



# CLIENT AGREEMENT

Between Alchemy Systems International Ltd and  
[insert Client name]

Date:

BACKGROUND:

A. Alchemy Systems Limited offers certain hosted and cloud products, and complimentary services as defined in attached schedules provided by Alchemy Systems Limited and third party suppliers, as well as a proprietary control panel(s) to permit End Users to monitor and control use of those products (collectively the "Cloud & Hosted Services").

This Cloud & Hosted Services agreement (the "Agreement") is made on the "commencement date" between

(1) Alchemy Systems Limited a company incorporated under the laws of England and Wales with registered number 3593636 whose registered office is at Alchemy House, Band Lane, Egham, Surrey TW20 9LN ("ASI")

and (2) [insert client details] the "client"

It is agreed as follows:

**Schedules forming part of this Agreement:-**

- Schedule 01 Pricing
- Schedule 02 ASI Service Level Agreement
- Schedule 03 Vendor End User License Terms – Microsoft
- Schedule 04 Vendor End User License Terms – Blackberry
- Schedule 05 ASI Cloud & Hosted Terms & Conditions
- Schedule 06 Software Download Site Terms

## 1. Definitions in this Agreement

“Access Credential”	means a username and password provided to the Reseller to access the Product Management Portals.
“Agreement”	means these terms and conditions and the Appendices & Schedules attached to them.
“Cloud & Hosted Terms & Conditions”	means the standard End User terms and conditions the client is agreeing to, upon ordering and using the Products and services that are the subject of this agreement.
“Commencement Date”	means the date that this Agreement becomes effective and is the same date as the date on which this Agreement has been signed by both parties to this Agreement.
“Date of Registration”	date from which the Products will be made available to the client.
“Client Documentation”	means the Agreement, Service Level and other service description documents that ASI will provide to the Client to enable the Client to manage their Products.
“Equipment”	means computer equipment capable of interacting with the Service.
“Intellectual Property Rights”	means all vested contingent and future intellectual property rights including, but not limited to goodwill; reputation; rights in confidential information; copyright; trade marks; logos; service marks; devices; plans; models; diagrams; specifications; source and object code materials, data and processes; design rights, patents; know-how; trade secrets; inventions; get-up; database rights (whether registered or unregistered) and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.
“LAR”	means Microsoft Large Account Reseller, is the appointed distributor of Microsoft SPLA licensing.
“Legacy System”	means the existing systems providing the services that are replaced by ASI’s services.

“Maintenance”	means the analysis, coding, testing and release of corrections to the Products.
“Minimum Period”	means the period of 12 month commencing on the Commencement Date.
“Products”	means any one of, or combination of, the products or services described in Schedule 01.
“Product Management Portals”	the web browser based portal for ASI, the client to use to administer, manage and provision users & End User organisations.
“Royalty”	means the payment made, or the discount given, to the Reseller as defined in Schedule 01.
“Service Level”	means the performance standard, specified in the Service Level Agreement in Schedule 02 and if any, set out in the Agreement.
“SPLA”	means Microsoft Service provider License Agreement, monthly subscribed volume license arrangements.

## **2. Appointment and Licence**

- 2.1. ASI appoints the client for the agrees to act in that capacity subject to the terms and conditions of this Agreement.
- 2.2. Nothing in this Agreement shall prevent ASI from supplying the Products to other clients in the Territory.

## **3. Intellectual Property Rights**

- 3.1. ASI or its licensor is the owner or licensee of all Intellectual Property Rights forming part of the Products and client Documentation.
- 3.2. Neither this Agreement nor any licence or sub-licence granted under this Agreement shall be construed to convey or transfer any ownership or proprietary interest in any Intellectual Property Rights in the Products, client Documentation or any third party.
- 3.3. The client agrees that it will make no other copies of the Products nor any print outs of the End User Documentation save that it may make a reasonable number of copies of such but only to the extent and for the duration that is reasonable for First Level Support and Maintenance, back-up, archival, and training purposes.
- 3.4. Subject to clause 3.5 and except to the extent that ASI cannot prohibit such acts by law, the client agrees not to translate, adapt, vary, modify, disassemble, decompile or reverse engineer the Products and/or client Documentation or create derivative works of the same for any purpose (including error correction or any other type of maintenance) without ASI's prior written consent.
- 3.5. Notwithstanding clause 3.4, in the case of reverse analysis where permitted by applicable law, the client may incidentally decompile the Products only if it is essential to do so in order to achieve interoperability of the Products with another software program or hardware ('Permitted Purpose') and provided the information obtained by the client during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party without ASI's prior written consent and is not used to create any software which is substantially similar to the expression of the Products nor used in any manner which would be restricted by copyright.
- 3.6. Notwithstanding clause 3.5, the client undertakes to first consult ASI regarding any data the client requires in order to achieve interoperability or to deduce underlying ideas and principles so that ASI may consider making the same available to the client (without the client having to rely on clause 3.5) subject to the restrictions on disclosure set out in clause 3.5.
- 3.7. The client Agrees That:**
  - 3.7.1. The Products and client Documentation are the valuable property of ASI or supplying vendor to ASI and shall be treated as confidential as described under clause 15;
  - 3.7.2. It will not sell, license, lease, rent, loan, lend, transmit, network, or otherwise distribute or transfer the Products and/or End User Documentation in any manner to third parties save as is expressly permitted otherwise in this Agreement; and

3.7.3. It will maintain true and accurate records to enable ASI to ensure the client's compliance with the terms of this Agreement.

**3.8. The client undertakes throughout the Term:**

3.8.1. Not to cause or permit anything which may damage or endanger ASI's or supplying vendor to ASI Intellectual Property Rights or ASI's title to them or assist or allow others to do so;

3.8.2. To notify ASI of any actual, threatened or suspected infringement of ASI's Intellectual Property Rights;

3.8.3. To notify ASI of any claim by any third party that the Products infringe any Intellectual Property Rights of any third party;

3.8.4. To take such reasonable action as ASI may direct at the expense of ASI in relation to such infringement;

3.8.5. To affix such notices to the Products or their packaging or advertising as ASI may be legally or statutorily required to do;

3.8.6. To compensate ASI for any use by the client of ASI's Intellectual Property Rights otherwise than in accordance with this Agreement;

3.8.7. To indemnify ASI for any liability incurred to third parties for any use of ASI's Intellectual Property Rights otherwise than in accordance with this Agreement;

3.8.8. On the expiry or termination of this Agreement forthwith not to use the Intellectual Property Rights save for any Products already purchased under the terms of this Agreement;

3.8.9. Not to tamper with any markings or name plates or other indication of the source of origin of the Products which may be placed by ASI on the Products;

3.8.10. To use the Intellectual Property Rights (in compliance with all relevant laws and regulations) whenever any Product is referred to by the client;

3.8.11. Not to use any name or Intellectual Property Rights similar to or capable of being confused with the Intellectual Property Rights nor modify any of the Intellectual Property Rights in any way nor use the Intellectual Property Rights or any derivation of them otherwise than is permitted by this Agreement;

3.8.12. To permit ASI to review without notice marketing materials containing the Intellectual Property Rights;

3.8.13. To acknowledge that any goodwill or reputation for the Products or End User Documentation generated by the client's obligations under this Agreement will belong to ASI and upon termination of this Agreement for whatever reason the client shall not be entitled to claim recompense or compensation for such enhanced goodwill or reputation.

**4. Third Party Claims**

4.1. ASI shall defend, at ASI's expense, any claim (the 'Claim'), brought against the client alleging that any Product and/or End User Documentation as acquired under this Agreement infringes an Intellectual Property Right of a third party. ASI shall pay all costs and damages awarded or agreed to in settlement of a Claim provided that the client furnishes ASI with prompt written notice of the Claim and provides ASI with reasonable assistance and sole authority to defend or settle the Claim.

- 4.2. If, in ASI's reasonable opinion, the Products become the subject of a Claim, then ASI shall either obtain for the client the right to continue using the Product and/or End User Documentation, replace it, or, with the prior written consent of the client, modify it so it becomes non-infringing. If such remedies are not reasonably available (in ASI's sole opinion), then the client shall return the Products and/or End User Documentation which are the subject of the Claim.
- 4.3. ASI shall have no liability for any Claim resulting from the combination of the Products with other products, which were neither supplied nor combined with the Products by ASI.

## **5. ASI's Obligations and Rights**

- 5.1. ASI agrees with the client through the Term:
  - 5.1.1. To provide and promptly update information about the Products with copies of the Licensed User Agreement in a form suitable for use by the client, along with all necessary supporting licences or documentation as varied from time to time;
  - 5.1.2. Has properly observed and performed its obligations under this Agreement throughout the Term; and
  - 5.1.3. Accepts that the terms of this Agreement shall apply to any extension of the Term (whether express or implied).
- 5.2. ASI may add to the Products such other products as ASI may in its sole discretion deem appropriate provided that the client at ASI's request executes a new agreement in respect of the addition on ASI's standard terms current at the date of such agreement.
- 5.3. ASI shall be entitled for any reasonable reason to reject any order, tender or request for the Products submitted by the client.

