



## GENERAL TERMS AND CONDITIONS

### 1.0 SERVICES

1.1 Services. In consideration for the payment of fees set forth in the Sales Quotation, and subject to the terms and conditions of this Agreement, Alchemy shall provide Customer with the services as set forth below (collectively, the “Services”):

1.1.1 Deliverables. Alchemy will provide the deliverables as set forth in the Sales Quotation.

1.1.2 Maintenance and Support. Alchemy shall maintain and support the Alchemy Products as set forth in Section 4 below.

1.1.3 Alchemy Custom Content. Should Customer request Alchemy provide Customer with Alchemy Custom Content (as defined in Section 3 below), Alchemy will provide the Alchemy Custom Content deliverables specified in the Alchemy Custom Content Addendum as set forth in Exhibit B.

1.1.4 Consulting Services. Should Customer request consulting services from Alchemy (the “Consulting Services”), Alchemy will provide the Consulting Services specified in the Alchemy Consulting Services Addendum as set forth in Exhibit C.

1.2 Customer Assistance. Customer shall provide, upon Alchemy’s request, all reasonable assistance required to enable Alchemy to perform the Services, including but not limited to, adequate IT personnel, system support, and project management to successfully accomplish the project. Customer acknowledges that Alchemy’s performance of Services is dependent upon close cooperation between Alchemy’s personnel and Customer’s personnel. Alchemy and Customer shall not interfere with each other’s performance of their respective obligations pursuant to this Agreement and shall take all reasonable actions requested by the other party in connection with Alchemy’s performance of Services hereunder.

1.3 Additional Services. Customer understands that if it requests services other than those defined in Section 1.1 above, such services, if agreed to by Alchemy, shall be governed by the terms and conditions of either a separate written

agreement or a written addendum to this Agreement and additional Statement(s) of Work. Alchemy may accept or reject each such request in its sole and absolute discretion.

1.4 Pre-Approved Out-of-Pocket Costs and Expenses. Customer shall pay to Alchemy an amount equal to Alchemy’s reasonable out-of-pocket costs and expenses (“Expenses”) pre-approved by Customer and incurred by Alchemy in the performance of any service provided to Customer hereunder, consistent with Customer’s then-current expense reimbursement policy provided to Alchemy.

### 2.0 LICENSES

2.1 Alchemy Products. In consideration of the fees set forth in the Sales Quotation, and subject to the terms and conditions set forth in this Agreement, Alchemy will provide to Customer the hosting services and installation, operation and maintenance of the Alchemy Products identified in the Sales Quotation for Customer to access the Alchemy Products as authorized under the Agreement. “Alchemy Products” means the hardware, the hosted software and associated applications and content identified in the Sales Quotation, associated Alchemy Materials (as defined in Section 3 below) and Alchemy Custom Content provided via the data center of Alchemy or of a third party under lease or license to Alchemy that are utilized to provide the Services to Customer hereunder. Alchemy reserves the right upon thirty (30) days advance written notice to Customer to change or modify, in whole or in part, or discontinue any and all of the Alchemy Products. To the extent such modification or discontinuance materially affects Customer’s use of the Alchemy Products, Customer may terminate this Agreement upon thirty (30) days written notice to Alchemy, subject to Section 10 (Term and Termination) below.

2.2 Grant of License. Subject to the terms and conditions of this Agreement, Alchemy hereby grants to Customer a non-exclusive, non-transferable (except in accordance with Section 11.4 below), revocable license under its Intellectual Property Rights (as defined in Section 3 below) to access and use the Alchemy

Products and associated Alchemy Materials solely for Customer's internal business purposes for the Term (as defined in Section 10 below) of this Agreement.

- 2.3 License Restrictions. Customer shall have no right to assign or transfer (except in accordance with Section 11.4 below), or sublicense its right to use, or otherwise grant access to, the Alchemy Products. Customer is not granted the right to: (a) modify, disassemble, decompile or reverse engineer any portion of the Alchemy Products nor authorize any third party to do so; or (b) copy any portion of the Alchemy Products. It is further expressly understood and agreed that Customer's business operations shall not include, without Alchemy's express written consent, any use of the Alchemy Products for the purpose of any transaction: (i) undertaken for a fee or other consideration, (ii) performed substantially for the benefit of any third party, or (iii) which is not reasonably related to Customer's business operations. Customer may use the Alchemy Products only for its business purposes and shall not: (A) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (B) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (C) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (D) interfere with or disrupt the integrity or performance of the Alchemy Products or the data contained therein; or (E) attempt to gain unauthorized access to the Alchemy Products or its related systems or networks.
- 2.4 Limited Rights. The rights of Customer to use the Alchemy Products are limited to those expressly granted in this Section 2 and shall terminate automatically upon the termination of this Agreement for any reason. There are no implied licenses. Alchemy hereby reserves all rights not expressly granted to Customer under this Agreement. The Alchemy Products are licensed and not sold.
- 2.5 Alchemy Ownership. Notwithstanding any other provision of this Agreement, as between Alchemy and Customer, Alchemy and/or its licensors shall exclusively own all right, title and interest in and to the Alchemy Products, Alchemy Materials and any Aggregate Data (as defined in Section 3 below), including any modification thereof no matter by whom made, and all Intellectual Property Rights thereto.

Customer acknowledges that the use of the Alchemy Products outside the scope of this Agreement without Alchemy's prior express written consent constitutes an infringement of Alchemy's Intellectual Property Rights and Customer expressly covenants that, during the Term of this Agreement and after the termination of this Agreement for any reason, Customer shall not, either directly or indirectly, commit an act of infringement, or contest or aid in contesting the validity or ownership of any of Alchemy's Intellectual Property Rights in and to the Alchemy Products or any variations thereof, or take any other action in derogation of Alchemy's or any of its affiliates', subsidiaries' or licensors' ownership and Intellectual Property Rights in and to the Alchemy Products.

- 2.6 Customer Responsibilities. Customer is responsible for all activity and data (including ensuring that all data complies with the requirements set forth in this Agreement or any exhibit/addenda) occurring under its account hereunder whether publicly posted or privately transmitted, that Customer, directly or indirectly, uploads, posts, e-mails, transmits, provides or otherwise makes available through the Alchemy Products and/or to Alchemy and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the use of the Alchemy Products, including those related to data privacy, international communications and the transmission of technical or personal data.

### **3.0 INTELLECTUAL PROPERTY RIGHTS**

- 3.1 Intellectual Property Rights. "Intellectual Property Rights" means all or any of the following: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, domain names and social media names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.
- 3.2 Customer Material; Customer Content; Customer Records. Customer shall own all Customer

Content and Customer Materials, and all associated Intellectual Property Rights. "Customer Material(s)" means: (a) software provided by Customer; (b) third party software provided by Customer; (c) Customer Content; (d) Customer Records (as defined in Section 6 below) and (e) Customer's domain names and trademarks. "Customer Content" means (i) any pre-existing content of Customer provided to Alchemy for use with the Alchemy Products or for Alchemy's provisioning of Services under this Agreement, and (ii) content created by Customer during the Term of this Agreement that is used in any Alchemy Products. Customer grants to Alchemy and its subcontractors a worldwide, non-exclusive, non-transferable (except in accordance with Section 11.4 below), royalty-free license under its Intellectual Property Rights during the Term of this Agreement to use, reproduce, perform, display, transmit, operate, maintain, alter, transform, modify and prepare derivative works of Customer Materials for the sole purpose of providing Services to Customer in accordance with this Agreement.

3.3 Customizations. To the extent Customer Content is created or used to customize any Alchemy Materials and/or Alchemy Products provided to Customer hereunder (for example, modifications to training materials made by Customer for incorporation into customized training courses in the Alchemy Products)(the customized Alchemy Materials and/or customized Alchemy Products are referred to as the "Customizations"), such Customizations shall be owned by Alchemy, but are hereby licensed back to Customer under Section 2.2 above on an exclusive basis. Customer hereby assigns all right, title and interest to Alchemy of such Customizations, and all Intellectual Property Rights therein and thereto. For clarity, (a) Customer retains ownership of the Customer Content incorporated into any Customizations and does not obtain any ownership to the underlying Alchemy Materials or Alchemy Products whatsoever, and (b) Alchemy retains ownership of the Alchemy Materials and Alchemy Products in any Customizations and does not obtain any ownership to Customer Content whatsoever.

3.4 Alchemy Material; Aggregate Data. Alchemy shall own (a) all art, software, tools, designs, documentation, data and other material, whether or not copyrighted or copyrightable, developed by or for Alchemy as may be necessary to provide the Services and any deliverables hereunder, and (b) any routines, tools, methodologies, processes or technologies created, adapted or used by

Alchemy in completing the work together with all associated Intellectual Property Rights (collectively, the "Alchemy Material(s)"). Alchemy shall also own any and all Aggregate Data produced from Customer's use of the Alchemy Products. For the purposes of this Agreement, "Aggregate Data" means any and all data produced from the Customer's use of the Alchemy Products or provisioning of the Services for broad groups or categories in which the characteristics of individual persons are no longer identifiable, including but not limited to metadata.

3.5 Alchemy Trademarks. Customer acknowledges that the trademarks, trade names, service marks, trade dress, logos, domain names, social media names and identifying marks under which Alchemy markets the Alchemy Products and Services (the "Alchemy Marks") are the exclusive property of Alchemy and that no license to such Alchemy Marks is granted to Customer under this Agreement. Customer will not change, modify, alter, obscure or remove any of the Alchemy Marks on the Alchemy Products without the express written consent of Alchemy under a separate written agreement. Customer shall at no time adopt or use without Alchemy's prior review and express written consent, any new mark or any variation of any Alchemy Marks, or any mark likely to be similar to or confusing with any Alchemy Marks.

3.6 Alchemy Custom Content. "Alchemy Custom Content" means all deliverables and other work product and services resulting from or arising in the course of performance of this Agreement, the Alchemy Custom Content Addendum, and/or other addendum, that is developed or provided specifically for Customer pursuant to a Statement of Work or other addendum, including without limitation video or audio works, software, literary works, manuals, training materials, documentation and other works of authorship, but excluding any Alchemy Material, Customer Material and Third Party Material (defined below). Alchemy shall own all right, title and interest (including all Intellectual Property Rights) in the Alchemy Custom Content and all legally protectable elements, contributions, collective works thereof or derivative works thereto.

3.7 Non-exclusivity; Third Party Material. Customer acknowledges that Alchemy provides services similar to those provided under this Agreement to third parties and Alchemy may be providing deliverables to third parties that are substantially similar to the deliverables being provided to Customer, but Alchemy shall not use any

Customer Material or Customer Confidential Information (as defined below) in performing services for third parties. Alchemy shall not be prevented from using Alchemy Custom Content or providing any services or deliverables to any third party, except as may be provided in this Section 3, provided that Alchemy does not use or incorporate any Customer Materials or Customer Confidential Information in connection with or into such services or deliverables. In performing the Services, Alchemy shall not incorporate into any Alchemy Custom Content any art, software, tools, designs, documentation, data or other material of any third party ("Third Party Material") unless Alchemy or Customer has all necessary licenses and rights to do so.

