

**ALCHEMEX CERTIFIED BUSINESS PARTNER APPLICATION FORM**

To apply to become an Alchemex (Pty) Ltd (Alchemex) Certified Business Partner (Alchemex CBP), please complete and sign this application form and email to [info@alchemex.com](mailto:info@alchemex.com) or fax it to +27 (31) 266 9804

**CBP Organisation Details**

Trading Name of Business					
Registered Name of Business					
Company Registration Number					
VAT Registration Number (if SA)					
Who to Invoice? (Name & e-mail add.)					
Date of establishment of Business					
Software company specializes in (please tick)	<input type="checkbox"/> Pastel Partner	<input type="checkbox"/> SAP Business One	<input type="checkbox"/> Sage	<input type="checkbox"/> Microsoft Navision	<input type="checkbox"/> Oracle Financials
	<input type="checkbox"/> Pastel Evolution	<input type="checkbox"/> SYSPRO	<input type="checkbox"/> Quickbooks	<input type="checkbox"/> Microsoft Great Plains	<input type="checkbox"/> Case Ware
	<input type="checkbox"/> AccPac	<input type="checkbox"/> VIP Payroll	<input type="checkbox"/> Simply Accounting	<input type="checkbox"/> Microsoft Exapta	<input type="checkbox"/> Other – Please Specify below
Physical Address					
Postal Address					
Region/ State					
Code					
Country					
Telephone					
Fax					
E-Mail					
Web Site					

**Alchemex CBP Proprietor/Members/Directors Details**

Name	Position	Id Number/Passport Number

**CBP Key Contacts**

Title	Name and Surname	E-mail address	Cell Phone No.
Sales Manager			
Purchasing Manager			
Marketing Manager			
Accounts Manager			
IT Manager			

**BP Trade References**

Company Name	Contact Person	Contact Numbers	Credit Limit	Date account was opened
		T: ( )		
		F: ( )		
		T: ( )		
		F: ( )		

**THIS AGREEMENT IS CONCLUDED BETWEEN**

Vendor:	ALCHEMEX (PTY) LTD
Registered Address:	4 Derby Place, Derby Downs, University Road, Westville, KZN South Africa
Tel:	+ 27 (31) 266 9112/3
Fax:	+27 (31) 266 9804
e-Mail:	<a href="mailto:info@alchemex.com">info@alchemex.com</a>
Internet address:	<a href="http://www.alchemex.com">http://www.alchemex.com</a>

(Hereinafter referred to as "Vendor")

**AND**

Certified Business Partner:	
Billing Address:	
Postal Address:	
Tel:	Code          Number
Fax:	Code          Number
e-Mail:	
Internet Address:	<a href="http://www.">http://www.</a>

(Hereinafter referred to as "CBP")

## TERMS AND CONDITIONS

### Section 1 Definitions

1.1 Act of Bankruptcy means becoming insolvent or committing an act of bankruptcy which includes but is not limited to: (i) filing a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of a party or its assets; (ii) proposing a written agreement for the composition or extension of debts; (iii) being served with an involuntary petition, filed in any insolvency proceeding, and such petition will not be dismissed within sixty (60) days after the filing thereof; (iv) proposing or being a party to any dissolution or liquidation; or (v) making an assignment for the benefit of creditors.

1.2 Agreement means this CBP Agreement, any Schedules signed by both parties and any other written amendments made in accordance herewith. The Agreement refers to various schedules and documents containing fees, prices, and discounts and other like documents containing requirements and guidelines. This information is subject to change and any reference is to the most current version, which can be obtained from Alchemex upon request

1.3 Authorised Products means one or more of the software products (as packaged for commercial distribution by Alchemex, including an executable digital copy of the software product and any documentation.