## **6. Client's Obligations**

- 6.1. ASI grants the client the non-exclusive and non-transferrable right to use the service during the contracted period after which he/she must remove it from the computer and cease to use the program.
- 6.2. The Client shall throughout the Term:**
  - 6.2.1. Obey ASI's reasonable instructions in relation to the intended use of the Products;
  - 6.2.2. Supply to ASI such information and support as may enable ASI to carry out its obligations under this Agreement;
  - 6.2.3. Provide training to members of its own organisation and where necessary, to the End User's wishing to use the Products, and ensure all sales and technical staff attend training provided by ASI.



**6.3. The client shall not:**

- 6.3.1. Describe itself as agent or representative of ASI except as expressly authorised by this Agreement;
  - 6.3.2. Hold itself out, or permit any person to hold it out, as being authorised to bind ASI in any way, nor do any act which might reasonably create the impression that it is so authorised;
  - 6.3.3. Pledge the credit of ASI in any way;
  - 6.3.4. Use any advertising, promotional or selling materials in relation to the Intellectual Property Rights, except those supplied or approved by ASI;
  - 6.3.5. Engage in any conduct which in the opinion of ASI, is prejudicial to business or the marketing of the Products generally;
  - 6.3.6. Make or give any promises, warranties, guarantees or representations concerning the Products other than those contained in the Licensed User Agreement; or
  - 6.3.7. Supply any Products to any third party until such third party has signed the Licensed User Agreement or any related software licences substantially in the form of the Licensed User Agreement unless ASI has given its prior written consent otherwise. The client shall only make material changes to the Licensed User Agreement that it agrees with the End User if ASI has given its prior written consent to such changes.
- 6.4. The client shall indemnify and keep indemnified ASI from and against any and all loss, fees and costs incurred by ASI resulting from breach of this Agreement by the client including:
- 6.4.1. Any act, neglect, or default of the client.
  - 6.4.2. Breaches resulting in any successful claim by any third party alleging libel or slander in respect of any claim in any End User Documentation or any other matters arising from the resale of the Products provided that such liability has not been incurred by ASI through any default on its part in carrying out the terms of this Agreement.

**7. ASI's Support and Maintenance Obligations**

- 7.1. ASI will provide first, Second and third Level Support and Maintenance services in accordance with the Service Level in respect of the Products and End User Documentation to the Reseller.
- 7.2. Subject to the terms of this Agreement and unless otherwise agreed in writing between the parties, ASI shall provide first, Second and third Level Support and Maintenance to the client in accordance with the Service Level in respect of the Products and End User Documentation.
- 7.3. ASI shall not be obliged to provide first, Second and third Level Support and Maintenance if payment of the Support Fee, if applicable, by the client is overdue.

## **8. Exclusions from Support and Maintenance**

- 8.1. ASI shall be under no obligation to provide Support and Maintenance in respect of:
  - 8.1.1. Problems resulting from any modifications or customisation of the Products not made by or authorised in writing by ASI;
  - 8.1.2. Any software other than the Products;
  - 8.1.3. Incorrect or unauthorised use of Products or operator error where these are defined as use or operation not in accordance with the End User Documentation;
  - 8.1.4. Any fault in any computer hardware;
  - 8.1.5. Any programs used in conjunction with the Products;
  - 8.1.6. Use of the elements of the Products in any combination other than those specified in the End User Documentation;
  - 8.1.7. Use of the Products with any other software or products that ASI has not expressly authorised in writing to be used with the Products;
  - 8.1.8. Use of the Products with computer hardware, operating systems or other supporting software other than those specified in the End User Documentation.

## **9. Warranty**

- 9.1. ASI warrants that for a period of 90 days from delivery, the Products shall perform substantially in accordance with published specification, current at the time of delivery.
- 9.2. ASI does not warrant that the functions of the Products will meet any particular requirements or that their operation will be entirely error-free or that all program defects are capable of correction or improvement. All other warranties including any implied warranties of merchantability, satisfactory quality or fitness for purpose or ability to achieve a particular result are hereby excluded. In the absence of fraud, no oral or written information or advice given by ASI or its agents or licensees shall create a warranty or give rise to any other liability other than is given in this Agreement.
- 9.3. ASI itself does not warrant third party products. Where ASI supplies third party hardware, ASI will pass on to the Reseller the benefit of any third party warranty which will usually be supplied by a third party manufacturer as specified in the documentation provided with the third party products.

## **10. Warranty Remedies**

- 10.1. In respect of the Products, the client agrees that its sole remedy in respect of any non-conformance with any warranty in this Agreement is that ASI will remedy such non-conformance and if in ASI's reasonable opinion, it is unable to remedy such non-conformance ASI will accept return of the Products and refund fees charged by ASI for the non-conforming Products, if paid and on a depreciated basis, whereupon that particular End User's sub-licence shall immediately terminate unless otherwise agreed in writing by ASI and the client.
- 10.2. The client must promptly notify ASI of any non-conformance to the above warranties in order to benefit from the remedies stated above and in any event within a calendar year after delivery of any Products.

