Software not in accordance with this Agreement or the Documentation; (b) any use of the Software in combination with other products, equipment, software, or data not provided or approved by Asimily; (c) any use of any version or release of the Software other than the most current version or release made available to Customer; or (d) any modification of the Software by any person other than Asimily or its authorized agents.

8.4 **EXCLUSIVE REMEDY.** THIS SECTION 8 STATES ASIMILY'S SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

## 9. LIMITATIONS OF LIABILITY

9.1 **Exclusion of Damages.** EXCEPT FOR DAMAGES ARISING FROM A BREACH BY EITHER PARTY OF ITS OBLIGATIONS UNDER SECTION 7 OR A BREACH BY CUSTOMER OF THE LICENSE TERMS AND RESTRICTIONS SET FORTH IN SECTIONS 2.1 AND 2.2, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR LOSS OF USE, DATA, BUSINESS, OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE AND DOCUMENTATION, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF THE OTHER PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM ASIMILY'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

9.2 **Total Liability.** IN NO EVENT SHALL ASIMILY'S CUMULATIVE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND THEORIES OF LIABILITY, EXCEED THE PAYMENTS RECEIVED BY ASIMILY FROM CUSTOMER UNDER THIS AGREEMENT. THIS LIMITATION OF LIABILITY IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT.

9.3 **Basis of Bargain.** The parties expressly acknowledge and agree that Asimily has set its prices and entered into the Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between Asimily and Customer.

## 10. TERM & TERMINATION

10.1 **Term.** This Agreement is effective upon the Effective Date and continues until the expiration of the license term set forth in the Order unless earlier terminated upon mutual

agreement of the parties. Upon termination or expiration of this Agreement, Customer shall immediately cease using any Software and must destroy or return to Asimily all copies of the Software and Documentation in its possession or control and will, within ten (10) days after the date of termination, provide Asimily with written certification that all such copies have been returned or destroyed and each party must promptly return any Confidential Information of the other that it has received during the term of this Agreement.

10.2 **Survival.** Sections 1, 5, 6, 7, 8, 9, 10.2, and 11 will survive termination or expiration of this Agreement.

## 11. MISCELLANEOUS

11.1 **Assignment.** Customer may not assign this Agreement or assign any of its rights or delegate any of its obligations under this Agreement, by operation of law or otherwise (including by merger, sale of assets, or consolidation), without Asimily's prior written consent, which may be granted or withheld in Asimily's sole discretion. Any attempted assignment in violation of this Section 11.1 will be void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

11.2 **Export Control.** Regardless of any disclosure made to Asimily of an ultimate destination of the Software, Documentation, or Asimily's Confidential Information, Customer acknowledges that all such materials are being released or transferred to Customer in or from the United States and are subject to U.S. export control laws and regulations. Customer acknowledges its exclusive obligation to ensure that any further export or deemed export of such materials is in compliance with U.S. export control laws and all applicable governmental regulations of any foreign countries.

11.3 **U.S. Government Restricted Rights.** The Software and Documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software and Documentation with only those rights set forth therein.

11.4 **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

11.5 **Force Majeure.** In accordance with GSAR Clause 552.212-4(f), neither party will be responsible for any failure to perform (except failure to pay) due to causes beyond its reasonable control (each a "*Force Majeure*"), including labor disputes, strikes, lockouts, shortages of labor, energy, raw materials or supplies, war, riot, act of God or governmental action, provided that such party gives prompt written notice thereof to the other party. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than sixty (60) days.

11.6 **Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.” This Agreement will be interpreted in accordance with its terms and without any strict construction in favor of or against either party.

11.7 **Notices.** All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile or e-mail transmission, by courier or overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to a party at the address set forth beneath such party’s signature below or such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices under this Agreement by giving written notice to the other party.

11.8 **Relationship of Parties.** The parties hereto are independent contractors, and no agency, employment, partnership, fiduciary, or joint venture relationship is intended or created by this Agreement. Neither party (nor any agent or employee of that party) is the representative of the other party for any purpose and neither party has the power or authority as agent, employee, or in any other capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever. No party will be deemed as a third-party beneficiary to this Agreement or any provision herein.

11.9 **Waivers.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.10 **Entire Agreement.** This Agreement, together with any Proofs of Entitlement, contains the complete understanding and agreement of the parties, and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter hereof. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of the parties.

11.11 **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument.

11.12 **Customer Lists.** Subject to Customer’s prior approval, Customer hereby grants Asimily a worldwide, non-exclusive license to use to use Customer’s name on Asimily’s website and in Asimily’s customer lists and other marketing material to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the Effective Date.

**ASIMILY, INC.**

*[insert governmental entity]*

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Name:

Name:

Title:

Title:

Address:

Address:

Email:

Email:

Telephone:

Telephone: