



## STANDARD TERMS FOR SERVICES

These Standard Terms for Services (these “**Terms**”) contain the terms and conditions under which Alef Omega, Inc. d/b/a Figure (“**Figure**” or “**Company**”) will provide services to the educational institution, company or organization (“**Customer**”) listed in any Work Order (as defined below). By executing a Work Order (“**Work Order**” or “**Order**”), or accessing the Licensed Products, Customer is agreeing to these Terms.

### 1. SERVICES

**1.1 Scope of Agreement.** These Terms, together with the Terms of Use and Privacy Policy (as such policies may be updated from time to time) and any and all Work Orders, sets forth the terms and conditions pursuant to which Company agrees to (a) make the Figure educational mathematics assistance web-based platform and related application (the “**Licensed Products**”) available to Customer for the contracted number of End Users during the Term, and (ii) if applicable, provide to Customer professional services related to Customer’s access to, and use of, the Licensed Products (“**Professional Services**” and together with the Licensed Products, the “**Services**”), in each case as further set forth in one or more Work Orders. In the event of a conflict between these Terms and a Work Order, the terms of the applicable Work Order shall govern.

**1.2 The Services; Access and Use License.** Subject to the terms and conditions of these Terms, during the Term, Company shall use commercially reasonable efforts to provide (i) Customer and Authorized Users access to the Licensed Products, and (ii) Customer the Professional Services. Company hereby grants to Customer, for the Term of these Terms, a non-exclusive, non-transferable, non-sublicenseable, license to access and use the Licensed Products made available to Customer and its End Users solely for educational purposes. All such access and use shall be subject to the terms and conditions of these Terms. All rights not specifically granted herein are reserved by Company.

**1.3 Access and End Users.** Customer’s faculty, staff, and students who are authorized by Customer to access and use the Licensed Products on Customer’s behalf (each, an “**End User**”) will use the Licensed Products using a unique user identification name and password (“**User ID**”). Customer shall be responsible for ensuring the security and confidentiality of User IDs for all End Users. User IDs may not be shared with any person other than the specific End User to whom the User ID is assigned. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Company promptly of any such unauthorized use. Customer is solely responsible for activity taken in connection with each End User account, whether or not such activity is authorized by Customer. Prior to accessing or using the Services, each End User will be required to agree to abide by the Company’s Terms of Use and Privacy Policy.

**1.4 License Restrictions.** Customer may not use the Services beyond the usage, storage or other applicable restrictions set forth in the Terms. In addition, Customer will not, and will not permit any End User to: (i) permit any third-party to install, configure, access, use or copy all or any portion of the Services; (ii) modify, reverse engineer, decompile, disassemble, distribute, create derivative works based on, copy or otherwise exploit all or any portion of the Services except as expressly permitted by applicable law, rule or regulation; (iii) sell, sublicense, rent, lease, or otherwise transfer rights to all or any portion of the Services; (iv) use the Services to operate in or as a time-sharing, outsourcing or service bureau environment or in any manner which supports the business of a third party; (v) obscure, remove or alter any intellectual property rights

notices or markings on the Services; or (vi) use the Services in any manner which could (a) pose a security risk or (b) disable, overburden, damage, or impair the performance or operation of the computing environment on which the Licensed Products are hosted (including where such use interferes with any other party's use thereof). With notice to Customer, Company reserves the right to suspend access to and use of the Licensed Products with respect to any End User that Company reasonably believes has undertaken, or participated in, any of the foregoing activities.

## **2. PAYMENT**

**2.1 Fees and Expenses.** In consideration of the rights granted and Services provided by Company hereunder, Customer hereby agrees to pay Company all fees, costs and expenses due pursuant to Work Orders entered into hereunder, as set forth in this Section 2. All fees due hereunder are non-refundable and are not contingent on any additional services or products to be provided. Customer agrees to pay for Company's pre-approved reasonable travel and lodging expenses for Professional Services performed at Customer's premises.

**2.2 Cost per Student Service; Overage.** The "Cost per Student" specified in any Work Order is based upon the number of teacher and student licenses. A Work Order may specify a number of "Contracted Students," which is the number of students for whom Customer has purchased a particular Service as of the date of the applicable Order. Customer and Company agree that, upon request by the Company Representative to serve more students than the number of Contracted Students or to provide additional Services, the terms of applicable Work Order will apply, without the need for the parties to enter into an amendment. A request may be made orally or in writing, and any students in excess of the number of Contracted Students to receive a particular Service ("**Additional Students**") will be billed at a pro-rated portion of the corresponding Cost Per Student. Pro-ration will be based on the number of months remaining in the Term, including the first month in which the Additional Student received Services of any duration.