1.4 Confidential Information means all information, oral or written, embodied in or related to, Authorised Products and Alchemex's and CBP's business, including but not limited to, the methods and techniques used to create Authorised Products (including source and object code and documentation); drawings; designs; specifications; know-how; business studies, policies and procedures; finance, marketing and sales data; unannounced products and services; methods, plans and efforts; trade secrets; identities of and relationships with existing and prospective End-Users; the terms and conditions of this Agreement; and any other materials that have not been made available to the general public. Without limiting the foregoing, the following shall be deemed Alchemex Confidential Information: unpublished Alchemex technical data, marketing information and plans, return information, price lists, unannounced products, Alchemex product roadmap, and the terms of this Agreement. Failure to mark any Confidential Information as confidential or proprietary will not affect its status as Confidential Information under this Agreement. "Confidential Information" does not include information that is part of the public knowledge or literature or known to the general public at the time of receipt or has entered the public domain through no fault of the receiving party.

1.5 End-User means a person that acquires, either directly or indirectly through its third party purchasing agent or other like intermediary, Authorised Products for their own use and not for further sale or distribution.

1.6 Alchemex Marks means the names, logos and slogans used by Alchemex, including without limitation, registered trademarks and logos, corporate names, trade names, trademarks, service marks, product names, website names and URLs, CBP designations, and other marks identified and described in the Trademark Guide, any marketing collateral and other material prepared by Alchemex or otherwise recognized under common law as property of Alchemex. Without limiting the foregoing, any URL or website or other name or mark that includes the words "Alchemex" or "Excel on Steroids" and other Alchemex Marks, or any variant of such words that resemble such Marks, shall be deemed to be Alchemex Marks.

1.7 CBP Programme means the document(s) describing the Alchemex CBPs, Programme benefits and other relevant Programme information, as well as Programme information specific to this CBP (such as any Business Plan), any of which Alchemex may modify from time to time in its sole discretion in accordance with this Agreement.

1.8 CBP Portal means the Alchemex communications vehicles that Alchemex uses generally for communicating with its channel CBPs, including Partner zone, CBP mailings and/or emails.

1.9 CBP means the Alchemex CBP as described under this Agreement, the CBP Programme and other documentation as published by Alchemex.

1.10 CBP Tier means the specific CBP tier for which CBP is registered, which may be adjusted per the terms of the CBP based upon CBP's performance.

1.11 Trademark Guide means the most current trademark style and content guide available in the CBP Programme, which sets forth certain rules and restrictions on the use of Licensed Marks.

## **Section 2 Proprietary Rights**

2.1 Ownership. Title to and ownership of all proprietary rights and interests, including copyrights, moral rights, patents, trademarks, trade names, domain names, trade secrets and all other intellectual property rights, in and to Authorised Products, CBP materials and Alchemex Confidential Information and all copies and modifications, enhancements and upgrades thereto, and all Alchemex Marks will at all times remain with Alchemex and/or third-parties who have licensed rights to Alchemex. All use of the Licensed Marks and any other proprietary materials by CBP will inure to the benefit of Alchemex. Upon Alchemex's request and at Alchemex's expense, CBP will assist Alchemex with respect to any and all efforts of Alchemex to protect and enforce its proprietary rights.

2.2 Confidentiality. Each party acknowledges that in the performance of its duties under this Agreement, the other party will communicate Confidential Information. Each party agrees that it will not use in any way for its own or a third party's account, nor disclose to any third party, any Confidential Information revealed to it by the other party except to fulfil its express obligations under this Agreement. Each party will take every reasonable precaution to protect the confidentiality of such information.

2.3 No Copying, Reverse Engineering, Etc. Without the express written consent of Alchemex, CBP will not reproduce, alter, vary, translate, create derivative works to or in any way modify Authorised Products or cause others to do the same. CBP will not, under any circumstances, disassemble, decompile, or reverse engineer, the Authorised Products or Alchemex Confidential Information, in whole or in part, or cause others to do the same.

2.4 Protection. CBP will use its best efforts to protect the Authorised Products from unauthorised copying, dissemination, or disclosure and from other unauthorised use. CBP will not take any action that infringes or is inconsistent with any of Alchemex's rights in or to any of the Authorised Products, Licensed Trademarks, trade secrets or other intellectual property or proprietary rights in any country or jurisdiction in the world.

2.5 Territory Laws. If Alchemex in its sole discretion determines that the laws, rules, regulations or policies of any country are or become materially insufficient to protect its Intellectual Property Rights in and to Authorised Products, Alchemex may restrict or terminate the CBP's rights to market and distribute Authorised Products in that country.

