

**March 2022 - version 2022.01**

**See Annex A for a summary of changes since January 2021 version 2020.03**

## Introduction

Please read these Terms and Conditions and the Privacy Policy carefully before You start to use the Site or You request Services from us. We recommend that You print a copy of these Terms and Conditions and Privacy Policy for future reference.

While this is an important and legally-binding document, We've tried to keep these Terms of Conditions as readable and user-friendly as possible. We have, however, stuck to some conventional legal document practices (such as capitalisation of 'You' and 'Us' in relation to each party) where it's helpful for clarity.

## Who We Are

The Site is operated, and the Services are provided, by Alkemygold Limited ("We/Our/Us/Alps"). We are registered in England and Wales under company number 04258920 and Our registered office is Kevin Conway House, Longbow Close, Bradley, Huddersfield, HD2 1GQ.

## Who do these Terms and Conditions apply to?

These terms and conditions, alongside the Schedules and documents referred to ("Terms and Conditions") shall apply to Your use of the Alps website (<https://alps.education>) ("Site"), the Data Transfer System and the Application(s) that are accessed via the Site, and the Services that You receive from Us.

Please read these Terms and Conditions and the Privacy Policy carefully before You start to use the Site or request Services from us.

By using Our Site, Services, Application or Data Transfer System You are indicating that You accept these Terms and Conditions and that You agree to abide by them. If You do not agree with or accept any of these Terms and Conditions, You must not use Our Site or provide any Data to Us.

## Glossary of Terms

This section defines the terms we use throughout these Terms and Conditions.

**A-Level Results Day:** the day on which You are permitted to publicise student's A-Level results.

**Academic Year:** 1 September to 31 August each year

**Administrator:** a user authorised by You for managing terms and conditions and data contracts, the Users granted access and the Services purchased.

**Analysis:** the information generated at Your instruction through the provision of Your selected Services in relation to the Data You provide to us.

**Application:** the Connect application.

**Charged for Areas:** those areas of the Application for which there is a charge to use those services.

**Connect:** the web-based analysis tool that allows users to:

- (i) transfer Data to us (as part of the Data Transfer System); and
- (ii) interact with their end of Academic year and within-Academic Year data incorporating Alps benchmarks and indicators accessed via the Site.

**Data:** any data submitted by You, including Pupil Data, via the Data Transfer System or otherwise

**Data Transfer System:** the Application.

**Directories:** the directories of good practice or other reporting or analysis that we offer to our clients, or are contracted to provide to a Regional Schools Commissioner, Head Teacher Association or other such body (and a Directory means one of the Directories).

**Event Outside Our Control:** any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural disaster, or failure of public or private telecommunications networks.

**GCSE Results Day:** the day on which You are permitted to publicise student's GCSE level results.

**Group Analysis:** analysis using Your data together with that of other schools or colleges in a MAT, MCC or Local Authority area or other such group.

**Group Contract:** a contract for Services with a MAT, MCC or Local Authority for Group Analysis, including Analysis relating to You.

**Indexation:** the increase in a Price, reflective of the percentage increase in the RPI during the previous 12 months, up to a maximum of 10%.

**MAT:** a 'Multi Academy Trust,' accountable for a number of academies and operating as a single legal entity.

**MCC:** a multi-centre college having more than one separate location at which teaching is delivered.

**Owner Research:** research, analytics and analysis carried out by us using an anonymised or de-identified instance of the Pupil Data You submit.

**Price:** the cost of Your Subscription, selected Analysis or receipt of other Services as agreed with You provided that where elements of the Price become payable by You at different times any reference to the Price means such elements of it as have been incurred by you.

**Pupil Data:** Personal Data about pupils from Your school or college supplied by You to Us.

**Purchased Analysis:** any additional Analysis requested by You which is beyond the scope of Your Subscription available at a Price confirmed by Us.

**Results Window:** the period of time between 23:59 on the Sunday prior to A level Results Day and 30 September immediately following that A level Results Day.

**RPI:** the Retail Prices Index (All Items) published by the Office for National Statistics. If the Retail Prices Index stops being published or becomes inappropriate in Our opinion, We may rely on any other index or measure of inflation as we consider appropriate.

**Services:** use of the Application and (if selected) processing of Analysis and any additional advice, training, Analysis or any other services that may be provided by us to You in relation to the Application, Analysis or otherwise.

**Subscription:** the entitlement to access the Application for a Subscription Period.

**Subscription Period:** a period relating to the duration of Your Subscription as agreed in writing with You or confirmed via the Application prior to Your Subscription being activated.