## **11. Limitation of Liability**

- 11.1. ASI shall indemnify the client for personal injury or death caused by the negligence of its employees in connection with the performance of their duties under this Agreement, or by defects in any Products supplied pursuant to this Agreement.
- 11.2. ASI shall indemnify the client for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties pursuant to this Agreement. ASI's total liability under this clause shall be limited to a sum equivalent to the price paid to ASI under this Agreement for the Products that are the subject of the client's claim.
- 11.3. Save in respect of claims for death or personal injury arising from ASI's negligence, in no event will ASI be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of ASI whether such damages were reasonably foreseeable or actually foreseen.
- 11.4. Except as provided above in the case of personal injury, death, and damage to tangible property, ASI's maximum liability to the client under this Agreement or otherwise for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the lesser of:
  - 11.4.1. A sum equivalent to the monthly price paid to ASI under this Agreement for the Products that are the subject of the client's claim less licensing costs.
- 11.5. In no event shall ASI be liable to the client for any losses whatsoever (whether lost future revenues, lost future profits, expenditure incurred to no benefit, or otherwise) suffered or incurred by the client solely or substantially because this Agreement has been terminated.
- 11.6. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause 'ASI' includes its employees, sub-contractors and suppliers. The Reseller acknowledges that ASI's employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

- 11.7. Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of this Agreement to each party and the commercial standing of each party.
  
- 11.8. Service Level Compensation is specified within the applicable SLA provided within Schedule 02 for the Products that are the subject of the parties claim, but is limited to no more than the value defined in clause 12.4.1.

## **12. Orders and Deliveries**

- 12.1. The client will deliver to ASI a purchase order and agreed required information for the Products required, to enable ASI to provision the request products.
- 12.2. ASI will consider each purchase order from the client and if it approves the same it will notify the client of the delivery date and shall use reasonable endeavours to deliver the Products at the delivery address by such date.
- 12.3. While ASI shall use reasonable commercial efforts to meet delivery and supply times, the client's only remedy for unreasonable delay in supplying products or services will be the right to terminate this Agreement after service of notice of breach as provided for elsewhere in this Agreement whereupon ASI shall repay to the client the Licence fee and Support fee if already paid.

## **13. Price.**

- 13.1. Prior to making any Products available to the client, the client shall either:
  - 13.1.1. Purchase from ASI a software licence (in accordance with clause 13 above) corresponding to each sub-licence to be granted to the client, such licences to be at the rate set out in Schedule 01 (plus VAT) (the 'Licence Fee'), or
  - 13.1.2. Ensure the client has provided ASI with a completed ASI order form for the Products required at the rate set out in Schedule 01 (plus VAT) (the 'Licence Fee').
- 13.2. If applicable (details of which are set out in Schedule 01), ASI shall charge the client for Support and Maintenance in respect of each sub-licence granted to each End User at the rate set out in Schedule 01 (plus VAT) for the first year commencing on the Date of Registration of the Products and at the then prevailing rate each year thereafter (the 'Support Fee') or as otherwise agreed in writing between ASI and the client.
- 13.3. The price of the Products is subject to change by ASI on 30 days prior written notice to the client except where:
  - 13.3.1. ASI has agreed to maintain such price for the validity period of the client's quote to the End User, provided that such validity period is no longer than 30 days; or
  - 13.3.2. ASI has received a purchase order from the client prior to ASI's price increase notice becoming effective.
- 13.4. The client shall be liable for any other agreed fees, any national, European Union, value added, sales, excise, state, local or other taxes or customs duties applicable.
- 13.5. The client shall pay an interest charge on any sum outstanding to ASI at the rate of 4% above Barclays Bank's Sterling base rate on a monthly basis from the due date of payment until payment has been made. The client shall notify ASI in writing within 5 days of receipt of an invoice that the invoice is in dispute either in part or in full and the client shall be entitled to withhold the amount disputed.
- 13.6. The Licence Fee and/or the Support Fee shall be payable to ASI in accordance with Schedule 01.

13.7. The billable period begins for each customer from the Date of Registration.

13.7.1. ASI will send the client a consolidated invoice in an agreed format for the recurring services 30 days prior to the Service being delivered.

13.7.2. This invoice will include any other one-off or upfront charges incurred.

13.7.3. This invoice will include any pro-rata or in whole charges incurred from increases in user charged or other metered charged Products.