2.6 No Rights. No rights whatsoever are granted by Alchemex to CBP under these General Terms and Conditions, whether to resell Alchemex products or to provide training, support or other services related to Alchemex products and CBP agrees to not provide any of the foregoing products or services unless expressly permitted under a mutually executed Schedule to this Agreement.

## **Section 3 CBP Obligations**

3.1 Orders/Payment. CBP will comply with Alchemex's requirements for orders and payment (as well as all territorial laws and requirements), including providing Alchemex with the names and addresses of End-Users and details of the Authorised Products so ordered and an executed copy of the End-User License Agreement. All orders will be subject to acceptance by Alchemex, either through confirmation or shipment, and, in the case of shipment, the order is accepted only as to the portion of the order actually shipped. Alchemex reserves the right to cancel or suspend any orders placed by CBP and to suspend any CBP benefits, if CBP fails to make any payment under this Agreement; to meet credit or financial requirements established by Alchemex; or to comply with the terms and conditions of this Agreement. Further, in the event CBP fails to pay Alchemex on a timely basis, CBP shall pay all costs of collection, including attorneys' and collection agency's fees. In the case of FTP (or similar electronic) deliveries, such deliveries shall be deemed complete upon delivery by Alchemex of the order onto the FTP site (or similar electronic platform).

3.2 Certification. Within three (3) months after the Effective Date, CBP will become certified for the Authorised Products and the CBP by fulfilling the certification training requirements for the CBP Tier as described in the CBP Programme and as otherwise determined by Alchemex. CBP will timely apply for and pass all of the requirements of Alchemex for re-certification and will take any additional training and fulfil any additional certifications required by Alchemex on an ongoing basis for each CBP, and ensure there is no lapse in certification.

3.3 Territory. CBP will not exercise any of the rights granted under this Agreement, either directly or indirectly, outside of the Territory without Alchemex's prior written consent.

3.4 Records. CBP will during the term of this Agreement, and for three (3) years after termination of this Agreement, keep and maintain complete and accurate business records and documentation with respect to its activities under this Agreement, and will make such records available to Alchemex or its agents for inspection at CBP's address set forth on the Cover Page or at such other address designated by notice in the manner provided in this Agreement.

3.5 Pricing to End-Users. Alchemex will publish retail list prices to be adhered to by the CBP. CBP will at all times promote Alchemex and its products in a manner that reflects favourably at all times Alchemex products and Alchemex's goodwill and reputation, and will conduct its business in a highly ethical, professional and non-deceptive manner. CBP shall comply with Alchemex's privacy policy and other practices established by Alchemex from time to time.

3.7 CBP Programme Changes. CBP acknowledges that it has reviewed the CBP Programme in its entirety and understands its obligations under the CBP Programme. Alchemex may at any time modify the terms of the CBP Programme and the CBP, such change to be effective no later than thirty (30) days unless otherwise provided in the notice. CBP agrees that it shall strictly comply with the terms and conditions of the CBP Programme, including any changes or updates to the Guide in accordance with the applicable notice period. CBP's failure to comply with any term or condition of the CBP Programme shall be grounds for immediate termination of this Agreement or any Schedule by Alchemex.

3.8 Similar Technology. During the term of this Agreement, and for a period of six (6) months following termination thereof, CBP agrees that it will not market nor sell any software or products developed by CBP (or by any legal affiliate of CBP), the functionality of which is substantially similar to that of any Authorised Product or other Alchemex product.

3.9 Publicity. Unless expressly permitted under the CBP Programme, no press release, advertising or other publicity regarding this Agreement or relationship may be made without Alchemex's prior written approval.

3.10 Confusing Marks. CBP agrees that it will not use in any manner other marks or promote its goods and/or services in a manner that is likely to cause confusion with the Alchemex Marks, or other conduct its business in any manner that might suggest it is a legal affiliate of Alchemex. To the extent CBP is using or has applied for or registered any website URLs, corporate names, trademark or other material that incorporates or resembles any Alchemex Mark, CBP agrees that it shall assign all rights to such marks, URLs and other items to Alchemex.

