## TERMS OF SERVICE

The following terms and conditions (the "**Terms**") apply to individuals and entities (each, a "**Customer**" and collectively, the "**Customers**") using services to be provided by Assemble Systems, LLC, a Delaware limited liability company ("**Assemble**"), with offices at 520 Post Oak Blvd., Suite 420 Houston, Texas 77027, through the online use of software owned or licensed by Assemble. Each individual Service Package (as defined below) is defined in a separate Order Form (as defined below), which shall be executed separately, sequentially numbered and, when so executed by both parties and delivered to Assemble by Customer will be incorporated herein by reference. In the event of a conflict between the provisions of these Terms and the provisions of an Order Form, the provisions of the Order Form will control. These Terms are effective as of _____, 2015 and shall remain in effect until modified, revoked or terminated by Assemble in its sole discretion.

By using a Service Package, you agree to the Terms, just as if you had signed a physical copy of them. Assemble reserves the right, in its sole discretion, to change, modify, add or remove portions of the Terms at any time. Each Customer should check the Terms periodically for changes. By using a Service Package after Assemble posts any changes to the Terms, a Customer agrees to accept those changes, whether or not the Customer has reviewed them. If a Customer does not agree to these Terms, such Customer should not use the products of Assemble. Use of the same implies full informed consent and agreement to abide by these Terms. PLEASE READ THE TERMS CAREFULLY. IF YOU DO NOT AGREE TO THESE TERMS DO NOT USE THE SERVICES OR PRODUCTS OF ASSEMBLE, AS VIOLATION OF THESE TERMS CAN LEAD TO LEGAL LIABILITY.

## 1. Definitions.

"**Assemble Intellectual Property**" means all patents, copyrights, trademarks, service marks, trade names and applications therefore, and all inventions, domain name rights, and other trade secret rights, and all other intellectual property rights that are owned by or licensed to Assemble.

"**Assemble Technology**" means all of the Assemble's proprietary technology (including, but not limited to, hardware, software, documents, processes, algorithms, user interfaces, and know-how) and services made available by providing each Service to Customer.

"**Customer Data**" means any data or information that is inputted or submitted by Customer in connection with the Customer's use of the Service and the resulting data that is outputted by the Service Package through Customer's use of the Service.

"**Enterprise Package**" means a Service Package which includes an Unmonitored Subscription Volume within a Customer's Assemble environment. For the avoidance of doubt, an Enterprise Package includes any changes or modifications made to the base Assemble environment by Assemble, but does not include separately sold, "add-on" modules to the base Assemble environment, which must be purchased separately.

"**Order Form**" shall mean each order form executed by Customer and Assemble, each of which shall specify, among other things, the Service Package subscribed to by Customer, the Subscription Volume, the pricing and fees associated with such Service Package, the Subscription Term and such other terms as may agreed to in writing by the parties and set forth therein.

"**Project**" shall mean an active monthly project (i.e. a project which a Customer access and uses during any calendar month) within a Customer's Assemble environment.

"**Service(s)**" means the services and functionality provided by each Service Package subscribed to by Customer as evidenced by an Order Form.

"**Service Package**" means each separately priced service offering that is made generally available by Assemble to its customers via an online access subscription to the software package that provides such Service. For the avoidance of doubt, the term "Service Package" includes Enterprise Packages to the extent that a Customer has subscribed for an Enterprise Package.

"**Subscription Term**" means the term during which Assemble will provide each Service Package Service to Customer, in each case as set forth in the Order Form pursuant to which Customer subscribed for such Service Package, unless earlier terminated in accordance with these Terms, together with any extension or renewal of such Service Package made in accordance with these Terms; provided, however, that in the event any Order Form fails to specify the specific duration of a Subscription Term, the Subscription Term shall be deemed to be one (1) year.

"**Subscription Volume**" shall mean, with respect to each Service Package, the maximum number of unique Projects that Customer is permitted to simultaneously access and use within such Service Package in a calendar month.

"**Technical Specifications**" shall mean the written technical specifications and functionality descriptions contained in the user manual that relates to a Service Package.

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"**User(s)**" shall mean those employees, representatives, consultants, contractors or agents of Customer who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Assemble at Customer's request).