#### **4.0 MAINTENANCE & SUPPORT**

- 4.1 General. Alchemy shall provide maintenance and technical support for the Alchemy Products as described in the Maintenance & Technical Support Addendum set forth in Exhibit A (the "Support Services").
- 4.2 Modifications. Alchemy retains all rights, title and interest in and to the Alchemy Products, Services, Alchemy Materials, Alchemy Custom Content and all attendant Intellectual Property Rights. In the event that Customer makes suggestions to Alchemy regarding new features, functionality or performance that Alchemy adopts for the Alchemy Products and/or Services ("Modifications"), such Modifications shall become the sole and exclusive property of Alchemy, free from any restriction imposed upon Alchemy. Alchemy shall 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 Alchemy Products and Services. Customer further agrees to take any actions Alchemy deems reasonably necessary to vest all rights, title and interest in Alchemy to such Modifications, at Alchemy's cost.

#### **5.0 PAYMENTS TO ALCHEMY**

- 5.1 Fees. Customer shall pay to Alchemy the fees specified in the Sales Quotation, any Statements of Work or other addenda to this Agreement, as well as all applicable Expenses. All payments shall be made net thirty (30) days from date of invoice except as otherwise set forth in the Sales Quotation, any Statements of Work or other addenda to the Agreement.

- 5.2 Currency and Payments. All money amounts set forth herein are expressed in, and all payments to be made hereunder shall be made in, United States dollars. The amounts to be paid to Alchemy hereunder shall be paid as set forth herein without deduction for any taxes, duties or payments of any kind to any third party. In the event that Alchemy is required to pay any amount of tax or duty, or make any payment to any third party in connection herewith, except for taxes based on Alchemy's income, Customer shall promptly pay to Alchemy such amount.
- 5.3 Suspension; Late Payments. Without prejudice to its other rights, Alchemy reserves the right to suspend or terminate this Agreement and/or Customer's access to the Alchemy Products and Services if Customer does not pay amounts when due hereunder. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Customer will continue to be charged for use fees during any period of suspension. Alchemy reserves the right to impose a reconnection fee in the event Customer's access is suspended and thereafter requests access to the Alchemy Products and Services. Customer agrees and acknowledges that Alchemy has no obligation to retain any of the Customer data on the Alchemy Products as part of the Services and that such data may be irretrievably deleted if Customer's payments are 30 or more days delinquent.

#### **6.0 CONFIDENTIAL INFORMATION; PERSONALLY IDENTIFIABLE INFORMATION**

- 6.1 "Confidential Information" includes, but is not limited to, technical information, information about product plans and strategies, promotions, customers and related technical, financial or business information which the disclosing party considers to be the confidential information of disclosing party or its third party contractors or suppliers. Confidential Information shall be either (a) written information received from the disclosing party which is marked or identified as confidential; or (b) oral or visual (or other non-tangible format) information identified as confidential at the time of disclosure which is summarized in writing to the receiving party promptly after such disclosure; or (c) information which a reasonable person under the circumstances would know the disclosing party intended to be treated as Confidential

Information. Software source code and any documentation, release notes, collateral materials, operating instructions and information related to system performance provided by Alchemy shall be considered Alchemy Confidential Information, regardless of whether it has been designated as such. Confidential Information does not include information that is: (i) already known by or available to the receiving party without obligation of confidentiality prior to disclosure under this Agreement; (ii) or becomes publicly known without breach of this Agreement by the receiving party; (iii) rightfully received by the receiving party from a third party without a duty of confidentiality; (iv) independently developed or learned by the receiving party without use of or reference to the disclosing party's Confidential Information as proven by its records; (v) disclosed by the receiving party with the disclosing party's prior written approval.

6.2 "Personally Identifiable Information" means any nonpublic information and data that alone or in combination with other data relates to or can be used to identify a natural person. This definition includes name, address and any unique personal identification number. Personally Identifiable Information does not include non-identifiable, general aggregate data and information.

6.3 Use of Confidential Information. The receiving party shall (a) keep the disclosing party's Confidential Information in its strictest confidence and take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the receiving party employs with respect to its confidential materials); (b) not make any use of the disclosing party's Confidential Information except to carry out its rights and obligations under this Agreement; (c) not divulge the disclosing party's Confidential Information or any information derived therefrom to any third party except to receiving party's affiliates and its and their employees, directors, officers, agents, consultants and contractors ("Representatives") as is reasonably required in connection with the exercise of receiving party's rights and obligations under this Agreement; and (d) not copy (except as necessary to carry out its rights and obligations under this Agreement) the disclosing party's Confidential Information. Any Representatives given access to the disclosing party's Confidential Information must have a legitimate "need to know" and must have agreed, either as a condition of employment, representation or in a written agreement in order

to obtain the Confidential Information, to be bound by terms and conditions no less protective of the disclosing party than this Section 6. The receiving party shall be liable for any of its Representatives' failure to comply with such obligation.

6.4 Authorized Disclosures. The receiving party may disclose the disclosing party's Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body; to the extent not prohibited by law, the receiving party must give reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement or seek confidentiality treatment. Each party may disclose terms and conditions of this Agreement (a) in connection with any financing transaction or due diligence inquiry, and/or (b) pursuant to a registration statement, annual, quarterly or current report, proxy statement, or other filing with, and any exhibits thereto, filed with the Securities and Exchange Commission, securities exchange or quotation service, or any state securities commission, or any other associated documents or materials so filed or furnished.

6.5 Privacy Policies and Practices. Alchemy understands that in the course of performing Services under this Agreement, Alchemy may be exposed to certain personal information or records of Customer or to which Customer is entrusted (the "Customer Records"). To the extent applicable, Customer shall promptly inform Alchemy of Customer's privacy policies procedures, and privacy practices to assist Alchemy in facilitating compliance with such policies, procedures and practices. If Customer makes any changes to such privacy policies, procedures or practices, Customer shall immediately advise Alchemy in writing, and shall allow Alchemy a reasonable period in which to bring its own practices into compliance. Notwithstanding anything herein to the contrary, Customer hereby agrees and understands that Customer is not obligated by this Agreement to provide Alchemy with any Personally Identifiable Information as a prerequisite for access to or a condition of use of the Alchemy Products. However, in the event that Customer does provide such Personally Identifiable Information or the like to Alchemy at any time, Alchemy hereby assumes no risk or liability as a result thereof. Customer assumes all risk and liability of such disclosure to Alchemy.