**Summit:** the web-based analysis tool that allows Group Analysis Users to interact with the Group Analysis via an on-line platform

**UK GDPR:** the UK General Data Protection Regulation as set out in s.3(10) Data Protection Act 2018.

**User:** a person authorised by You to access the Data Transfer System or Application and to receive Analysis.

**You or Your:** the school, college or other organisation (including a MAT, MCC or Local Authority) that has used the Site, Data Transfer System, Application and/or submitted Data to us.

## Summary of Terms and Conditions

To start with, here's a brief summary of the things that We think are particularly important, both in terms of Our key commitments to You and Your responsibilities:

### You agree to:

- Only use Our Site and Services if You are able to do so in accordance with data protection laws
- Retain Your responsibility as the Data Controller, and comply with the legal responsibilities it brings, over the data You send to Us, including its accuracy and completeness
- Have full responsibility for Your account, and the credentials related to Your account, and ensure no unauthorised access to it
- Pay for the Services You use for which there are associated charges
- Act in good faith at all times when using Our Site and Services

### You agree not to:

- Copy or share any of Our Intellectual Property
- Use Our Intellectual Property (code, trademarks or other material) without Our consent
- Do anything which adversely affects the security of Our Sites and Services, for example infecting it with viruses, Trojan horses or other similar harmful components
- Access, attempt to access, or inspect any data for which You do not have permission

### We agree to:

- Provide analysis of the data received from You for the purposes of education and school improvement for those purposes necessary to provide the Services You have requested and for Owner Research
- Adhere strictly to the terms of all data protection laws, including the UK GDPR, the Data Protection Act 2018 and any future amendments or applicable legislation
- Only store and process the minimum data required to provide Our Services, and to inform You in advance of using any of Our Services what data that Service requires
- Take an approach to building and maintaining Our Sites and Services that involves privacy by design and privacy by default
- Help You to comply with all Subject Access Requests made relating to the data We store
- Transport and store all personal data originating from You using modern and best practice encryption technologies, with pseudonymisation where appropriate.
- Only retain data for as long as required, and delete all data if You ask us to do so.
- Ensure that all data is held securely by taking steps so that data is not corrupted or lost
- Always maintain adequate liability insurance
- Maintain ISO27001 and Cyber Essentials Compliance
- Make Terms of Conditions and Privacy Policies clearly and publicly available on Our website
- Act in good faith at all times when providing Our Site and Services

### We agree not to:

- Store or transport personal or special category data outside of the UK, the EEA or outside of countries which are granted by UK adequacy regulations issued under Section 17A Data Protection Act 2018 or Paragraphs 4 and 5 of Schedule 21 of the Data Protection Act 2018 except in accordance with the Data Protection Schedule
- Share Your personal data with any third parties except where explicitly requested by You (including by commissioning a Service requiring sharing of data with a third party) or required by law
- Transport personal data originating from You in a non-encrypted format
- Claim ownership or exclusive rights over any of the data processed or created as part of Services provided to You

## Detailed Terms and Conditions

### Receiving Our Services

1. There are various ways to receive any of Our Services:
  - a. You or Your Local Authority, MCC or MAT may have entered into a separate agreement for the provision of Services.
  - b. You may wish to receive Services direct from us where there is no separate agreement between Your Local Authority, MCC or MAT and us; or
  - c. You may wish to receive additional Services from us to those provided under Your Local Authority, MCC or MAT's agreement.

These Terms and Conditions shall apply to Your use of the Site and commissioning of any Services as a data controller. Use of the Site includes accessing, browsing, or registering to use the Site.

### Services

2. By requesting any Services (by whatever method) or submitting Data to us via the Data Transfer System or otherwise You agree that You are making an offer to purchase the relevant Services for the Price.
3. Upon the earlier of issuing an invoice to You, granting access to the Application, processing, making available or otherwise sending to You the Analysis produced by provision of the Services We are accepting Your offer in return for payment of the Price.
4. Where You have Subscribed to the Application You may also:
  - a. access any Directories that You have been included in, in line with paragraph 44; and
  - b. purchase Analysis in addition to Your Subscription.
5. Purchased Analysis will be made available to You via the Application (subject to You holding a valid Subscription) wherever reasonably possible within 8 business days of receipt of the Data, or if longer, as soon as reasonably practicable.
6. The availability of Analysis from Services is dependent on the necessary Data being provided by You and the correctness of Your Data.
7. The appearance of Analysis, other Analysis and/or the Application may vary from that shown on images on the Site and/or in Our promotional materials.

### The Application

8. Access to the Application is subject to payment of the Price in full and Us activating your Subscription.
9. Your Subscription will be activated from the date the Price is received by Us or as close to that date as is reasonably possible.
10. Once your Subscription has been activated, Your access to the Application will be available for the Subscription Period. If Your Subscription is activated during a Results Window Your Subscription Period shall expire on the commencement of the Results Window of the year Your Subscription is due to expire.
11. Access will be subject to a Subscription to the Application being in effect.