13.7.4. If ASI has been unable to make the Service available due to a failure by the client to provide the required information or due to the client act or omission, ASI shall be entitled to commence charging for the Product or service and the Reseller shall be obliged to pay for the Product or service as if the Product or service had been made available.

13.8. The client will settle all ASI invoices within 15 days of invoice date.

13.9. The client agrees that ASI, in its sole discretion, may terminate the Agreement immediately and/or suspend/cancel its obligation to the client if it fails to place an order for Products in the preceding 90 day period.

#### **14. Confidentiality**

14.1. Restricted Information ("Restricted Information") means any private, secret or confidential information, which is disclosed by either party pursuant to or in connection with this Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such).

14.2. Both parties shall at all times during the continuance of this Agreement and after its termination:

14.2.1. Use their best endeavours to keep all Restricted Information confidential and accordingly not disclose any Restricted Information to any other person; and

14.2.2. Not use any Restricted Information for any purpose other than the performance of its obligations under this Agreement; and

14.2.3. Be responsible for the activities of any properly appointed sub-contractors or subsidiaries and undertake that they will be bound to the same extent of confidentiality as this clause.

14.3. The provisions of clause 15.2 shall not apply to:

14.3.1. Any information in the public domain otherwise than by breach of this Agreement;

14.3.2. Information in the possession of the receiving party before disclosure thereof by the disclosing party;

14.3.3. Information obtained without restriction from a third party; and

14.3.4. Information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority.

#### **15. Duration and Termination**

- 15.1. This Agreement shall become effective on the Commencement Date and shall continue for the term of the Minimum Period and shall renew automatically for successive annual terms unless either party gives at least 60 days' notice in writing of its decision not to renew, such notice to expire on what would otherwise be the renewal date.
- 15.2. ASI may terminate with immediate effect upon written notice any Licensed User Agreement if any End User commits a breach of the Licensed User Agreement where such breach has a material adverse effect on ASI's Intellectual Property Rights in the Products.
- 15.3. Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if:
  - 15.3.1. That other party commits any material breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
  - 15.3.2. An encumbrance takes possession or a receiver is appointed over any of the property or assets of that other party;
  - 15.3.3. That other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
  - 15.3.4. That other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);
  - 15.3.5. Anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
  - 15.3.6. That other party ceases, or threatens to cease, to carry on business.

## **16. Termination Consequences**

On the termination of this Agreement for any reason:

- 16.1. The client shall within 30 days, send to ASI or otherwise dispose of in accordance with the directions of ASI, copies of all Product and End User Documentation and all advertising, promotional, sales material and Restricted Information relating to the Products then in the possession of the client.
- 16.2. The client shall have no claim against ASI for compensation for loss of client's rights, loss of goodwill or any similar loss.
- 16.3. Clauses that are necessary for the enforcement or interpretation of this Agreement shall survive, which shall include clauses relating to confidentiality and protection of Intellectual Property Rights, and
- 16.4. Subject as otherwise provided in this Agreement and to any rights or obligations, which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

## **17. Data Protection & GDPR**

The parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

## **18. Interpretation**

18.1. In this Agreement unless the context otherwise requires:

18.1.1. Words importing any gender include every gender;

18.1.2. Words importing the singular number include the plural number and vice versa;

18.1.3. Words importing persons include firms, companies and corporations and vice versa;

18.1.4. References to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;

18.1.5. Reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;

18.1.6. The headings to the clauses, schedules and paragraphs of this Agreement will not affect the interpretation;

18.1.7. Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

18.1.8. Any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

18.1.9. Any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

18.2. In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any Schedule, the provision in the body of this Agreement shall take precedence.

## **19. Agency, Partnership**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.



**20. Amendments**

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

**21. Announcements**

No party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior written consent has been obtained from the other party.

**22. Assignment**

22.1. This Agreement is personal to the parties and, subject to clause 23.2 below, neither this Agreement nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party.

22.2. Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of this Agreement or to any entity controlled by, that controls or is under common control, with a party to this Agreement. Any attempted assignment in violation of this clause will be void and without effect.

**23. Entire Agreement**

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

**24. Force Majeure**

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than six months, either party may terminate this Agreement by written notice to the other party. Any costs arising from such delay shall be borne by the party incurring the same.

## **25. Notices**

- 25.1. All notices under this Agreement shall be in writing.
- 25.2. Notices shall be deemed to have been duly given:
  - 25.2.1. When delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
  - 25.2.2. When sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
  - 25.2.3. On the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - 25.2.4. On the tenth business day following mailing, if mailed by airmail, postage prepaid, in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

## **26. Schedules**

The provisions of all Schedules shall form part of this Agreement as if set out here.