"**Unmonitored Subscription Volume**" means a Service Package with a fixed Subscription Volume, however Assemble will allow the Customer to access and use a number of unique Projects in excess of the Subscription Volume during the Subscription Term.  Upon the expiration of the Subscription Term, if the Customer elects to renew its Service Package for an additional Subscription Term, then the fixed Subscription Volume during such additional Subscription Term shall be (i) mutually agreed upon by Customer and Assemble and (ii) based on the actual usage of the Customer during the expiring Subscription Term, but shall not be less than the Subscription Volume during the expiring Subscription Term.  An Unmonitored Service Package must be designated as such on the applicable Order Form.

2. **Service.**

**2.1 Initial Service.** During the Subscription Term for each Service Package subscribed to by Customer, Assemble shall make such Service Package available to Customer in accordance with Section 7.2 below on a software-as-a-service basis, and provide Customer with the Service associated with such Service Package in accordance with these Terms and in accordance with the terms set forth in the Order Form associated with such Service Package, including the Subscription Volume.  Assemble shall have no obligation to provide Customer with access to any Service Package other than those subscribed to and paid for by Customer.  Customer shall not (i) access or use any Service Package that Customer has not subscribed and paid for or (ii) exceed the Subscription Volume subscribed to by Customer in connection with each Service Package.  If Customer accesses any Service Package for which Customer has not subscribed or Customer exceeds the Subscription Volume for the Service Package subscribed to by Customer, then Assemble may bill Customer and Customer shall pay Assemble for such additional Service Packages and such excess Subscription Volume based upon Assemble's then-current list price.

**2.2 Renewal of Service.**  Upon the expiration of the initial Subscription Term set forth in an Order Form, such Service Package shall automatically renew for an additional Subscription Term of equal duration unless Customer notifies Assemble in writing of its election not to renew such Service Package at least thirty (30) days prior to the expiration of the then-current Subscription Term.  Unless otherwise set forth in an Order Form, each Service Package that is renewed under these Terms, shall renew based upon Assemble's then-current list pricing at the time of such renewal.

**2.3 Additional Service.**  If Customer wishes to add additional Service Packages or increase Subscription Volume, Customer shall deliver to Assemble an Order Form evidencing such additional Service Packages or increased Subscription Volume. Upon Assemble's acceptance of any such additional Order Form, Assemble shall make such additional Service Packages available to Customer or increase Customer's Subscription Volume as provided in the additional Order Form.

**2.4 Standard Set-Up and Configuration.**  Some Service Packages require an initial standard configuration by Assemble in order for Customer to use the Service associated with such Service Package.  The Order Form associated with all such Service Packages shall specify the set-up fee associated with such initial standard configuration (the "**Set-Up Fee**").

**2.5 Custom Configuration and Professional Services.**  In the event that Customer requests a non-standard or custom configuration of any Service Package or Customer requests any modifications to a Service Package or services other than the Services provided by such Service Package, all such configurations, modifications or additional services shall be provided by Assemble as professional services on a time and materials basis in accordance with Assemble's standard Professional Services Agreement.  Assemble shall be under no obligation to provide any such configurations, modifications or additional services unless and until Assemble enters into such standard Professional Services Agreement with Customer.

3. **Use of the Services.**

**3.1 Assemble's Obligations.**  Assemble shall: (i) in addition to its confidentiality obligations under Section 6, not use, edit or disclose the Customer Data, other than in connection with the use of Aggregated Meta-Data pursuant to Section 5.4 or as directed or consented to by Customer; (ii) use commercially reasonable efforts to maintain the security of each Service; (iii) unless indicated to the contrary on an Order Form, provide technical support to Customer's Users via email during normal business hours (between the hours of 8:00 am and 5:00 pm CST on each business days); and (v) make the Service available to Customer's Users in accordance with Section 7.2 below.  Live telephone technical support is available to Customer for any additional monthly support upgrade fee.

**3.2 Customer's Obligations.**  Customer is responsible for all activities that occur under Customer's User accounts. Customer shall:  (i) promptly pay for all Service in accordance with these Terms and all applicable Order Forms, (ii) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (iii) use commercially reasonable efforts to prevent unauthorized

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access to, or use of, the Services, and notify Assemble promptly of any such unauthorized use; (iv) comply with all applicable local, state, federal, and foreign laws in using each of the Services; and (v) use the Services only for its own internal business purposes in accordance with the Subscription Volume subscribed to by Customer and shall do so using only passwords and User accounts which are rightfully possessed by Customer.