**2.3 Invoicing; Taxes; Late Payment.** Except as otherwise set forth herein or in an Order, Company will invoice Customer on a periodic basis, no more frequently than monthly, for amounts due hereunder, and Customer shall pay all amounts invoiced within thirty (30) days after the invoice date. All payments must be made in U.S. dollars. Outstanding balances shall accrue interest at a rate equal to the lesser of one-and-a-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Company's reasonable costs of collection. All fees due hereunder are exclusive of, and Customer shall pay, all sales, use and other taxes, export and import fees, customs duties and similar charges applicable to the transactions contemplated by these Terms, except for taxes based upon Company's net income. Customer agrees to indemnify and hold Company harmless from and against all claims, liabilities, costs, expenses and penalties arising out of or related to Customer's failure to timely report or pay any such taxes, fees, duties or charges. All rights of the Customer herein are conditioned on the Company's receipt of full payment. In addition, the Company may suspend performance of Services and withhold delivery of Deliverables (as defined below) until payment in full of all amounts due. The Company shall not be liable for any damages, losses or liabilities that may arise out of the Company's suspension of Services and/or withholding of Deliverables due to Customer's non-payment.

## **3. PROPRIETARY RIGHTS**

**3.1 Company Property.** Company shall retain all right, title and interest in and to (a) all software, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that Company makes, develops, conceives or reduces to practice, whether alone or jointly with others, in the course of performing the Services, (b) all enhancements, modifications, improvements and derivative works of each and any of the foregoing, and (c) all copyrights, trademarks, service marks, trade secrets, patents, patent applications and other proprietary rights related to each and any of the foregoing (collectively, the "**Company Property**"). The Services (including any updates or enhancements thereto), the look and feel

and layout of any reports or Deliverables generated in connection with the Services, and all worldwide intellectual property rights therein, are the exclusive property of Company and its licensors.

### **3.2 Customer Data.**

**3.2.1** All information concerning Customer and any personally identifiable information concerning End Users (“**Customer Data**”) shall belong to Customer and shall be considered Confidential Information of Customer subject to the terms and conditions of these Terms.

**3.2.2** Customer represents to Company that Customer has the legal right to, and is authorized to, use the Customer Data and that before Customer provides any Customer Data (whether directly or indirectly) to Company that Customer has obtained any licenses, consents and authorizations necessary for Company to use the Customer Data and provide the Services.

**3.2.3 Use of Customer Data.** Customer acknowledges and agrees that Company requires access to Customer Data in order to provide the Services. Customer hereby grants to Company a non-exclusive, non-transferable right and license to use the Customer Data: (a) for the limited purpose of performing Company’s obligations hereunder for the benefit of Customer, and (b) on a confidential basis in order to test, evaluate, improve, and commercialize the Services (or any successor products or services). Subject to the rights granted in these Terms, as between the parties, Customer retains all right, title and interest in and to the Customer Data, and Company acknowledges that it neither owns nor acquires any additional rights in or to the Customer Data not expressly granted by these Terms. Notwithstanding the foregoing, Customer acknowledges and agrees that Company may aggregate and anonymize data made available to Company in connection with the Services (“**Metric Data**”) and may use such Metric Data for its own lawful purposes including, in order to improve the Services and Company’s other products and services, and to better understand and predict market trends. In no case will Company use or disclose any Metric Data in any way that could identify Customer, an End User, or any third party. Nothing in this Section 3.2.3 shall be deemed to limit Company’s right to access or use, for any lawful purpose, any Customer Data that is made generally available to the public.

### **3.3 Customer Content.**

**3.3.1 Pre-Existing Content.** In connection with Customer’s access to, or use of, the Services, Customer may have the opportunity to upload or provide via other means to the Company, certain information, videos, data, documents, and other materials (“**Pre-Existing Content**”). As between Customer and Company, Customer remains the owner of all Pre-Existing Content that Customer makes available in connection with the Services. Customer unconditionally grants to the Company all rights to Customer’s Pre-Existing Content necessary to perform the Services. Customer represents and warrants to the Company that Customer has all rights necessary to provide the license and make the Pre-Existing Content available and that Customer is the owner of the Pre-Existing Content. Customer grants the Company full authority to develop Derivative Works (as defined below) using the Services based on the Pre-Existing Content, whether made by the Company’s staff, or by others, including Customer and the End Users, using the Services (the “**Deliverables**”).

**3.3.2 License of Derivative Works.** Customer acknowledges and agrees that all Derivative Works developed using the Services shall belong solely to the Company, and, provided that Customer is not in breach of any material term of these Terms or an Order, Customer shall have a perpetual, exclusive and transferable license to use the Deliverables through the Services. For the purposes of these Terms, “**Derivative Works**” shall mean for material subject to: (a) copyright, registered or unregistered design protection, any work which is based on Pre-Existing Content, such as revision, modification, improvement, upgrades, translation, abridgment, condensation, expansion, collection, compilation or any other form in which such pre-existing works may be recast, transformed or adapted using the Services; and (b) trade secret protection, any new material, information or data relating to and derived from the Pre-Existing Content using the Services,

including new material which may be protected by copyright, patent or other proprietary right, and, with respect to each of the above, the preparation and/or use of which, in the absence of these Terms or other authorization from the owner, would constitute infringement under applicable law.

#### **4. CUSTOMER DATA SECURITY AND PRIVACY**

**4.1 FERPA.** The parties hereto acknowledge that (i) Customer Data may include personally identifiable information from education records that are subject to the Family Educational Rights and Privacy Act, as amended (“**FERPA Records**”); and (ii) to the extent that Customer Data includes FERPA Records, Customer will be considered a “School Official” (as that term is used in FERPA and its implementing regulations) and will comply with the requirements and obligations of School Officials under FERPA. Each party represents and warrants to the other party that it will comply with all provisions of FERPA applicable to such party’s performance hereunder.

**4.2 COPPA.** The parties hereto also acknowledge that Customer Data may include personally identifiable information from children under the age of 13, subject to the Children’s Online Privacy Protection Act and related regulations (“**COPPA**”). Where applicable, Customer acknowledges that it will act as agent for the parents of students under the age of 13 for purposes of COPPA. Customer represents to Company that through the duration of these Terms, the Customer is duly authorized to provide the data to Company for processing based on having obtained parental consent where necessary. Customer further acknowledges that it has read, fully understands, and agrees to abide by Company’s Privacy Policy, available at <https://figuremath.com/privacy/> and as may be revised from time-to-time, incorporated by reference herein.

#### **5. WARRANTIES**

**5.1 Limited Warranty.** Company warrants to Customer that the Services will be performed in a professional manner consistent with industry standards. Company shall, as its sole obligation and Customer’s sole and exclusive remedy for any breach of the warranty set forth in this Section 5.1, re-perform the Services which gave rise to the breach or, at Company’s option, refund the fees paid by Customer for the Services which gave rise to the breach; provided that Customer shall notify Company in writing of the breach within thirty (30) days following performance of the defective Services, specifying the breach in reasonable detail.

**5.2 Disclaimer.** EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 5.1 ABOVE, THE SERVICES AND ANY DELIVERABLES ARE PROVIDED WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE OR COURSE OF DEALING. COMPANY DOES NOT WARRANT THAT THE SERVICES OR THE DELIVERABLES WILL MEET CUSTOMER’S REQUIREMENTS.

#### **6. INDEMNIFICATION**

**6.1 Indemnification by Company.** Company will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that any Deliverable infringes upon or misappropriates a United States patent or copyright of the third party, provided that such claim only relates to any modifications made by Company to original Customer materials and does not relate in any way to such Customer materials as provided by Customer to Company. Company will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer (a) notifying Company promptly in writing of such action, (b) giving Company sole control of the defense thereof and any related settlement negotiations, and (c) cooperating and, at Company’s request and expense, assisting in such defense or settlement. If any

Deliverable becomes, or in Company's opinion is likely to become, the subject of an infringement claim, Company may, at its option, either (i) procure for Customer the right to continue using the Deliverable, (ii) replace or modify the Deliverable so that it becomes non-infringing, or (iii) accept return of the Deliverable and give Customer a refund of the fees paid by Customer for the Deliverable. Notwithstanding the foregoing, Company will have no obligation under this Section or otherwise with respect to any infringement claim based upon (w) any use of the Deliverable not in accordance with these Terms or for purposes not intended by Company, (x) any use of the Deliverable in combination with other products, equipment, software, or data not supplied by Company, (y) any aspect of the Deliverable that is not modified by the Company, or (z) any modification of the Deliverable by any person other than Company. THIS SECTION 6.1 STATES COMPANY'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR THIRD PARTY CLAIMS AND ACTIONS.