## Analysis

12. You will be invoiced for any Purchased Analysis immediately Your request is submitted.
13. Purchased Analysis will be made available to You via the Application (subject to You holding a valid Subscription) wherever reasonably possible within 8 business days of receipt of the Data, or if longer, as soon as reasonably practicable.
14. The availability of Analysis from Services is dependent on the necessary Data being provided by You and the correctness of Your Data.

## Pricing and Payment

15. Prices for Services shall be made available on request.
16. We reserve the right to review and amend Our Prices at Our complete discretion from time to time for new Subscriptions.
17. At Our discretion, We may honour incorrectly advertised prices, unless the pricing error is obvious and unmistakable and could have reasonably been recognised by You, in which case, We shall not be obliged to provide the Services at the incorrect (lower) price.
18. Unless We have had written confirmation from Your Local Authority, MCC or MAT that it is paying for all or part of the Services (including Purchased Analysis), invoices shall be payable by You within 14 days from receipt of an invoice from us.
  - a. For Subscriptions of more than one year We will invoice You for the full cost of the whole Subscription at the start of the Subscription Period and the whole Price for the Subscription will be payable immediately.
19. Where You are a part of a Group Contract, You agree that;
  - a. by uploading Data Your Administrator agrees that the MAT or MCC shall be able to access copies of the Analysis and other Analysis and a Group Analysis generated from the Services. In such circumstances, You warrant that all fair processing notices required to be given in accordance with the Data Protection Schedule are wide enough in scope to capture any Processing of Pupil Data under this paragraph;
  - b. each entity within the Group Contract must hold its own Subscription licence;
  - c. if the Group Contract or Your involvement in it is terminated Your Subscription will end automatically unless You agree a new Subscription with Us.
20. Save where the law permits, no portion of any payments whatsoever previously paid by You to Us in relation to the Services shall be owed or be repayable by Us to You.

## Your Account

### Your account and password

21. An account on the Site to make use of the Application can be created by Your Administrator for any User forming part of Your staff or governing body. The User then must input a valid email address and create a password.
22. The correct use of accounts details, codes and passwords is an important part of the technical and organisational measures We provide to maintain the security of Data during processing by Us.

## Accessing the Secure Area

23. We may create a secure section of the Application to access secure information that is specific and confidential to You ("Secure Area").
24. In order to access the Secure Area, We will enable Your Administrator to grant access permissions to Your Users with access credentials set by the permitted Users. You must treat all passwords and identification codes as confidential and must not disclose them to any third party outside of Your organisation.
25. You are permitted to give access to the Secure Area to members of Your staff and governing body ("Authorised Person(s)") however, You will be responsible for ensuring that all persons who access the Secure Area or Site are made aware of these Terms and Conditions and the Privacy Policy and comply with them.
26. It is Your responsibility, to validate as suitable, any Authorised Person who is permitted by You to access the Secure Area.
27. In the event that any Authorised Person is no longer employed by You or part of Your governing body, or no longer requires access to the Secure Area, You are responsible for ensuring that their access is immediately revoked by Your Administrator.
28. In the event that We deem an Authorised Person as inappropriate (for any reason) to access the Secure Area, We reserve the right to disable their access without further notice and with immediate effect.

## Notification of Account Compromise

29. You agree to notify us immediately if You, or any of Your Authorised Persons, have lost or compromised Your account details, or if any unauthorised activity has taken place using Your account details. If You know or suspect that anyone other than You or Your Authorised Persons knows Your user identification code or password or has otherwise been given access to the Secure Area, You must immediately notify us by email on [info@alps.education](mailto:info@alps.education) or by telephone on 01484 887 600.

## Monitoring

30. We reserve the right to monitor usage of the Site by all Users (by way of audits or otherwise) for the purpose of (among others) ensuring compliance with the terms of these Terms and Conditions and the Privacy Policy. We reserve the right to disable any User's identification code or password or delete Your account at any time if, in Our reasonable opinion, You or any Authorised Person have failed to comply with any of the provisions of these Terms and Conditions or Privacy Policy or for any reason related to security or breach of laws. We also reserve the right to disable access to the Secure Area in relation to any unpaid invoice.

## Account Deletion

31. If Your Subscription ends, You inform us that You no longer use the Site, or We choose to disable or delete Your account as a result of monitoring, in line with these Terms and Conditions, You will no longer be able to access any Analysis on the Site and We will delete (or at Your option and cost, return) any Data uploaded to the Site in line with Our Retention Schedule in force at the relevant time.