3.11 Insurance. CBP shall maintain all business, labour and liability insurance reasonably appropriate to cover its performance and obligations (including any indemnities) under this Agreement, and will, upon request by Alchemex, provide Alchemex with a current Certificate of Insurance (or equivalent).

#### **Section 4 Alchemex Obligations**

4.1 Authorised Product Change. Alchemex has the right, in its sole discretion, to (a) change any of the Authorised Products, (b) change the design, or discontinue developing, producing, licensing or distributing any of the Authorised Products, or (c) change the prices for any or all Authorised Products. In addition, Alchemex has the right, in its sole discretion, to announce new products or services, which when added to this Agreement by mutual consent of the parties will be subject to the same terms and conditions.

4.2 Benefits. Alchemex will use commercially reasonable efforts to provide the CBP benefits described in the CBP Programme; provided, that the failure of Alchemex to provide CBP with any or all of such benefits will not result in any liability to CBP or any other person. Alchemex reserves the right to revise such benefits from time to time in its sole discretion.

#### **Section 5 Warranties/Limitations**

5.1 Limited Warranty. Alchemex represents and warrants to CBP that: (a) Alchemex has the right to license Authorised Products without obtaining the consent of any other person (other than consents that have already been obtained); To the maximum extent permitted by applicable law, ALCHEMEX EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES AS TO QUALITY OR MERCHANTABILITY, ACCURACY, AND FITNESS FOR A PARTICULAR PURPOSE.

5.2 Limitation of Liability. Except as provided in Section 5.1 and 5.4 and to the maximum extent permitted by applicable law, Alchemex will not have any liability to CBP or to any other person, in tort, contract or otherwise, for claims, losses, damages or injuries arising out of the use or licensing of Authorised Products, except for the return by Alchemex of an amount not in excess of the payments by CBP to Alchemex during the preceding twelve (12) month period for the corresponding Authorised Product. To the maximum extent permitted by applicable law, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OR LOST PROFITS (INCLUDING WITHOUT LIMITATION LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA OR OTHER ECONOMIC ADVANTAGE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, except for claims by Alchemex against CBP for intellectual property infringement.

5.3 Limited Remedy. To the maximum extent permitted by applicable law, CBP's sole and exclusive remedy for any damage or loss in any way connected with Authorised Products (other than infringement claims discussed in Section 5.4 below) or any services furnished by Alchemex, whether or not caused by Alchemex's breach of warranty, negligence or any breach of any other duty, will be, at Alchemex's option, (a) replacement, repair or re-performance of Authorised Products or (b) return or credit of the appropriate portion of any payment by CBP with respect to such Authorised Products.

5.4 Indemnification of CBP. Alchemex will, at its expense, indemnify, defend and hold CBP harmless from and against any claim that Authorised Products infringe any copyright provided that CBP gives Alchemex prompt, written notice of any such claim and allows Alchemex to control the defence and all related settlement negotiations. CBP will allow Alchemex, at Alchemex's option and expense, if any infringement claim has occurred or in Alchemex's reasonable judgment is likely to occur, to procure the right for CBP to continue using Authorised Products or to replace or modify them so that they become non-infringing; and, if neither of the foregoing alternatives is available on terms that are reasonable, in Alchemex' sole discretion, then CBP will, upon the request of Alchemex, return Authorised Products to Alchemex, whereupon Alchemex will return the relevant CBP payment to CBP. Alchemex will incur no liability to CBP on account of such request and return, except for return of the CBP payment. THE FOREGOING IS CBP'S SOLE REMEDY, AND

ALCHEMEX'S SOLE LIABILITY AND OBLIGATION, WITH RESPECT TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY INTELLECTUAL, INDUSTRIAL OR PROPRIETARY PROPERTY RIGHT.