**3.3 Press Releases.** With Customer's prior written consent, Assemble may issue press releases relating to any Order Form and publicly refer to Customer as a client of Assemble or user of the Services.

## 4. Fees & Payment.

**4.1 Fees.** Customer will pay each of the fees specified in an Order Form (including all Set-Up Fees specified therein) and all fees associated with any unauthorized access to a Service Package or use of a Service Package in excess of the paid Subscription Volume, in each case as provided in Section 2.1 above. All fees are quoted in United States Dollars. All fees are non-refundable and are based on the Service Packages and Subscription Volumes specified in the relevant Order Form. Fees for additional Service Packages or increased Subscription Volume added in the middle of a monthly billing period shall be charged for that billing period in full and going forward based on the number of months remaining in the Subscription Term. Customer shall not be entitled to any refund or, except as expressly provided in Section 7.2 below, credit in respect of all or any portion of any Service Package or Subscription Volume subscribed for by Customer but not used by Customer during the applicable Subscription Term.

**4.2 Invoicing & Payment.** Assemble will invoice Customer for fees for the Service in advance and otherwise in accordance with the terms of the relevant Order Form. Customer shall fully pay all invoiced amounts within thirty (30) days of the invoice date. All payments made will be in United States dollars.

**4.3 Overdue Payments.** If Customer fails to make any payment when due, Assemble may, at its discretion, assess a late charge at the rate of 1.5% of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**4.4 Suspension of Service.** If Customer's account is thirty (30) days or more past-due, in addition to any of its other rights or remedies, Assemble reserves the right to suspend or modify the Service provided to Customer, without liability to the Customer, until such amounts are paid in full.

**4.5 Taxes.** Assemble's fees are exclusive of all local, state, federal and foreign taxes, levies, or duties of any nature ("**Taxes**"), and Customer is responsible for payment of all Taxes, excluding only United States taxes based on Assemble's income. If Assemble has the legal obligation to pay or collect taxes for which Customer is responsible pursuant to this Section 4.5, the appropriate amount will be invoiced to and paid by Customer unless Customer provides Assemble with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 5. Proprietary Rights.

**5.1 Reservation of Rights.** Assemble and its licensors own all right, title and interest to the Assemble Intellectual Property, the Assemble Technology, each Service Package and all Services provided thereunder, all IP addresses and internet addresses used to access a Service, all passwords and User accounts used to access or use the Services and all modifications, ideas, concepts or recommendations provided by Customer to Assemble. Neither an Order Form nor these Terms conveys or transfers any ownership rights in any Service Package, any Service provided thereunder, any Assemble Technology or any Assemble Intellectual Property. The Assemble name, logo, and trade names are trademarks of Assemble and no right is granted to use them except as granted herein.

**5.2 License Grants.** Subject to these Terms and the relevant Order Form, Assemble hereby grants Customer a non-exclusive, non-transferable, non-sublicenseable, limited right and license during the applicable Subscription Term to access and use the Service provided by each Service Package subscribed to by Customer, in each case solely for Customer's own internal business purposes and only to the extent and in accordance with the Technical Specifications and Subscription Volume for which Customer has subscribed, as evidenced by the applicable Order Form. Customer grants to Assemble a non-exclusive, non-transferable, non-sublicenseable, limited right and license during the applicable Subscription Term (and for a period of six months following termination of the Subscription Term) to process, copy, transfer, store, modify and display the Customer Data solely to the extent necessary to provide the Services to Customer or to provide Customer with a copy of the Customer Data. All rights not expressly granted to Customer are reserved by Assemble and its licensors.

**5.3 Restrictions.** Customer may not, directly or indirectly, (i) sublicense, resell, rent, lease, distribute, or otherwise transfer rights to access and use any Service or Assemble Technology for any purpose including timesharing or service bureau purposes; (ii) modify, copy or make derivative works based on the Service or any Assemble Technology; (iii) disassemble, reverse engineer, or decompile any of the Assemble Technology or Service or copy any ideas, features, functions or graphics of the Service for any purpose other than what is contemplated in these Terms, (iv) create Internet "links" to or from the Service, or "frame" or "mirror" any of

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Assemble's content which forms part of the Service (other than on Customers' own internal intranets).