6.6 Remedies Each party acknowledges that monetary remedies may be inadequate for any

breach of this Section 6 and, without prejudice to any rights or remedies at law or in equity otherwise available to the disclosing party, the disclosing party shall be entitled to seek injunctive relief, specific performance or other appropriate equitable remedies to protect its interest therein, without the posting of bond or proof of actual damages.

## **7.0 WARRANTIES AND DISCLAIMERS**

- 7.1 General Warranty. Each party hereby represents and warrants to the other that (a) such party has the right, power and authority to enter into this Agreement and to fully perform all its obligations hereunder; and (b) the making of this Agreement does not violate any agreement existing between such party and any third party.
- 7.2 Services. Alchemy represents and warrants to Customer that the Services performed hereunder will be performed in a competent, workmanlike manner in accordance with standard industry practices.
- 7.3 Limited Warranty. Alchemy warrants that the Alchemy Products, associated Alchemy Materials and/or Alchemy Custom Content (if any) provided under this Agreement will be free from material defects. As Customer's sole remedy and Alchemy's sole liability and obligation for any breach of the foregoing warranty, Alchemy will repair or replace any defective Alchemy Products, associated Alchemy Materials and/or Alchemy Custom Content provided to Customer pursuant to this Agreement free of charge. Such replacement shall be Customer's sole and exclusive remedy for breach of the above warranty.
- 7.4 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, ALCHEMY MAKES NO OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, WITH RESPECT TO THE ALCHEMY PRODUCTS, ANY ALCHEMY MATERIALS, CUSTOMIZATIONS, ALCHEMY CUSTOM CONTENT OR SERVICES PROVIDED HEREUNDER, AND ALCHEMY HEREBY DISCLAIMS ANY IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, SATISFACTORY QUALITY, ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. RELIANCE BY CUSTOMER OR

ITS PERSONNEL OR CLIENTS ON ANYTHING IN THE ALCHEMY PRODUCTS, ALCHEMY MATERIALS, CUSTOMIZATIONS, ALCHEMY CUSTOM CONTENT AND/OR SERVICES OR ANYTHING SAID OR DISTRIBUTED BY ALCHEMY OR ITS AGENTS IN CONNECTION WITH THE ALCHEMY PRODUCTS SHALL BE AT CUSTOMER'S SOLE RISK. ANY AND ALL USE OF, INTERPRETATIONS AND DECISIONS MADE BY CUSTOMER AS A RESULT OF USING, ALCHEMY PRODUCTS OR OTHER INFORMATION PROVIDED BY ALCHEMY UNDER THE TERMS HEREOF ALSO INCLUDE THE OPINION AND JUDGMENT OF CUSTOMER. CUSTOMER HAS FULL RESPONSIBILITY FOR USE OF, ALL SUCH INTERPRETATIONS AND DECISIONS MADE BY CUSTOMER USING, ANY ALCHEMY PRODUCTS OR OTHER INFORMATION PROVIDED BY ALCHEMY UNDER THE TERMS OF THIS AGREEMENT. ALCHEMY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE OF THE ABILITY, COMPETENCE, KNOWLEDGE OR SKILL OF CUSTOMER'S PERSONNEL OR CLIENTS TO UTILIZE SUCCESSFULLY OR APPROPRIATELY, IN ANY CIRCUMSTANCE, ANY OF THE TRAINING CONTENT OR LESSONS CONTAINED WITHIN THE ALCHEMY PRODUCTS.

## **8.0 INDEMNIFICATION**

- 8.1 By Alchemy. Alchemy shall defend, indemnify and hold harmless Customer, its parents, subsidiaries and affiliates and its and their directors, employees and agents from and against any liability, claim, damage, cost or expense (including reasonable attorneys' fees) awarded against Customer or agreed upon by Alchemy in settlement to the extent arising out of or resulting from a claim that the Alchemy Products, Alchemy Materials, Customizations or Alchemy Custom Content (excluding any Customer Materials or Third Party Materials) (collectively or individually, an "Alchemy Item") infringes a U.S. patent, or any copyright, or otherwise misappropriates any trade secret(s) of a third party. If such notice, suit or action occurs, or if Customer's use of any of an Alchemy Item hereunder is, or in Alchemy's opinion is likely to be, enjoined due to the type of infringement specified in above, then Alchemy may undertake at its sole option, and at its expense, one or more of the following: (a) procure for the Customer the right to continue using the affected

Alchemy Item under the terms of this Agreement; (b) replace or modify the Alchemy Item to render it non-infringing and substantially equivalent or better in function to the enjoined item; or (c) if options (a) and/or (b) above cannot be accomplished despite Alchemy's commercially reasonable efforts, then Alchemy may terminate this Agreement with respect to such Alchemy Item and upon return of the Alchemy Item issue a prorata refund or credit to Customer corresponding to the portion of the then-current Term for such Alchemy Item after the date of such termination. Notwithstanding the terms of this Section 8.1, Alchemy will have no liability or obligation of any kind to the extent it results from: (i) any Alchemy Item manufactured to specifications furnished by or on behalf of Customer; (ii) any infringement arising out of the use of the Alchemy Item in combination with other hardware, equipment, software or materials not furnished by Alchemy (if such infringement would not have occurred but for such combined use); (iii) use of an Alchemy Item in a manner not normally intended, or to any patent, copyright or trade secret in which the Customer, or subsidiary or affiliate thereof, has a direct or indirect interest; (iv) modification or alteration of the Alchemy Item by Customer, without Alchemy's express written authorization and direct supervision; (v) Customer's continuing such allegedly infringing activity after being informed by Alchemy and provided, at no additional charge, with modifications that would have avoided the alleged infringement and reasonable time to implement such modifications; (vi) Customer's use of such Alchemy Item in breach of this Agreement; or (vii) Customer's use of the Alchemy Item after the then-current Term for such Alchemy Item. This Section 8.1 contains and limits the entire liability and obligations of Alchemy for Intellectual Property Rights infringements by the Alchemy Products, Alchemy Materials, Customizations or Alchemy Custom Content.