## Training

In the event that Your Subscription includes training provided by Us, the following provisions will apply:

### Intellectual Property

32. All intellectual property rights in or arising out of or in connection with the training shall be owned by Us.
33. All training materials used by Us in the provision of the Services are Our exclusive property. We license to You all relevant intellectual property rights free of charge and on a non-exclusive basis to the extent necessary to enable You to make reasonable internal use of the training services and any course materials provided. You shall not use any part of the course materials for any other purposes, including commercial purposes, without obtaining a licence to do so from Us.
34. Where delivered virtually, for example via Microsoft Teams or other online webinar platforms, training may be recorded for training and monitoring purposes and must be used for internal purposes only.

### Your Obligations

35. You shall:
  - a. update Us as soon as reasonably practicable and, in any event, no less than 5 working days before the delivery of any training as to any changes to the training to be delivered;
  - b. co-operate with Us in all matters relating to the training;
  - c. where applicable, provide Us with access to Your premises, office accommodation and other facilities as reasonably required by Us for the purposes of delivering the training;
  - d. provide Us with such information and materials as it may reasonably require in order to supply the training, and ensure that such information is accurate in all material respects;
  - e. ensure that it has appropriate health and safety measures in place to prevent harm to any member of Our personnel or Our consultant attending Your premises to perform the training; and
  - f. maintain appropriate public liability and other relevant insurances during the course of the training.
36. We shall have no liability if we are prevented or delayed from providing the training due to any act or omission by You, or breach by the You of Your obligations under these Terms and Conditions.
37. Our employees and consultants providing the training will comply with any safeguarding instructions provided by You. Trainers provided by Us do not usually work directly with children or young adults as part of their contracts and not all trainers are directly employed by Us. Disclosure and Barring Service (DBS) records are not held by Us for employees or consultants. It is therefore Your responsibility to satisfy yourselves of any safeguarding requirements.

### Our Obligations

38. We shall:
  - a. provide the training at the time, date and location specified by Us using reasonable care and skill;
  - b. be solely responsible for Our employees and contractors in the carrying out of the training. We will provide all training materials as part of the training and these will be with Our employee or consultant delivering the training on the day, In the event that You increase delegate numbers or the times and length of training, We reserve the right to adjust the price of the training.



## Use of the Data Transfer System and Application

### Uploading Data to the Site

39. Whenever You upload Data to the Site, You must do so in compliance with these Terms and Conditions. You may not use the Site in any way which may interfere with or prevent the proper working of the Site.
40. Where You upload Data to the Site, You grant us a royalty-free, non-transferable, non-exclusive licence:
  - a. for the term of Our agreement to process on Your behalf the Data to the extent necessary to perform the Services; and
  - b. to use anonymised or de-identified information extracted from the Data for Our own analytical, research purposes; ("Owner Research").
41. You warrant that any Data provided by You complies with these Terms and Conditions and will not infringe any third party's intellectual property rights. You will be liable to us and indemnify and keep indemnified and hold us harmless against any claims, losses, costs or expenses incurred by us for any breach of that warranty.
42. We shall have the right to disclose Your identity to any third party who is claiming that any content posted, or Data uploaded by You to the Site constitutes a violation of their intellectual property rights, or of their right to privacy.
43. We will not be responsible, or liable to any third party, for the content or accuracy of any content posted by You or any other user of the Site.

### Directories

44. If You have elected to participate in and receive a Directory where one applies and a Directory applies to Your organisation We will in order to allow for the preparation of the Directory process Your Data by presenting and analysing parts of it with information relating to other organisations within the coverage of the Directory.
45. Where We process Your Data to produce a Directory the Data will be de-identified or anonymised.

### Your Licence to use Our Data Transfer System

46. In order to upload Your Data and transfer it to us to be viewed in the Application or if applicable Summit (subject to the purchase of such Services and in consideration of the Price), We grant to You a limited, revocable licence to use Connect as the Data Transfer System.

### Data Transfer System Allowances

47. The correct use of Connect is an important part of the technical and organisational measures We provide to maintain the integrity and security of Data. You are only permitted to use Connect to:
  - a. submit Data to us in order for us to provide the Services
  - b. generate internal reports and target grades for current students for internal educational purposes
48. The use of Connect as the Data Transfer System and the supply of Services in connection with this is governed by these Terms and Conditions. If You decide to use Connect (as applicable) as the Data Transfer System and use the Application, You are agreeing to be bound by these Terms and Conditions. If You do not agree to be bound by these Terms and Conditions, You must not use Connect as the Data Transfer System or use the Application.