**5.4 Use of Meta-Data.** Assemble may aggregate non-identifiable Customer meta-data with non-identifiable anonymous meta-data from other Assemble customers and third parties to create anonymous aggregated meta-data that does not identify any individual customer or the metrics or information pertaining to any individual customer or its domain ("Aggregated Meta-Data"). Assemble will own all rights to Aggregated Meta-Data, and has the irrevocable right to maintain, store, use and disclose Aggregated Meta-Data.

**5.5 Suggestions, Ideas and Feedback**. Assemble will have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Service to the extent it does not constitute Confidential Information of Customer.

**6.    Confidentiality.**

**6.1  Definition of Confidential Information.** As used herein, "Confidential Information" means all information of a party ("**Disclosing Party**") which the Disclosing Party designates in writing as being confidential when it discloses such information to the other party ("**Receiving Party**"),  or if not so designated, is understood by a reasonable Receiving Party from the context of disclosure or from the information itself to be confidential or proprietary, including without limitation these Terms, Customer Data, all Assemble Technology, all Assemble Intellectual Property, and all methodologies, processes and software pursuant to which Assemble provides the Services, all non-standard pricing or discounts offered by Assemble, all passwords, IP address or internet addresses provided by Assemble for Customer to access to any Service, business and marketing plans, technology and technical information, product designs, product roadmaps, features, functionality and software under development and not generally available to Assemble's customers and all business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). Customer Data will be deemed Confidential Information regardless of its written designation.  Confidential Information will not include any information that:  (i) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (ii) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (iii) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party.

**6.2  Confidentiality.** The Receiving Party may not disclose or use any Confidential Information of the Disclosing Party

for any purpose outside the scope of these Terms, except with the Disclosing Party's prior written permission.

**6.3 Protection.**    Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event will either party exercise less than reasonable care in protecting such Confidential Information.

**6.4 Compelled Disclosure**.   If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it will provide the Disclosing Party with prior notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure.

**6.5 Remedies.**  If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party will have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

**7.    Warranties & Disclaimers.**

**7.1 Limited Functionality Warranty.**  Assemble represents and warrants to Customer during the Subscription Term for each Service Package subscribed to by Customer, that under normal use and circumstances each such Service will perform substantially in accordance with the Technical Specifications related to such Service Package.   Customer's exclusive remedy and Assemble's sole obligation for breach of the foregoing warranty will be for Assemble to refund the fees paid by Customer to Assemble, for the applicable period of time, for which the foregoing warranty was breached, provided that Customer notifies Assemble of such breach within ten (10) days of the breach.

**7.2 Limited Service Availability Warranty.** Assemble shall provide at least 99.9% level of availability to access and use the Services on a 24-hour per day basis, including all holidays but excluding inability to access the Services due to any of the following circumstances (each, an "Exempt Event"):  (a) Scheduled Maintenance; and (b) down time caused by circumstances  beyond  Assemble's  reasonable  control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, failures or delays involving hardware or software not within Assemble's possession or reasonable control, network intrusions or denial of service attacks, but only if such unavailability results notwithstanding the exercise of reasonable care and due diligence to avoid or mitigate the same in anticipation of or in response to such causes.  For purposes of these Terms, the term "**Scheduled Maintenance**"