**6.2 Indemnification by Customer.** Customer agrees to indemnify, and hold the Company, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation reasonable attorney's fees and costs, arising out of or in any way connected with (a) Customer's access to or use of the Services; (b) Customer's violation of these Terms; (c) Customer's violation of any third party right, including without limitation any intellectual property right or any publicity, confidentiality, property or privacy right, including but not limited to any such right under FERPA or COPPA; (d) any claim that Customer's use of the Services caused damage to a third party, or (e) any incorrect or fraudulent statements or information Customer provides in connection with the Services.

## **7. LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING OUT OF A BREACH BY CUSTOMER OF SECTIONS 1.4 OR 3.1 ABOVE, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THESE TERMS, THE USE OF OR INABILITY TO USE THE DELIVERABLES OR ANY SERVICES PROVIDED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY SERVICES PROVIDED UNDER THESE TERMS OR ANY ORDER, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO COMPANY UNDER THESE TERMS DURING THE 12-MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT COMPANY WOULD NOT ENTER INTO THESE TERMS OR ANY ORDER WITHOUT THESE LIMITATIONS ON COMPANY'S LIABILITY.

## **8. CONFIDENTIAL INFORMATION**

**8.1 Definition.** "Confidential Information," as used herein, shall mean the terms and conditions of these Terms and all information related to a party's business, financial affairs or operations, including, but not limited to, information related to business plans, technology, source code, product or service development plans, pricing, techniques and methods, which is either marked as confidential or with a similar legend or, if disclosed orally, is confirmed as confidential in writing to the receiving party within 30 days following disclosure.

**8.2 Obligations.** Each party agrees, during the Term (as defined below) and for a period of five (5) years thereafter, that it will (a) hold the other party's Confidential Information in confidence using the same standard of care as it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care; (b) not disclose the Confidential Information of the other to any third party without the other's prior written consent, except as expressly permitted under these Terms; and (c) limit access to the other's Confidential Information to those of its employees or agents having a need to know

who are bound by confidentiality obligations at least as restrictive as those set forth herein. Notwithstanding the foregoing, (i) either party may make disclosures as required or requested by a court of law or any governmental entity or agency, provided that such party provides the other with reasonable prior notice to enable such party to seek confidential treatment of such information; and (ii) either party may disclose the terms and conditions of these Terms solely to potential investors, acquisition partners and its legal counsel and accountants in connection with a proposed financing or acquisition, provided that each such third party is bound by confidentiality obligations at least as restrictive as those set forth herein.

**8.3 Exclusions.** The restrictions on the use and disclosure of Confidential Information shall not apply to any Confidential Information, or portion thereof, which (a) is or becomes publicly known through no act or omission of the receiving party; (b) is lawfully received from a third party without restriction on disclosure; (c) is already known by the receiving party at the time it is disclosed by the disclosing party, as shown by the receiving party's written records; or (d) is independently developed by the receiving party without reference to the other's Confidential Information, as shown by the receiving party's written records.

**8.4 Injunctive Relief.** Each party acknowledges that a breach or threatened breach of this Section 8 would cause irreparable harm to the non-breaching party, the extent of which would be difficult to ascertain. Accordingly, each party agrees that, in addition to any other remedies to which a party may be legally entitled, the non-breaching party shall have the right to seek immediate injunctive or other equitable relief in the event of a breach of this Section 8 by the other party or any of its employees or agents.

**8.5 Exception & Immunity.** Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), each party is on notice and acknowledges that, notwithstanding the foregoing or any other provision of these Terms:

**8.5.1 Immunity.** An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

**8.5.2 Use of Trade Secret Information in Anti-Retaliation Lawsuit.** An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.

## **9 TERM AND TERMINATION**

**9.1 Term.** These Terms will commence on the date the first Work Order is executed by Customer and will continue in effect until terminated in accordance with these Terms (the "**Term**").

**9.2 Termination.** Either party may terminate these Terms or any uncompleted Order at any time upon at least sixty (60) days' prior written notice. Either party may terminate the Terms and all uncompleted Orders by written notice in the event the other party is in material breach of any obligation under these Terms or any Order, which default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such default. Notwithstanding the foregoing, Company may also terminate the Terms and all uncompleted Orders immediately upon written notice in the event (a) Customer fails to pay any amounts payable hereunder within ten (10) days after receiving written notice from Company that payment is due, or (b) Customer breaches any provision in Section 3, 4 or 8. The termination or expiration of a single Order shall not cause the automatic termination of any other Order.