## **27. Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **28. Successors and Assignees**

- 28.1. This agreement shall be binding upon, and inure to the benefit of; the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.
- 28.2. In this Agreement references to a party include references to a person:
  - 28.2.1. Who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Agreement (or any interest in those rights); or
  - 28.2.2. Who, as administrator, liquidator or otherwise, is entitled to exercise those rights, and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

**29. Waiver**

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.

No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

**30. Counterparts**

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

**31. Time of the Essence**

Time shall be of the essence in this Agreement as regards any time, date or period mentioned in this agreement or subsequently substituted as a time, date or period by agreement in writing between the parties.

**32. Language**

This Agreement is made only in the English language. If there is any conflict in the meaning between the English language version of this Agreement and any version or translation of it in any other language, the English language version shall prevail.

**33. Costs and Expenses**

Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

**34. Set-off**

Where either party has incurred any liability to the other party, whether under this Agreement or otherwise, and whether such liability is liquidated or unliquidated, each party may not set off the amount of such liability against any sum that would otherwise be due to the other party under this Agreement.

**35. Third Parties**

The parties confirm their intent (subject to clause 12.6) not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

**36. Reservation of Rights**

All rights not specifically and expressly granted to the Reseller by this Agreement are reserved to ASI.

**37. Proper Law and Jurisdiction**

38.1. This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law notwithstanding the conflict of law provisions and other mandatory legal provisions save that:

38.1.1. ASI shall have the right to sue to recover its fees in any jurisdiction in which the Reseller is operating or has assets; and

38.1.2. ASI shall have the right to sue for breach of its Intellectual Property Rights and other proprietary information and trade secrets (whether in connection with this Agreement or otherwise) in any country where it believes that infringement or a breach of this Agreement relating to its Intellectual Property Rights might be taking place.

38.1.3. Each party recognises that the other party's business relies upon the protection of its Intellectual Property Rights and that in the event of a breach or threatened breach of Intellectual Property Rights, the other party will be caused irreparable damage and such other party may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of its Intellectual Property Rights.

38.2. With respect to all other disputes which are not Intellectual Property Rights related pursuant to clauses 38.1 above and its special rules the following procedures in clauses 38.3 shall apply. Where there is a dispute, the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management of each of the parties ('representatives') shall meet in person or communicate by telephone within five business days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within five business days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further five business days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.

38.3. If the parties cannot resolve a dispute in accordance with the procedure in clause 38.2 above, then they shall with the assistance of the Centre for Effective Dispute Resolution ('CEDR'), seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ('ADR') procedure acceptable to both

parties before pursuing any other remedies available to them. If either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 90 days after it has arisen, the matter shall be settled in accordance with the procedure below.

- 38.4. If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement. For the avoidance of doubt, the place of performance of this Agreement is agreed by the parties to be England.
- 38.5. If the dispute shall be of a technical nature relating to the functions or capabilities of the Products or any similar or related matter then such a dispute shall be referred for final settlement to an expert nominated jointly by the parties or failing such nomination within 14 days after either party's request to the other therefore nominated at the request of either party by the President for the time being of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His decision shall (in the absence of clerical or manifest error) be final and binding on the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees.

**38. Schedules to this agreement**

**Schedule 01 Pricing**

Pricing to be agreed at the outset of this agreement.

## Schedule 02 ASI Service Level Agreement

### 1. Definitions

- a) The following words shall have the following meanings for the purposes of this Service Level Agreement:
- b) **"Credit Request"** means the notification which the Customer must submit to Alchemy Systems by Email to [finance@Alchemysys.net](mailto:finance@Alchemysys.net) with the subject line "Credit Request" (unless otherwise notified by Alchemy Systems);
- c) **"Monthly Charge "** means the monthly Charge for the affected Services as detailed in the Hosted Services Agreement;
- d) **"Service Level "** means each of the Service parameters defined in this Service Level Agreement;
- e) **"Availability "** as defined in Service Availability Measure for each service
- f) **"Unavailability "** means any period of time a user is unable to access the Service and begins when a ticket is raised either by the customer and has been confirmed by the Alchemy monitoring service. The period of unavailability finishes when Alchemy issues a fix report.