8.2 By Customer. Customer shall defend, indemnify and hold harmless Alchemy, its parents, subsidiaries and affiliates and its and their directors, employees and agents from and against any liability, claim, damage, cost or expense (including reasonable attorneys' fees) awarded against Alchemy or agreed upon by Customer in settlement to the extent arising out of or resulting from a claim that the Customer Materials or Customer Content infringe a U.S. patent, or copyright, or otherwise

misappropriates any trade secret(s) of a third party.

8.3 Indemnity Process. The party seeking to be indemnified will give prompt written notice to the other party of the claim against which it seeks to be indemnified and will provide the indemnifying party, at the indemnifying party's expense, with the assistance reasonably necessary for the defense and settlement of the claim. The failure by the indemnified party to timely furnish to the indemnifying party any notice required to be furnished under this Section 8 will not relieve the indemnifying party of its obligations under this Section 8, except to the extent such failure materially and adversely prejudices the ability of the indemnifying party to defend such matter. The indemnifying party will have sole control of the defense and settlement of any such claim. The indemnifying party will not be liable for any settlement of an action effected without its written consent (which consent will not be unreasonably withheld or delayed), nor will the indemnified party settle any such action without the written consent of the indemnifying party (which consent will not be unreasonably withheld or delayed). The indemnifying party will have no right to bind the indemnified party to terms other than the terms and conditions in this Agreement or admit liability by the indemnified party in any claim, or settlement thereof, without the indemnified party's prior written consent, which will not be unreasonably withheld or delayed. The indemnified party may engage counsel of its choice at its own expense.

## 9.0 LIABILITY LIMITATIONS

9.1 Total Liability. ALCHEMY'S TOTAL AGGREGATE LIABILITY TO CUSTOMER FOR ANY KIND OF LOSS, DAMAGE OR LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO ALCHEMY HEREUNDER FOR THE ALCHEMY PRODUCTS AND SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY AROSE. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

9.2 Exclusion of Damages. EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS AND A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER

PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES RENDERED BY ALCHEMY HEREUNDER INCLUDING ACCESS TO THE ALCHEMY PRODUCTS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS OUTSIDE THE CONTROL OF ALCHEMY BUT INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS AND REMOTE COMPUTING SERVICES. ALCHEMY IS NOT RESPONSIBLE FOR ANY DAMAGES RESULTING FROM SUCH DELAYS, DELIVERY FAILURES OR OTHER SIMILAR PROBLEMS.

- 9.3 Failure of Essential Purpose. The limitations specified in this Section 9 shall survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## 10.0 TERM AND TERMINATION

- 10.1 Term. This Agreement shall commence on the Effective Date and continue in full force and effect, unless earlier terminated in accordance with the express provisions of this Agreement, for the period stipulated in the Sales Quotation ("Initial Term") and thereafter automatically renew for successive one-year terms (each a "Renewal Term") without notice unless terminated by written notice by either party at least ninety (90) days before the end of such Initial Term or Renewal Term. The "Initial Term" and each "Renewal Term" together are referred to herein as the "Term".
- 10.2 Termination. This Agreement and all licenses granted and Services provided hereunder may be terminated immediately by Alchemy upon notice to Customer if (a) Customer breaches any of the terms and conditions set forth in Section 2.3 of this Agreement, or (b) Customer breaches any of the restrictions on use or disclosure of any Confidential Information of Alchemy. This Agreement and all licenses granted and Services provided hereunder may otherwise be terminated by Alchemy upon thirty (30) days notice by Alchemy upon (i) any material breach

by Customer of this Agreement that remains uncured for a period of thirty (30) days following notice by Alchemy of such material breach of this Agreement; (ii) the insolvency, bankruptcy or receivership of Customer; (iii) any change in control of Customer (whether through transfer of ownership, merger or otherwise); or (iv) the sale or transfer by Customer of all or a substantial part of Customer's assets. In addition, this Agreement may be terminated by Customer upon thirty (30) days notice by Customer upon any material breach by Alchemy of this Agreement that remains uncured for a period of thirty (30) days following notice by Customer of such material breach of this Agreement.

- 10.3 Effect of Termination. Except as expressly set forth in Section 10.4 below, all rights granted to Customer hereunder shall immediately terminate upon any termination of this Agreement. Upon termination by either party, Customer will within ten (10) business days: (a) pay to Alchemy any and all unpaid amounts due under this Agreement; (b) return or destroy, at Alchemy's direction, any and all Alchemy Products, Alchemy Materials, Customizations and Alchemy Custom Content (if any, but excluding any Customer Materials or Third Party Materials) and all copies thereof, relating to the Alchemy Products; and (c) certify in writing to Alchemy that all actions required by the preceding clauses (a) and (b) have been satisfied. Further, upon such termination Alchemy will within ten (10) business days return or destroy, at Customer's direction, any Customer Materials, Customer Content, and Customer Records and certify in writing to Customer that it has done so. Further, both parties shall either return or destroy any and all Confidential Information of the other party, and all copies thereof, at the direction of the owning party and provide written proof of same upon the owning party's reasonable request. In the event of liquidation or bankruptcy of Alchemy, the license will remain in full force and effect for the applicable remaining Term of this Agreement with license fees remaining due and payable to Alchemy as debtor-in-possession, or its successor-in-interest.
- 10.4 Non-Exclusive Remedy. Except as otherwise expressly stated herein, termination of this Agreement by either party will be a nonexclusive remedy and will be without prejudice to any other right or remedy of such party. Except as otherwise expressly stated herein, the rights and



remedies of the parties to this Agreement are cumulative and not alternative.