## Data Transfer System Restrictions

49. Nothing in these Terms and Conditions grants You any legal rights to the Data Transfer System or the Application other than as necessary to access and use the Data Transfer System and Application for Your internal business and educational purposes only.
50. You and any Authorised Users are not permitted:
- a. to use the Data Transfer System for any purposes other than uploading Data to send to us or use the Application for any purposes other than viewing internal analysis generated by the Data Transfer System. You and any Authorised Users are not permitted to use the Data Transfer System or Application on behalf of any other school, educational institution or other organisation without Our prior approval;
  - b. except as expressly permitted by these Terms and Conditions and save to the extent and in the circumstances expressly permitted by law, to rent, lease, sub-license, loan, copy, modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the Data Transfer System or Application (or any associated documentation of these) or use, reproduce or deal in the Data Transfer System or Application (or any part thereof of these) in any way;
  - c. to transfer the Data Transfer System or Application (or any associated documentation of these) or the benefit of these Terms and Conditions to another person unless You have Our prior written agreement;
  - d. modify, adapt, edit, abstract, create derivative works of, sell or in any way commercially exploit any part of the Application or Site;
  - e. to frame or mirror any part of the Data Transfer System or Application without Our express written consent;
  - f. use the Data Transfer System or Application to provide outsourced services to third parties or make it available to any third party or allow or permit a third party to do so; or
  - g. combine, merge or otherwise permit the Data Transfer System or Application to become incorporated in any other program, nor arrange or create derivative works based on it.

## Data Transfer System Errors

51. We do not warrant that any element of the Data Transfer System or Application will meet Your requirements or that the operation of the Data Transfer System or Application will be uninterrupted or error-free or that defects in the Data Transfer System or Application will be corrected. We are not liable for any failure by the Data Transfer System or Application to provide any functions not specified in its instructions or associated documentation.

## Obligations and Warranties

### Our Obligations to provide the Services

52. We will:
- a. use Our reasonable endeavours to deliver the Services as purchased in accordance with these Terms
  - b. comply with applicable laws in performance of the Services including as required by the Data Protection Schedule

## Your Obligations to Us

53. You warrant that:

- a. You will comply with all applicable laws including as required by the Data Protection Schedule
- b. Your Administrators have the authority to bind any organisation on whose behalf any of them uses the Site to purchase the Services;
- c. You have the right to upload the Data and to grant us a right to make an anonymised or de-identified copy of the same for the purpose of the Owner Research;
- d. You will obtain and at all times maintain all necessary licences and consents necessary for the provision of Our Services; and
- e. You will comply with all Our reasonable instructions regarding Your use of the Site, Data Transfer System, Application and any Services in order to preserve the security of Your Data including Analysis.

54. We shall not be required to process Analysis or complete Services if, after making reasonable requests to You, We do not receive all required information from You to provide the Services, or where You have breached these Terms and Conditions or, in Our reasonable opinion, You have not acted in good faith at any time.

## Your Obligations to Us when sharing Data and Analysis with Local Authorities

55. You warrant that, where and to the extent that sharing of Analysis and the processing of a Group Report including your data relating to your Data with a local authority is enabled by any of your Administrators or validly required by a local authority in accordance with a Group Contract including the relevant Analysis:

- a. You have all necessary permissions and consents;
- b. You have undertaken all such compliance steps, including without limitation as provided for in the Data Protection Schedule, such that We may undertake that sharing on the condition that the Local Authority is either
  - i. the Local Authority in the case of a Group Contract including the relevant Analysis, or
  - ii. subject to terms as provided for in the LA Sharing Schedule in relation to Your Data and Analysis where the data sharing is enabled by Your Administrator.

## Renewal, Non-Renewal and Cancellation

56. At least 90 days before the end of Your Subscription Period (Relevant Period), we may provide Account Administrators with written notice (including notice given within the Application) of the expiry and confirmation of the renewal Price of Your Subscription (Renewal Notice). The renewal Price of Your Subscription will be calculated in accordance with the most recent Price for Services, available on request.

57. On receiving a Renewal Notice, You may:

- a. allow Your Subscription to be automatically renewed at the stated Price;
- b. renew Your Subscription for a shorter term or change the Services within your Subscription by providing not less than 14 days' notice in writing including through the Application (Notice of Change) provided that You may not use a Notice of Change to change the Subscription Period to less than 12 months or produce a Subscription with no Services;
- c. cancel Your renewal by choosing the non-renewal option within Connect or by providing written confirmation to Us including through the Application during the Relevant Period and providing not less than 60 days' notice expiring within the Relevant Period (Notice of Cancellation).

58. If You fail to provide Notice of Cancellation or Notice of Change within the Relevant Period, Your Subscription Period shall automatically renew for the longer of:
- a term of equivalent length to Your Subscription Period; or
  - 12 months.
59. Instead of providing a Renewal Notice, we may;
- Confirm that we do not intend to renew Your Subscription, providing not less than 60 days' notice in writing (Non-Renewal Notice);
  - not provide you with either a Renewal Notice or Non-Renewal Notice.
60. In the event that we do not provide you with a Renewal Notice or Non-Renewal Notice;
- Save where clause (c) applies We will offer a renewal Price that does not exceed Indexation for the relevant year in which Your Subscription is due to renew;
  - You will reserve the right cancel Your Subscription by providing Notice of Cancellation;
- 60.1. Where You have a Subscription as a result of participation in a Group Contract Your Subscription will only be renewed if Your participation in the Group Contract is renewed.