**9.3 Effect of Termination.** Upon the expiration or termination of these Terms, (a) each party shall return the other's Confidential Information in its possession or control, and (b) all amounts owed to Company under these Terms which accrued before such termination or expiration will be immediately due and payable. Upon any termination of these Terms by Company for Customer's material breach pursuant to Section 9.2 above, (i) all licenses to the Company Property granted to Customer hereunder will immediately terminate, and (ii) Customer shall promptly discontinue all use of the Company Property, erase all copies thereof from Customer's computers, and return to Company all other copies thereof in its possession or control. Sections 2 (Payment), 3 (Proprietary Rights), 4 (Customer Data Security and Privacy), 5.2 (Disclaimer), 6 (Indemnification), 7 (Limitation of Liability), 8 (Confidential Information), 9.3 (Effect of Termination), and 10 (General Provisions) will survive the expiration or termination of these Terms for any reason.

## **10. GENERAL PROVISIONS**

**10.1 Publicity.** Customer hereby grants to Company the limited right to use Customer's name and marks in marketing and publicity materials listing Customer as a customer of Company.

**10.2 No Agency.** Customer and Company are independent contractors and neither party is the legal representative, agent, joint venturer, partner, employee or employer of the other party for any purpose whatsoever, and neither party has any right, power or authority to assume or create any obligation of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect.

**10.3 Force Majeure.** Neither party shall be liable to the other for delay or failure of performance or for any breach of the Terms, other than any default in payment obligations, caused by events outside of its reasonable control, including but not limited to, war, civil unrest, acts of civil or military authorities, fire, earthquake or other natural disaster or act of God.

**10.4 Assignment.** Neither party may assign its rights or delegate its obligations under these Terms without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Company may assign its rights and obligations under these Terms to a parent, affiliate, or subsidiary, or to a successor, whether by way of merger, sale of all or substantially all of its assets or otherwise. Any attempted assignment of these Terms not in accordance with this subsection shall be null and void.

**10.5 Entire Agreement.** These Terms and its exhibits and Orders constitute the entire agreement between the parties with regard to the subject matter hereof. No oral or written representation that is not expressly contained in these Terms is binding on Company or Customer.

**10.6 Severability.** If any provision of these Terms is for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceable under applicable law in any respect, then these Terms will be construed as if such invalid, illegal, or unenforceable provision were excluded from these Terms.

**10.7 Subcontractors.** Customer acknowledges and agrees that Company may hire subcontractors to perform Services hereunder. Company will be responsible for the direction and coordination of the services of each subcontractor and Customer will have no obligation to pay any subcontractor directly.

**10.8 Waiver.** Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**10.9 Amendment.** These Terms may only be amended, modified, or supplemented by an instrument in writing specifically mentioning these Terms and signed by an authorized representative of each party.

**10.10 Notices.** Any notice, demand, request, or other communication required or permitted to be given under these Terms (any “**Notice**”) will be made in writing and will be delivered by personal delivery, by overnight courier, by email or by registered mail, return receipt requested, postage pre-paid, to Company and to Customer as follows:

If to Customer, to it at the address set forth on the applicable Work Order.

If to Company:

Alef Omega, Inc. d/b/a Figure  
Attn: A.C. Rondono, CEO  
7755 E. Quincy Ave., D4-308  
Denver, CO 80237  
E-mail: ACRondono@figuremath.com

or to such other addresses as a party may designate pursuant to this notice provision. Any notice given shall be deemed to have been received on the date on which it is delivered personally, by courier service or by email, or, if mailed, on the third business day following the mailing thereof.

**10.11 Governing Law and Venue.** These Terms will be governed by the laws of the State of Colorado, without regard to its choice of law provisions. Each of the parties hereto consents to the exclusive jurisdiction and venue of the state and federal courts of Denver County, Colorado.

**10.12 Export.** Customer shall comply with all applicable export and import control laws and regulations in its use of the Deliverables and, in particular, Customer shall not export or re-export the Deliverables without all required United States and foreign government licenses. Customer will defend, indemnify, and hold Company harmless from and against any violation of such laws or regulations by Customer, its agents or employees.