10.5 Survival. Notwithstanding any other provision of this Agreement, Sections 2.3, 2.4, 2.5, 2.6, 3, 4.2, 5 (for amounts due and payable), 6, 7, 8, 9, 10.3, 10.4, 10.5 and 11, and all rights and obligations thereunder, and the exhibits/addenda (to the extent required to carry out the rights and obligations set forth in this Agreement), and all other terms and conditions which by their express statement are intended to survive, shall survive any termination of this Agreement and shall continue in perpetuity, unless such provisions expire or terminate by their terms.

## 11.0 MISCELLANEOUS

11.1 Governing Law. Disputes under this Agreement will be governed by the laws of the State of Texas excluding rules as to choice and conflict of law. Each party consents to the exclusive jurisdiction and venue of the State and Federal Courts for Travis County, Texas; provided, however, that an action for injunctive relief may be filed in a jurisdiction where the actions or party to be enjoined is located. The parties hereby exclude the application hereto of the United Nations Convention on Contracts for the International Sale of Goods.

11.2 Force Majeure. Except with respect to any payment to be made to Alchemy hereunder, neither party shall be liable for any failure, deficiency or delay in the performance of its obligations under this Agreement due to any force majeure, which shall include but not be limited to any storm, flood, fire, aircraft damage, explosion, electrical or communication line failure, disturbance, war or military action, acts of terrorism, Government act or administrative delay, equipment failure or non-delivery, inability to obtain materials or any cause or matter whatsoever not within the reasonable control of such party. In the event of such a force majeure, the affected party shall be entitled to a reasonable extension of time for the performance of its obligations under this Agreement.

11.3 Independent Contractors. The parties are independent contractors. Nothing contained herein or done pursuant to this Agreement shall constitute either party the agent of the other party for any purpose or in any sense whatsoever, or constitute the parties as partners or joint venturers.

11.4 Assignment. Customer will not have the right or ability to assign or transfer (whether by merger,

operation of law or otherwise) this Agreement, in whole or in part, including without limitation any obligations or rights under this Agreement without the prior written consent of Alchemy, which consent will not be unreasonably withheld. A change of control of Customer will be deemed an assignment for purposes of this Section. Alchemy may assign or transfer its rights and obligations under this Agreement, without Customer's consent, to an Alchemy affiliate or in connection with any merger, consolidation, sale of all or substantially all of Alchemy's assets or equity, reorganization, or any similar transaction (whether by merger, operation of law or otherwise). In the event of any permitted assignment or transfer of this Agreement by a party, (a) the assigning party will provide prompt written notice of such assignment or transfer to the other party, (b) the assignee must agree to bound by the terms and conditions of this Agreement, and (c) the assignee must be capable of performing the obligations of the assigning party under this Agreement. Any assignment or transfer not made in accordance with this Section will be void. Without limiting the foregoing, any permitted assigns or successors hereof shall be bound by all terms and conditions of this Agreement.

11.5 Amendment. No alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement shall be valid or binding on either party unless mutually assented to in writing by both parties.

11.6 No Waiver. The failure of either party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter. The express waiver by either party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

11.7 Severability. If, for any reason, a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The parties

agree to negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent and economic effect of such provision.

- 11.8 Notices. All notices, requests, demands, waivers, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given: (a) when delivered by hand or confirmed facsimile transmission; (b) one business day after being sent by receipted overnight delivery; or (c) four days after being mailed by certified or registered mail, return receipt requested, with postage prepaid to the attention of CFO if to Alchemy, and the designated contact of Customer as specified in the Sales Quotation, if to Customer, at the appropriate address set forth in the Sales Quotation or to such other person or address as either party shall furnish to the other party in writing pursuant to the above.
- 11.9 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- 11.10 Counterparts. This Agreement may be executed in counterparts or duplicate originals, both of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement. Signatures executing this Agreement may be delivered by facsimile transmission or in an emailed PDF file or by other reliable means.
- 11.11 Order of Precedence. In the event of conflict, the following order of precedence shall apply: (a) the General Terms and Conditions, (b) the Sales Quotation, (c) any exhibits and addenda attached or incorporated by reference to this Agreement, and (d) any Statement of Work

attached or incorporated by reference to this Agreement.

- 11.12 Publicity. Neither party will publicize nor disclose to any third party without the consent of the other party the terms of this Agreement, except as may be necessary to comply with other obligations stated in this Agreement. Notwithstanding the foregoing, Alchemy may use Customer's name and identification of this engagement in connection with general lists of Customers and experience.
- 11.13 Absence of Third-Party Beneficiary Rights. No provision of this Agreement is intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any third party, affiliate or subsidiary, and all provisions hereto shall be personal solely between the parties hereto.
- 11.14 Construction. This Agreement will be construed without regard to any presumption or rule requiring construction against the drafting party. Each of the individuals executing this Agreement on behalf of a party individually represents and warrants that he or she has been authorized to do so and has the power to bind the party for whom they are signing.
- 11.15 Entire Agreement. This Agreement, including the Sales Quotations, and the applicable exhibits, addenda and Statement(s) of Work attached or incorporated herein by reference, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all previous and contemporaneous agreements and understandings, whether oral or written, between the parties with respect to the subject matter hereof.