## Termination

61. These Terms and Conditions are effective until:
- Your Subscription Period ends, and You have chosen not to renew Your Subscription in accordance with the Renewal provisions in these Terms and Conditions or we have provided You with a Non-Renewal Notice;
  - You have materially failed to abide by these Terms and Conditions (where such failure is not remediable or has not been remedied within 14 days of written notice from us of such failure);
  - You have failed to pay any amount due under these Terms and Conditions on the due date and such amount remains unpaid for 28 days after You have received a written notification from us that the payment is overdue; or
  - in the case of a Group Contract the Group Contract or Your participation in it is terminated.
62. Termination of these Terms and Conditions is without prejudice to any rights and remedies which may have accrued up to the date of termination.
63. Upon termination:
- the right to access any Services provided will terminate immediately;
  - You will immediately pay to us any of Our outstanding unpaid invoices and in respect of Services supplied but for which no invoice has been submitted, We will submit an invoice which will be payable by You immediately on receipt.
64. We reserve the right to suspend all Services as an alternative to termination of your Subscription provided that we may decide to terminate your Subscription if grounds for termination exist.

## General Terms

### Data Protection and Data Security (also see Data Protection Schedule)

#### Who is the Data Processor?

65. We are a 'data processor' for the purposes of UK GDPR and Data Protection Act 2018 whilst conducting activity such as the preparation of Analysis (as defined below) on behalf of a school or college or where passing on information to other bodies (e.g. Local Authority) when requested by a school or college.

#### Who is the Data Controller?

66. The school or college using Our services (or the organisation of which it forms part) will be the 'data controller' because it decides whether and when to send any information to Us and what We should do with it as well as retaining responsibility for assessing and applying Analysis.

## Intellectual Property

67. We (or Our licensors) shall at all times retain ownership of all intellectual property rights in and to the Site, Data Transfer System and Application. Nothing in these Terms and Conditions grants You any legal rights in the Site, Data Transfer System and Application other than as necessary to enable You to access the Site, upload the Data or receive the Services.

68. We shall at all times retain ownership of all copyright and other intellectual property rights in all and any Analysis and Directories generated, any deliverables relating to the Services, and any advice or training given as part of the provision of the Services and nothing shall be deemed as a release, transfer, assignment or other disposal of Our rights.

69. We grant You a non-exclusive, non-transferable, revocable licence to reproduce extracts of, and otherwise use Directories and Analysis (including any hardcopy and/or electronic contents) for the purposes of: (i) analysing Your Data to identify areas of strengths and weaknesses and improving standards, and (ii) other internal educational purposes that relate to You, including as evidence of performance for inspections or in discussions with Your Local Authority, MCC or MAT.

70. You must not modify the paper or digital copies of any materials You have printed or downloaded from the Site or Application in any way, and You must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.

71. You must not use any part of the materials on Our Site or Application for any other purposes, including commercial purposes, without obtaining a licence to do so from us or Our licensors.

72. If You breach any provisions of these Terms and Conditions relating to Our intellectual property, We are entitled to disable or delete Your access to the Site, Data Transfer System and/or Application and Your receipt of any Services.

## Content of the Site

73. We may update the Site from time to time and may change the content at any time. However, We give no warranties, express or implied, that the content of the Site is accurate, complete or up to date and, whilst We will use Our reasonable efforts to update the information on the Site We are under no obligation to do so.

74. The Analysis, Directories, and other information relating specifically to You and displayed in the Application are reliant on You providing up to date and accurate Data to us. You are responsible for ensuring the accuracy and completeness of the Data that You provide to us as this will form the basis of any Services We provide to You. No refund or rebate of any Price paid or payable shall be made by us to You where You upload inaccurate Data.

75. You must not upload any Data or other content which is unsuitable, offensive, defamatory, or breaches any laws or any rights of third parties and We reserve the right to delete any Data or other content determined by us to be so.
76. We do not guarantee that the Site, any element of it or any content on it, will be free from errors or omissions.

## Use and access to the Site

77. We shall use reasonable endeavours to make the Site available to You. From time to time it will be necessary for us to carry out maintenance in respect of the Site which may result in occasional periods of downtime. Although We will use reasonable endeavours to minimise such downtime periods We make no representations or warranties to You in respect of the availability of the Site.
78. We do not warrant that the Site will meet Your requirements or that the operation of the Site will be uninterrupted or error-free or that defects in the Site will be corrected.