5.5 Indemnification of Alchemex. CBP will, at its sole expense, indemnify, defend and hold Alchemex harmless from and against any and all liability, losses, damages, claims or causes of action, and expenses connected therewith, including reasonable attorneys' fees, caused directly or indirectly, by or as a result of any representation made by CBP or any of its employees or agents as to the performance of Authorised Products that is not approved in advance and in writing by Alchemex, and by the misconduct or negligence of CBP or its employees and agents in the marketing, resale, distribution, installation and support of Authorised Products.

5.6 CBP Statements. CBP agrees not to make any representations about the Authorised Products beyond that described in the documentation and materials provided by Alchemex. CBP further agrees that it has no right to, and will not, undertake any warranty obligations for Authorised Products.

## **Section 6 Term and Termination**

6.1 Term and Renewal. This Agreement has an initial annual term commencing on the Effective Date and ending at the last day of the Alchemex fiscal quarter that follows 12 months from the Effective Date (resulting in a maximum initial term of just less than 15 months), unless sooner terminated in accordance with this Agreement. Thereafter, 12-month annual renewals are available only if both parties mutually agree to renew in writing and CBP pays the applicable CBP fee. Continued performance by the parties beyond expiration of any term without a signed renewal shall not be construed as renewal of this Agreement.

6.2 Termination Without Cause. Notwithstanding anything to the contrary, either party may terminate this Agreement or any Schedule without cause upon thirty (30) days written notice to the other party; except that if Alchemex terminates this Agreement without cause within three (3) months of commencement of any annual term, then, Alchemex will refund any CBP fee paid for such annual term.

6.3 Termination for Cause. This Agreement and/or any individual Schedule may be immediately terminated by the non-breaching party, effective upon giving written notice to the breaching party, in the event of any of the following: (a) any Act of Bankruptcy; (b) any failure to make payments due under this Agreement; (c) after the first three (3) months of the Effective Date, any failure by CBP to maintain at least one (1) employee certified in each applicable category and Authorised Product for which CBP is registered; (d) failure to generate any net license revenue to Alchemex in any six (6) month period; or (e) failure to remedy within thirty (30) days after written notice of any breach of any material term or condition of this Agreement (including any CBP requirement or obligation set forth in the CBP Programme, Trademark Guide, certification requirements or other). In addition to the foregoing, this Agreement and/or an individual Schedule may be terminated in accordance with the CBP Programme and/or such Schedule.

6.4 Rights Upon Termination. Alchemex's sole obligation to CBP upon termination will be for delivery of paid for, but undelivered, Authorised Products to End-Users. Upon termination, all amounts due will become immediately payable and any credits due to CBP will be applied to outstanding balances, all rights and licenses granted to CBP hereunder shall cease and CBP will cease to represent itself as part of the CBP or otherwise affiliated in any manner with Alchemex. Within thirty (30) days after the termination of this Agreement, CBP will return to Alchemex or certify that it has destroyed all copies of Authorised Products, NFRs, Alchemex Confidential Information and any materials incorporating in any manner any Alchemex Marks in its possession or inventory.

## **Section 7 Miscellaneous**

7.1 Injunctive Relief. CBP acknowledges that it is impossible to measure fully, in money, the injury that will be caused to Alchemex Solutions in the event of a breach or threatened breach of any of the provisions of this Agreement, and CBP waives the claim or defence that payment of money will afford Alchemex an adequate remedy at law. Alchemex will accordingly be entitled to injunctive relief to enforce the provisions and restrictions of this Agreement, without prejudice to any other claim that Alchemex may have at law or in equity.

7.2 Choice of Law/Venue/Arbitration. (a) The validity and interpretation of this Agreement and the rights and obligations of the parties hereunder will be governed by the laws of South Africa, notwithstanding any conflict-of-law doctrines. The parties expressly disclaim and exclude the United Nations Convention on Contracts for the International Sale of Goods. Each party hereby: (i) agrees that any legal proceeding arising out of or relating to this Agreement will be instituted in Durban, South Africa; (ii) consents to the personal and exclusive jurisdiction of such court; and (iii) waives any objection that it may have to the laying of venue of any such proceeding and any claim or defence of inconvenient forum.