### 2. General

- a) In the event In the event that an availability outage exceeds the availability guarantee of 99.9%. The Customer must submit a Credit Request within three (3) working days of the end of the calendar month in question.
- b) All Credit Requests will be subject to verification by Alchemy Systems in Accordance with the applicable provisions of this Service Level Agreement.
- c) This Service Level Agreement will not operate:
  - i) during periods of Exclusions, Planned Maintenance and other periods as defined in the Hosted Service Agreement, or emergency maintenance, periods of non-availability due to force majeure, malicious attacks or acts or omissions of either the Customer or a third party;
  - ii) during any period of suspension of service by Alchemy Systems in accordance with the terms of the Hosted Services Agreement
  - iii) when the Customer is in default of payment;
  - iv) when it is caused by external network issues or failures with the client network or caused by incidents relating to any technical or human error on the client terminal or incidents relating to any peripherals such as printers, scanners, copiers etc
  - v) when any outage is caused by unsupported Software or Hardware
  - vi) when any outage is caused by any client initiated change requests
- d) The remedies set out in this Service Level Agreement shall be the Customer's sole and exclusive remedy in contract, tort (including without limitation negligence) or otherwise in respect of levels of Service.
- e) The maximum accumulative liability of Alchemy Systems under this Service Level Agreement in any calendar month shall be no more than one hundred percent (100%) of the Monthly Charge payable by the Customer for the affected Service(s).

### 3. Call Handling

- a) Before reporting

- i) Ensure this is a problem and it has been tested internally and the issue is replicable from more than one source/location
    - ii) Ensure the person reporting the issue is a named contact
  - b) Incident Reporting
    - i) Issue an email if possible to [helpdesk@alchemysys.net](mailto:helpdesk@alchemysys.net) describing:
      - a. the Service affected "Virtual Windows Desktop", " Hosted Exchange" etc
      - b. the issue in detail, with any way of replicating the issue or data you have
      - c. the Priority level
        - i. Level 1 - Total loss of service or actual security breach
        - ii. Level 2 - Degraded service performance, impaired functionality or suspected security breach
        - iii. Level 3 - Service/change request
    - ii) After 10 minutes and if the priority is level 1, initiate a service requests by contacting Alchemy's helpdesk (01784 223100) according to the procedure set out in the Welcome Support Pack.
    - iii) The helpdesk will record all of the relevant details and allocate a unique Incident reference number
    - iv) An engineer will immediately open the ticket and look to troubleshoot the problem and is likely to liaise with the person via email or phone.
    - v) A resolution path is provided and Alchemy issues a fix report.

#### 4. Escalation Procedure

- a) Escalation gateways where resolution of the Incident exceeds the following time frames :-
  - i) Up to target resolution time - Alchemy Engineer allocated to the Client's Incident Report.
  - ii) Up to target resolution time +50% - the Client's account manager.
  - iii) Beyond target resolution time +50% - Alchemy's Managing Director.

#### 5. Service Availability

- a) In relation to the Services, this Service Availability Service Level means the availability of the Services and shall only apply if the Customer host, gateway devices or proxy(s) are correctly configured on a 24x7 basis.
- b) If in any calendar month Service Availability is below (99.9%), the Customer may be entitled to the following percentage credit:

#### 6. Service Level Compensation

Service Credits are the sole and exclusive remedy for any violation of this SLA.

Should an individual service availability fall below 99.9% for any calendar month for any service as detailed in the service-specific section of this SLA a service credit may be due.

Downtime does not include the period of time when a Service is not available as a result of: (i) Planned or emergency maintenance or (ii) any of the service level exclusions are applicable or (iii) the acts or omissions of Customer, or its employees, agents, contractors, or vendors, anyone gaining access to the services by means of passwords or equipment.



Individual service availability for a calendar month is calculated by taking the total number of minutes in a calendar month multiplied by the total number of licensed users minus the total number of minutes of Downtime experienced by all users in a given calendar month, all divided by the total number of minutes in that calendar month multiplied by the total number of users for a service. This is reflected in the following formula:

$$\frac{\text{Total number of minutes in a month} \times \text{Total number of users on the affected service} - \text{Total minutes of Downtime experienced by affected users in that month}}{\text{Total number of minutes in a month} \times \text{Total number of users on the affected service}}$$

#### 7. Service Level Exclusions

This SLA and any applicable Service Levels do not apply when any of the following conditions exist:

- The system is placed under extra-ordinary load (over 200% of average load of previous 30 days) by the action of a wide scale email usage issue such as a web based virus.
- A Force Majeure condition is present as described in the contract.
- Due to factors outside of ASI's reasonable control;
- That resulted from Customer's hardware, network or software or that of a third party;
- That resulted from Customer's actions or inactions or those of third parties;
- Caused by Customer's use of the Service after ASI advised Customer to modify the use of the Service and such advice was not acted upon;
- During scheduled or emergency maintenance; or
- During beta and trial Services (as determined by ASI).
- The customer is using the system in breach of the AUP.
- during any period of suspension of service by Alchemy Systems in accordance with the terms of the Hosted Services Agreement
- when the End User Customer or its Reseller is in default of payment;
- when outage is caused by the affected End User or Reseller initiated change requests that a

ASI will not be held responsible for degradation of service to customers due to third party or external vendor outages. ASI will endeavor to keep customers informed as to the progress of external vendor investigation progress.