## Viruses

79. We do not guarantee that the Site will be free from interruptions, bugs or viruses.
80. You are responsible for configuring Your information technology, computer programmes and platform in order to access the Site. You should use Your own virus protection software.
81. You must not misuse the Site (including the Application) by introducing any software viruses or other malware (including any bugs, trojans, worms, logic bombs or any other self propagating or other such program or material which is malicious or technologically harmful) that may infect or cause damage to the Site (including the Application). You must not attempt to gain unauthorised access to the Site (including the Application), the server on which the Site (including the Application) is stored or any server, computer or database connected to the Site (including the Application). You must not attack the Site (including the Application) via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, You would commit a criminal offence under the Computer Misuse Act 1990. We will report any such breach to the relevant law enforcement authorities, and We will co-operate with those authorities by disclosing Your identity to them. In the event of such a breach, Your right to use the Site (including the Application and any Services) will cease immediately.
82. We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect Your computer equipment, computer programs, data or other proprietary material due to Your use of the Site (including the Application) or to Your downloading of any material posted on it, or on any website linked to it.

## Linking to Our Site

83. You may link to Our Site, provided You do so in a way that is fair and legal and does not damage Our reputation or take advantage of it.
84. You must not establish a link in such a way as to suggest any form of association, approval or endorsement on Our part where none exists.
85. You must not establish a link to the Site in any website that is not owned by You, nor may You create a link to any part of the Site other than the home page.
86. We reserve the right to withdraw linking permission without notice.

## Third Party Links

87. Where Our Site contains links to other sites and resources provided by third parties, these links are provided for Your information only. We have no control over the contents of those sites or resources, and such sites and resources are subject to the terms and conditions, privacy policies or other terms of use set out on such sites.

## Liabilities and Waivers

### Limits to Our Liability

88. Nothing in these Terms and Conditions excludes or limits Our liability for death or personal injury arising from Our negligence, or Our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English law.
89. To the extent permitted by law, We exclude all conditions, warranties, representations or other terms which may apply to the Site (or any content on it, including the Application), Data Transfer System or Services, whether express or implied.
90. We will not be liable to You or any user for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with the use of, or inability to use, the Site, Data Transfer System or Application or from any errors or deficiencies in the same (including any content displayed on the Site).
91. We will not be liable for any:
- loss of profits, sales, business, or revenue;
  - loss of business interruption or anticipated savings;
  - loss of business opportunity, goodwill or reputation; or
  - indirect or consequential loss or damage.
92. In relation to the supply of any Services, and in addition to the limitations of liability set out in paragraphs 89 to 93 inclusive, in no event shall Our liability exceed the amount paid by You, or on Your behalf, for the Services ordered by You in the 12 months preceding the event giving rise to the relevant claim.

## Waiver of Remedies

93. The failure of either party to insist upon strict performance of any provision of these Terms and Conditions; or, exercise any right or remedy to which it is entitled under these Terms and Conditions; shall not constitute a waiver thereof and will not prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

## Events Outside Our Control

94. We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under a contract between You and us subject to these Terms and Conditions that is caused by an Event Outside Our Control.
95. If an Event Outside Our Control takes place that affects the performance of Our obligations under a Contract:
- We will contact You as soon as reasonably possible to notify You; and
  - Our obligations under these Terms and Conditions will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control.



96. Where the Event Outside Our Control affects Our delivery of Services to You, We will arrange a new delivery date with You after the Event Outside Our Control is over.

## Anti-bribery

97. For the purposes of this section the expressions “adequate procedures” and “associated with” shall be construed in accordance with the Bribery Laws. “Bribery Laws” means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010.

98. Each of Us and You shall comply with applicable Bribery Laws including ensuring that each party has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that all of that party’s personnel, all others associated with that party and all of that party’s subcontractors involved in the performance of these Terms and Conditions so comply.

99. Neither Us nor You shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on Our or Your behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on Our or Your behalf.

100. You and Us shall immediately notify the other party as soon as it becomes aware of a breach of any of the requirements in this section.

## Freedom of Information

101. We agree to provide You all necessary assistance as reasonably requested by the You to enable You to respond to a request for information under the Freedom of Information Act 2000 (“FOIA”).

102. You agree to notifying us before responding to any request for information pursuant to FOIA, and We shall both agree whether any information designated by us as commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of FOIA and act accordingly.

## Transfer of Rights and Obligations under these Terms and Conditions

103. We may transfer Our rights and obligations under a contract to provide You with Services to another organisation, but this will not affect Your rights or Our obligations under these Terms and Conditions. We will always notify You in writing or by posting on the Site if this happens.

104. You may only transfer Your rights or Your obligations under these Terms and Conditions to another person if We agree in writing.

## Rights of Third Parties

105. Except where specifically provided for, a person who is not a party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the Terms and Conditions but this does not affect any right or remedy of a third party which exists or is available otherwise than pursuant to that Act.