**End**



## EXHIBIT A

### ***Maintenance & Technical Support Addendum***

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This Maintenance and Technical Support Addendum (“Support Addendum”) to the General Terms and Conditions (“Agreement”) between Alchemy and Customer describes the maintenance and technical support services (the “Support Services”) to be provided by Alchemy to Customer for the Alchemy Products licensed under the Agreement. Capitalized terms not defined in this Support Addendum have the same meanings as such terms are defined in the Agreement.

#### **1. DEFINITIONS**

1.1 “Bandwidth Allocation” shall have the meaning set forth in Section 5.5 below.

1.2 “Defect” means a failure of the Software to substantially conform to the functional specifications set forth in the Software documentation.

1.3 “Major Release” means a subsequent release of the Software that Alchemy makes generally available to its supported customers, as indicated by a version number increase to the left of the first decimal point (e.g., 2.0 to 3.0).

1.4 “Minor Release” means a subsequent release of the Software that Alchemy makes generally available to its supported customers, as indicated by a version number increase to the right of the first decimal point (e.g., 2.1 to 2.2).

1.5 “Patch” means a modification for a particular version of the Software, which may be of a temporary or interim nature, to resolve a Defect.

1.6 “Software” means the proprietary Alchemy software components of the Alchemy Products licensed under the Agreement to Customer.

1.7 “Storage Allocation” shall have the meaning set forth in Section 5.4 below.

1.8 “Updates and Upgrades” means Minor Releases and Major Releases. Updates and Upgrades shall not include any product components or course libraries that Alchemy licenses separately for an additional fee.

1.9 “Workaround” means a procedure or technique to provide a temporary or interim fix to a claimed Defect in a particular version of the Software.

#### **2. STANDARD MAINTENANCE AND SUPPORT**

2.1 Coverage. Subject to the General Terms and Conditions of the Agreement, Alchemy shall offer Support Services solely for the Software licensed under the Agreement.

2.2 Annual Software Maintenance. Alchemy shall use commercially reasonable efforts to maintain the Software so that it operates without Defects.

2.3 Updates and Upgrades. Alchemy shall supply Customer with Updates and Upgrades for the Software that are generally released during the term of this Agreement. Such Updates and Upgrades shall be provided to Customer at no additional charge. Except for Updates and Upgrades, Customer shall not be entitled to any other software as part of the Support Services. Updates and Upgrades may be delivered via physical media or made available electronically, at Alchemy’s sole discretion. From time to time Alchemy may offer new product components or course libraries that are not upgrades or updates to the licensed Alchemy Products or Software. These new offerings may be provided for an additional license fee.

2.4. Telephone Support.

2.4.1 General. Telephone support will be available from 3:00 am to 7:00 pm, Central Time, Monday through Friday, excluding Alchemy holidays (as of the Effective Date of the Agreement such holidays are New Year’s Day, Memorial Day, Independence Day (or the nearest business day if

Independence Day falls on a weekend), Labor Day, Thanksgiving Day and the day after Thanksgiving Day, and Christmas Eve and Christmas Day). Unless otherwise designated by Alchemy, Customer should call the following numbers for support:

Toll Free Number:	<b>888.988-8832</b>
Local Number:	<b>512.637.5100</b>

2.4.2 Problem Definition. To assist in expeditiously resolving Customer's problem, the Customer should record the following information for reference and should provide the information to Alchemy: (a) error messages and indications that Customer received when the malfunction occurred, (b) what the user was doing when the malfunction occurred, (c) what steps Customer has taken to reproduce the malfunction, (d) what steps Customer may have already taken to solve the problem and (e) product version.

2.5 Internet Support. Alchemy may provide Internet assistance to Customer through access to a website that may include any of the following: a knowledge base, on-line case tracking, frequently asked questions, Updates and Upgrades, and Software documentation.

2.6 Defect Severity Levels. Defects in the Software are classified according to severity of impact on the use of the Software as follows:

Severity	Impact
1	Production down situation.
2	Continued performance of one or more essential functions is impaired and may be circumvented or avoided on a temporary basis by the intended user.
3	Continued performance of one or more non-essential functions is impaired.

2.7 Response Time Goals: Alchemy agrees to use reasonable efforts to acknowledge software Defects promptly reported to Alchemy by Customer and to use reasonable efforts to provide Workarounds and Updates. Acknowledgements will be sent to Customer via the online support system, e-mail or phone. The following response time goals will be in effect:

2.7.1 Severity 1. If a Severity 1 Defect occurs during Alchemy's normal operating hours (8:30 am – 5:30 pm Central Time weekdays), Alchemy will begin immediate and continuous efforts to reproduce and resolve the Defect, and will carry out those efforts until the Defect is resolved. Alchemy will use reasonable efforts to resolve all Severity 1 Defects in the shortest time possible, and will review with Customer the status on a daily basis or more frequently, if requested.

2.7.2 Severity 2. If the Defect is a Severity 2 issue, Alchemy will begin efforts to reproduce the problem no later than the opening of the next Alchemy business day. Alchemy will use reasonable efforts to resolve Severity 2 problems as rapidly as practical.

2.7.3 Severity 3. Severity 3 Defects will be addressed in Alchemy's normal maintenance or enhancement release schedule.

2.8 Inclusion. All Workarounds, Updates and Upgrades shall be considered Software and licensed pursuant to and subject to the terms and conditions of the Agreement.

### 3. ADDITIONAL MAINTENANCE AND TECHNICAL SUPPORT

3.1 Coverage. For an additional fee, Customer may elect to receive certain additional maintenance and support services as outlined in this section. Fees related to such services will be determined by Alchemy on a quoted basis and all services are subject to the mutual written agreement of the parties.