means any period of downtime or unavailability of the Services (not to exceed more than six hours in any one instance or more than twenty-four hours in the aggregate in any one calendar month) for which Assemble gives Customer at least forty-eight (48) advance notice.  In the event that Assemble fails to maintain the availability of the Service in accordance with this Section 7.2 and such unavailability of the Services is not due to one or more Exempt Events, upon request by Customer, Assemble shall issue to Customer a service credit (a "**Service Credit**") that will be applied against the fees owing by Customer upon any renewal of the Services by Customer at the end of the then-current Subscription Term. Service Credits do not constitute a refund in respect of any Service and may not be exchanged for cash or other monetary consideration or value.  Service Credits are not available in respect of any outage or unavailability of the Service associated with an Exempt Event.  The amount of each Service Credit shall be calculated as follows: Customer shall receive a Service Credit equal to five percent (5%) of the monthly fee paid by Customer in respect of the Services that were unavailable for each continuous two-hour period of downtime occurring during the hours for which Assemble has guaranteed 99.9% availability, up to a maximum in any one calendar month of one hundred percent (100%) of the monthly fee paid by Customer in respect of such Services.  Service Credits shall be calculated by Assemble based upon the total number of minutes in a month less any minutes of availability relating to Exempt Events.  Service Credits are not available to any Customer that is more than thirty (30) days past due on any amount owing to Assemble or to any Customer that has breached an agreement with Assemble. In no event shall Customer be entitled to a Service Credit in any amount greater than the monthly recurring fees payable by Customer in respect of such unavailable Service for a single calendar month.  Customer's exclusive remedy and Assemble's sole obligation for any claims relating to the availability of the Service shall be the issuance by Assemble of a Service Credit as provided in this Section 7.2.

**7.3 DISCLAIMER OF WARRANTIES.  EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH SERVICE PACKAGE AND ALL SERVICES PROVIDED THEREUNDER AND ALL ASSEMBLE TECHNOLOGY IS PROVIDED TO CUSTOMER BY ASSEMBLE STRICTLY ON AN "AS IS" BASIS AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. ASSEMBLE AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE SERVICES OR ASSEMBLE TECHNOLOGY WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (B) ANY ERRORS OR DEFECTS WILL BE CORRECTED, OR (C) ANY CUSTOMER DATA IS ACCURATE AS PROCESSED BY THE SERVICES.  ASSEMBLE'S SERVICES MAY BE SUBJECT TO LIMITATIONS OR ISSUES INHERENT IN THE USE OF THE INTERNET AND ASSEMBLE IS NOT RESPONSIBLE FOR ANY PROBLEMS OR OTHER DAMAGE RESULTING FROM SUCH LIMITATIONS OR ISSUES.**

8.  **Mutual Indemnification.**

**8.1 Indemnification by Assemble.** Subject to these Terms, Assemble will defend, indemnify and hold Customer harmless against any loss or damage (including without limitation reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the Customer's use of the Services infringes the US patent, trademark or copyright of a third party; provided, that Customer (a) promptly gives written notice of the Claim to Assemble; (b) gives Assemble sole control of the defense and settlement of the Claim (provided that Assemble may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Assemble, at Assemble's cost, all reasonable assistance.  Assemble will have no obligations to Customer under this Section 8.1 to the extent such Claims arise from Customer's or its User's breach of these Terms or from the combination of such Service with any of Customer's products, services, hardware or business processes. If any Service or any portion of the Assemble Technology is held to infringe any third party intellectual property rights, then Assemble will, at its expense and option: (i) obtain the right for Company to continue to use the Service; (ii) modify the software so that it is non-infringing; or (iii) replace the infringing component with a non-infringing functionally equivalent component. This Section 8.1 contains Customer's exclusive remedy and Assemble's sole obligation for Claims of infringement or misappropriation brought against Customer.

**8.2 Indemnification by Customer.** Subject to these Terms, Customer will defend, indemnify and hold Assemble harmless against any loss or damage (including without limitation reasonable attorneys' fees) incurred in connection with Claims made or brought against Assemble by a third party alleging that any Customer Data, or the use thereof with any Service, has caused harm to a third party or infringes the intellectual property rights of a third party; provided, that Assemble (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Assemble of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.  Customer will have no obligations to

Assemble under this Section 8.2 to the extent such Claims arise from Assemble's breach of these Terms.

## 9. Limitation of Liability.

**9.1 LIMITATION OF LIABILITY. IN NO EVENT WILL ASSEMBLE'S AGGREGATE CUMMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY ORDER FORM HEREUNDER, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID OR PAYABLE BY AND DUE FROM CUSTOMER FOR THE SERVICE PACKAGE RELATED TO SUCH CLAIM DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.**

**9.2 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**

## 10. Term & Termination.

**10.1 Term.** The term of each Service Package shall be the Subscription Term specified in the Order Form relating to such Service Package and shall renew in accordance with Section 2.2 hereof unless terminated as provided in these Terms.