## 8. Service Availability Measure

### **Hosted Desktop**

The service is deemed unavailable when Customers are not able to log into the Hosted Desktop session.

### **Microsoft Exchange Online.**

The service is deemed unavailable when Customers are not able to send or receive email with Outlook Web Access.

### **Microsoft Hosted Skype4Business**

The service is deemed unavailable during any interruption in the end users' ability to access or use their Online service. Logged start and stop events will be used to measure interruptions and whether it was Service or user impacting.

### **Microsoft SharePoint Online and Hosted SharePoint Services**

The service is deemed unavailable during any period of time when Customer is unable to read or write any portion of a SharePoint site collection for which they have appropriate permissions.

### **Email Security**

The service is deemed unavailable during any period where the system does not accept email classified as non-virus and non-spam and attempt onward delivery within 5 minutes.

## Schedule 03 Vendor End User License Terms – Microsoft

### END USER LICENSE TERMS

#### TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Products") provided by Insert Company Name (hereinafter referred to as "Customer"). Customer does not own the Products and the use thereof is subject to certain rights and limitations of which Customer must inform you. Your right to use the Products is subject to the terms of your agreement with Customer, and to your understanding of, compliance with, and consent to the following terms and conditions, which Customer does not have authority to vary, alter, or amend.

#### DEFINITIONS.

"Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or other electronic device.

"Server Software" means software that provides services or functionality on a computer acting as a server.

"Software Documentation" means any end user document included with server software.

"Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

**OWNERSHIP OF PRODUCTS.** The Products are licensed to Customer from an affiliate of the Microsoft Corporation (collectively "Microsoft"). All title and intellectual property rights in and to the Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Products) are owned by Microsoft or its suppliers. The Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Products does not transfer any ownership of the Products or any intellectual property rights to you.

**USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices by Customer only in accordance with the instructions, and only in connection with the services, provided to you by Customer. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

**USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to you by Customer, you may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO CUSTOMER, WHICH TERMS MUST BE PROVIDED TO YOU BY CUSTOMER.** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Customer.

**COPIES.** You may not make any copies of the Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Customer; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution

Software upon termination or cancellation of your agreement with Customer, upon notice from Customer or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Products.

**6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

**7. NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Products except for the sole purpose of accessing the functionality of the Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Customer.

**8. TERMINATION.** Without prejudice to any other rights, Customer may terminate your rights to use the Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Customer or Customer's agreement with Microsoft under which the Products are licensed, you must stop using and/or accessing the Products, and destroy all copies of the Products and all of their component parts.

**9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY CUSTOMER AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.**

**10. PRODUCT SUPPORT.** Any support for the Products is provided to you by Customer and is not provided by Microsoft, its affiliates or subsidiaries.

**11. NOT FAULT TOLERANT.** THE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

**12. EXPORT RESTRICTIONS.** The Products are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

**13. LIABILITY FOR BREACH.** In addition to any liability you may have to Customer, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

**Schedule 04 Vendor End User License Terms – Blackberry**

The License Agreement to utilise the service is held between Blackberry and the Customer; the current version of which accessible at:

<http://us.blackberry.com/legal/>

**Schedule 05 ASI Cloud & Hosted End User Terms & Conditions**

<http://www.alchemysys.net/wp-content/uploads/2011/03/Alchemy-Hosted-Terms-and-Conditions-V4.4.pdf>

## **Schedule 06 Software Download Site Terms**

### **1. Access**

- 1.1. ASI hereby grants the client access to the ASI Client Software Download Site where the client can access and download relevant licensed Client Software.

### **2. The reseller hereby agrees to:**

- 2.1. indemnify ASI in line with the indemnity provisions in place in the existing client agreement under sections

3. Intellectual Property Rights
4. Third Party Claims - Indemnity

3. ASI reserves the right to suspend access to the ASI Client Software Download Site with written notice to the client at its discretion should it be felt that there is a risk to the overall integrity of the Service.

- 3.1.1. This Agreement shall remain in force whilst there are Service Supply Agreements between ASI and the client from the date of second signature hereof.

4. If a provision of this Agreement is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this Agreement.

5. This Agreement shall be governed by and construed in accordance with English Law.

6. This ASI Client Software Download Site Access & Utilisation Agreement is provided in concert with the Microsoft End User Licence Terms attached in Appendix 1, and forms part of this agreement, with all Terms and Conditions applicable to both the reseller and End User.

9. This terms of this Agreement may be updated from time to time in line with updates to the Microsoft Service Provider Use Rights (SPUR) Agreement which is available upon request.