3.2 On-Site Services. For an additional fee, Customer may elect to receive on-site support and maintenance.

3.3 Training. For an additional fee, Customer may elect to receive on-site training with respect to the Software.

3.4 Consulting Related to Customer Defects. For an additional fee, Customer may elect to receive Consulting Services related to Defects caused by issues other than the Software.

3.5 Out-of-Pocket Expenses. Customer shall pay all reasonable out-of-pocket Expenses incurred by Alchemy, including costs for meals, lodging and travel related to additional maintenance and support services.

#### 4. OBLIGATIONS OF CUSTOMER

4.1 First Level Support/Single Point of Contact. All communications relating to Support Services shall be supervised, coordinated, and undertaken by no more than two (2) designated contact persons per Customer location who shall act as a single point of contact between Customer and Alchemy. At a minimum, the Support Services require the Customer to ensure the following:

4.1.1 Reproduction. If possible and practical, the situation giving rise to the problem is reproducible in a single supported Software installation;

4.1.2 Release Level. The Software is at a supported release level in accordance with Section 5.2;

4.1.3 Access. The full system, including all software and hardware, is available to the Customer contact without limit during any telephone discussions with Alchemy support personnel; and

4.1.4 Cooperation. The Customer contact will follow the instructions and suggestions of Alchemy's support personnel when servicing the Software.

4.2 Remote Connection. If appropriate, Customer will cooperate with Alchemy to allow and enable Alchemy to perform Support Services via remote connection using standard, commercially available remote control software. Customer shall be solely responsible for instituting and maintaining proper security safeguards to protect Customer's systems and data.

4.3 Updates and Upgrades. Customer acknowledges and agrees that Updates and Upgrades provided by Alchemy pursuant to this Agreement may, in Alchemy's sole discretion, require additional training of Customer's personnel.

4.4 Disclaimer. Alchemy shall not be responsible to provide Support Services, Updates and Upgrades, or any other maintenance and support to the extent that Defects arise because Customer (a) misuses, improperly uses, misconfigures, alters, or damages the Software; (b) uses the Software with any hardware or software not supplied or supported by Alchemy; (c) fails to install an Update to the Software if such Update would have resolved the Defect; or (d) otherwise uses the

Software in a manner not in accordance with the Agreement. Notwithstanding anything in this Support Addendum to the contrary, the Support Services do not obligate Alchemy to provide: (i) project management; (ii) personnel management; (iii) application design or development; (iv) performance of Support Services on-site; (v) consulting, training or other support services relating to software other than the Software; (vi) support or maintenance services relating to any hardware or peripheral devices; (vii) recreation or reentry of data lost for any reason whatsoever; (viii) provision of any functional deliverables; (ix) performance of the generalized duties of a software developer engaged to create miscellaneous software applications at Customer's discretion; or (x) delivery of customized improvements or enhancements to existing Software functions.

#### 5. LIMITATION ON STANDARD MAINTENANCE AND SUPPORT

5.1 Customer Defects. If Customer notifies Alchemy of a problem and Alchemy correctly determines that the problem is due to Customer's incorrect or improper use of the Software or failure to comply with the terms of this Agreement (as opposed to a Defect in the Software), the resolution of such problem is not covered by the Support Services. However, at Customer's request in writing approving the fees therefore, Alchemy may provide Consulting Services to correct the problem pursuant to Section 3.4 above.

5.2 Release Support Period. Alchemy shall support a release of the Software if such release (a) was made generally available during the previous twenty four (24) months, or (b) is no more than one Major Release behind the current release of the Software. Other versions of the Software will not be supported unless Alchemy and Customer mutually agree otherwise in writing.

5.3 Third Party Products. The Support Services do not cover the operation or use of third party hardware or software, nor do they cover Software to the extent modified by Customer without the express written authorization of Alchemy or used in any manner in violation of the Agreement or inconsistent with the Software documentation.

5.4 Storage Allocation. The Support Services provide up to five Gigabytes (5 GB) in file storage space for e-learning courses for every one thousand

(1,000) licensed users or fractions thereof (the "Storage Allocation"). Alchemy e-learning courses and observations are not included in the Storage Allocation. The Storage Allocation is the equivalent of one hundred (100) e-learning courses with an average size of fifty Megabytes (50 MB). Should an overage occur in the Storage Allocation, Customer will be billed five hundred dollars (\$500) per month for each additional block of 5 GB (or portion thereof) used over the initial Storage Allocation in a given month. Alchemy will notify Customer when Customer is close to the Storage Allocation limit, and overage charges will not begin until at least one (1) week after notification by Alchemy so as to permit Customer to reduce the amount of space used to avoid such charges.

5.5 Bandwidth Allocation. The Support Services include up to two Terabytes (2 TB) of bandwidth per month for every 1,000 licensed users or fraction thereof (the "Bandwidth Allocation"). The Bandwidth Allocation is the equivalent of completing over 40,000 e-learning courses during the month at an average size of fifty Megabytes (50 MB) per course. Should an overage in Bandwidth Allocation occur, Customer will be billed one thousand dollars (\$1,000) per month

for each additional TB (or portion thereof) used over the initial Bandwidth Allocation in a given month. Alchemy will notify Customer when Customer is close to the Bandwidth Allocation limit, and overage charges will not begin until at least one (1) week after notification by Alchemy so as to permit Customer to adjust usage to avoid such charges.

## 6. TERM

6.1 Term. Support Services are provided as part of a valid license for Alchemy Products. The Support Services shall commence on the Effective Date of a valid license for Alchemy Products and shall continue for the term of such valid license for Alchemy Products.

6.2 Termination of Agreement. If Alchemy or Customer terminates the Agreement as provided therein, then the Support Services shall also terminate.

**End**