**10.2 Termination for Cause.** A party may terminate all Order Forms related to a Customer for cause: (i) upon thirty (30) days written notice of a material breach to the other party, provided such breach remains uncured at the expiration of such thirty (30)-day period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, Assemble will refund Customer any prepaid fees for the period after the date of termination.

**10.3 Termination Without Cause.** A party may terminate any Order Form without cause and for such party's convenience by delivering written notice of such termination to the other party at least five (5) business days prior to the effectiveness of such termination; provided, however, that (i) in the case of any termination by Assemble pursuant to this Section 10.3, Assemble shall (x) permit Customer to continue

to utilize and access all Projects active as of the date of the termination notice until such Projects are completed and these Terms shall continue and survive with regard to such Projects until completion, and (y) refund to Customer all pre-paid fees actually paid by Customer in respect of the remaining balance of the Subscription Term on the date of such termination, and (ii) in the case of any termination by Customer pursuant to this Section 10.3, Customer shall have not right to any refund or credit in respect of any pre-paid fees paid or payable by Customer on the date of such termination.

**10.4 Return of Customer Data.** Upon written request by Customer within thirty (30) days of the effective date of termination, Assemble shall provide Customer with an electronic file containing all Customer Data that Assemble possesses on the date of such termination. After such thirty (30)-day period, Assemble will have no obligation to maintain or provide Customer with any Customer Data.

**10.5 Surviving Provisions.** The following provisions will survive the termination or expiration of any Order Form for any reason and will remain in effect after any such termination or expiration: Sections 4, 5 (excluding Section 5.2), 6, 7, 8, 9, 10 and 11.

## 11. General Provisions.

**11.1 Relationship of the Parties.** Neither these Terms, nor any Order Form, creates a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**11.2 No Benefit to Others.** The representations, warranties, covenants, and agreements contained in these Terms are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.

**11.3 Notices.** All notices under these Terms will be in writing and will be delivered to the addresses notified by the parties to each other by a means evidenced by a delivery receipt, by facsimile or by email. Notice will be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing via United States Postal Service; (iii) on the date that notice is delivery via confirmed facsimile; or (iv) on the date that notice is delivery via confirmed email. Notices to Assemble will be addressed to the attention of its President at the address set forth in the preamble to these Terms. Notices to Customer shall be addressed to Customer at the address set forth on the signature page hereto or to the last address provided by Customer to Assemble.

**11.4 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under these Terms will constitute a waiver of that right. Other than as expressly stated

herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**11.5 Severability.** If any provision of these Terms is held by a court or arbitrator of competent jurisdiction to be contrary to law, the provision will be changed by the court or by the arbitrator and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms will remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate all Order Forms by notice to the other party.

**11.6 Assignment.** Customer may not assign or transfer any Order Form or these Terms or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of Assemble. Notwithstanding the foregoing Customer may assign an Order Form and all of its rights and obligations hereunder without consent of Assemble in connection with a merger or acquisition of Customer or a sale of all or substantially all of its assets of Customer; provided, that in each case such assignment or transfer does not involve a direct competitor of Assemble. Subject to the foregoing, any Order Form and these Terms will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**11.7 Governing Law.** All Order Forms and these Terms will be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of Texas, without regard to its conflict of laws provisions.

**11.8 Venue.** The federal courts of the United States in the Southern District of Texas and the state courts of the State of Texas located in Houston, Texas shall have sole and exclusive jurisdiction to adjudicate any dispute arising out of or relating to any Order Form or these Terms. Each party hereby irrevocably consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise.

**11.9 Export Control Laws.** Customer agrees not to import, export, re-export, or transfer, directly or indirectly, any part of the Services or any underlying information or technology except in full compliance with all United States, foreign and other applicable laws and regulations.

**11.10 Entire Agreement and Construction.** These Terms, together with each Order Form executed by a Customer, constitutes the entire agreement between the parties as to its subject matter, and supersedes all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of these Terms. No modification, amendment, or waiver of any provision of these Terms will be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. Notwithstanding any language to the contrary therein, no pre-printed terms or conditions set forth in a Customer purchase order or in any other Customer order documentation will be incorporated into or form any part of these Terms.