(b) Except for actions initiated by either party for injunctive relief pursuant to Section 7.1, any dispute, controversy or claim arising out of, or relating to or in connection with this Agreement or the performance or non-performance of either party hereto will be submitted to arbitration under the rules and regulations of the Arbitration Foundation of South Africa (“AFSA”) by an arbitrator to be appointed by AFSA. The cost and expenses of such arbitration will be borne by the parties equally unless the determination by the arbitrator includes an award of costs, in which case, in accordance with such award. Any arbitration brought hereunder will be held in Durban, South Africa. The decision and award of the arbitrator will be final and conclusive upon the parties, in lieu of all other legal, equitable or judicial proceedings between them, and no appeal or judicial review of the award or decision of the arbitrator will be taken, but rather any such award or decision may be entered as a judgment and enforced in any court having competent jurisdiction over the party against whom enforcement is sought.

7.3 Notice. All notices and other communications required or permitted to be given under this Agreement and shall be deemed to have been received on the earlier of the date of actual receipt when: (a) when delivered personally; (b) when sent by confirmed facsimile (followed by the actual document in air mail/air courier); (c) three (3) days after having been sent by registered or certified mail, postage prepaid (or six (6) days for international mail); (d) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of delivery; or (e) sent by electronic mail with a delivery confirmation (followed by the actual document in any of the other manner of notice described). Notice shall be sent to the other party at its address set forth on the Cover Page or at such other address designated by notice provided in this section. Further, Alchemex may provide notice to CBP through the CBP Portal and other communication mechanisms established for the CBP generally.

7.4 Severability. If any provision of this Agreement is determined to be void, invalid, unenforceable or illegal for any reason, such provision will be fully severable from this Agreement and the enforceability of the remaining provisions hereof will not be affected thereby; provided that, if any one or more of the provisions contained in this Agreement is determined to be invalid or unenforceable because such provision is held to be excessively broad as to duration, geographic scope, activity or subject, such provision will be deemed amended by limiting it to the minimum extent necessary to make such provision valid and enforceable under applicable laws.

7.5 Force Majeure. Neither party will be liable to the other under this Agreement if delayed or prevented from performance by causes beyond its control including, but not limited to, fires, floods, strikes, acts of God, war, insurrection, governmental restrictions, or other causes of a like or different nature beyond the control of such party.

7.6 No Waiver. The failure of either party to exercise any of its rights under this Agreement for a breach thereof will not be deemed to be a waiver of such rights nor will the same be deemed to be a waiver of any subsequent breach.

7.7 Assignment. Neither this Agreement nor the appointments and licenses granted herein may be assigned or transferred, in whole or in part, by CBP, by operation of law, change of control, merger, acquisition or otherwise, without the prior written consent of Alchemex.

7.8 Independent Contractor. Each party is an independent contractor and as such has no authority to bind or commit the other party. Nothing in this Agreement will be construed to create a joint venture, franchise, agency, fiduciary, employment or any similar arrangement between the parties.

7.9 Non-solicitation. During the term of this Agreement and for a period of six (6) months thereafter, each party agrees not to directly or indirectly solicit, recruit or attempt to persuade any employee of the other party to terminate his or her employment unless such employee is responding independently to a general advertisement.

7.10 Survival. Sections 1, 2, 5, 6.4 and 7, all will survive the termination of this Agreement.

7.11 Entire Agreement. This Agreement (including all Schedules) constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings, statements, warranties, representations, and agreements, oral and written, relating hereto. In the event of any conflict between any of the Schedules to this Agreement, the Schedule applicable to the specific CBP will prevail.

### **Agreement to Terms and Conditions**

I hereby warrant that all supplied information is true and correct and that I am duly authorised to sign this CBP agreement.

Thus done and signed at \_\_\_\_\_ on this the \_\_\_ day of \_\_\_\_\_20\_\_.

\_\_\_\_\_  
**Name and Surname (for Vendor)**

\_\_\_\_\_  
**Signature (for Vendor)**

Thus done and signed at \_\_\_\_\_ on this the \_\_\_ day of \_\_\_\_\_20\_\_.

\_\_\_\_\_  
**Name and Surname (for CBP)**

\_\_\_\_\_  
**Signature (for CBP)**