## Applicable Law

106. These Terms and Conditions (and any non-contractual obligations arising out of or in connection with them) shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.



## Entire Agreement

107. These Terms and Conditions (and the documents referred to in these Terms and Conditions) constitute the entire agreement between You and us in relation to their subject matter. You acknowledge that You have not relied on any statement, representation or promise made or given by or on behalf of us which is not set out in these Terms and Conditions or any document referred to within them.
108. These Terms and Conditions apply to the exclusion of any other terms and conditions that You may seek to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

## Changes to these Terms and Conditions

109. We reserve the right to amend these Terms and Conditions at any time without notice to You. The latest, fully-amended version of these Terms and Conditions is published on the Site. If You continue to use the Site after the effective date of each amendment, You will be conclusively deemed to have accepted such amended version of these Terms and Conditions. It is Your responsibility to check these Terms and Conditions from time to time to verify such variations.
110. Each of the clauses of these Terms and Conditions operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

## Questions and Concerns

111. If You have any questions or concerns please write to The CEO, Alkemygold Limited, Kevin Conway House, Longbow Close, Bradley, Huddersfield, HD2 1GQ

## Acceptance of Terms and Conditions

112. In respect of use of the Site, Data Transfer System and/or Application and Your receipt of the Services: Please click on the button marked "I Accept" at the end of these Terms and Conditions if You accept them. If You refuse to accept these Terms and Conditions and click "Cancel", You must cease to use the Site and You will not be able to access the Data Transfer System or Application or receive the Services.

## Data Protection Schedule

1. In this Schedule the following terms shall have the meanings set out below:
  - a. "Data Protection Laws" shall mean the Data Protection Act 2018, the UK General Data Protection Regulation (UK GDPR), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the national data protection authority including any amending or replacement legislation in force from time to time.
  - b. Data Controller, Data Processor, Data Subject and Personal Data, Special Category Data, Personal Data Breach, Automated Decision Making, Profiling, processing and appropriate technical and organisational measures shall have the meanings given to them in the Data Protection Laws.
  - c. "Purpose" means the purposes of using Personal Data to:
    - i. produce Analysis in accordance with these Terms and Conditions;
    - ii. anonymise or de-identify for the purposes of carrying out Owner Research; and
    - iii. produce the Directories in accordance with these Terms and Conditions.
2. The parties acknowledge that the factual arrangement between them dictates the role of each party in respect of the Data Protection Laws. Notwithstanding the foregoing, the parties anticipate that You shall act as a Data Controller and We shall act as Data Processor in respect of the Processing of the Pupil Data, as follows:
  - a. You shall be a Data Controller where You are Processing the Pupil Data or other personal data within Your Data in connection with Your relationship with the pupil (or the parent and/or legal guardian, member of staff or other data subject) and for any other purpose You choose to Process the Pupil Data or other such personal data within Your Data for from time to time; and
  - b. We shall be a Data Processor where We are Processing the Pupil Data or other such personal data within Your Data for the Purpose.
3. There may also be limited circumstances where we are a Data Controller:
  - a. We shall be a Data Controller where we are Processing any personal data you provide to us to create an account.
  - b. We will also be a Data Controller of the personal data that we obtain about your use of our Services. We will use this information to analyse and better understand the use of our Services as well as to improve our Services and provide you with recommendations of other services we think may be of use to you.
4. We each agree to comply with the Data Protection Laws in relation to the Pupil Data or other such personal data within Your Data at all times.
5. You:
  - a. agree to share with us in the format instructed by us from time to time (acting reasonably) Pupil Data or other personal data within Your Data, for the Purpose.
  - b. warrant that the Pupil Data or other personal data within Your Data is Processed on the basis of one or more of the legal grounds set out in Article 6 and where applicable Article 9 of the UK GDPR or as otherwise provided for in the Data Protection Laws.
  - c. warrant that You have provided all necessary fair processing notices to all pupils (and their parents and/or legal guardian) as legally required that are clear and that comply with the Data Protection Laws, in relation to the Processing for the Purpose and to enable the sharing of the Pupil Data or other personal data within Your Data with the third parties listed in the Terms and Conditions.

- c. warrant that if You use the results of our Analysis or other Analysis for Profiling or Automated Decision Making, You have made that known to data subjects, provided them with all necessary fair processing notices, informed them of their right to object to Automated Decision Making and will respect any exercise of that right in accordance with the provisions of the Data Protection Laws.
  - d. agree to the collection and use by us of all or any of Your school or college details inputted into the Site or otherwise supplied to us (in manual, electronic or any other form) including data associating staff with pupil outcomes relevant to Your school or college PROVIDED THAT We shall only use such details:
    - i. for internal processes and the production of Analysis,
    - ii. otherwise anonymised or de-identified research or
    - iii. Group Analysis where applicable;
  - f. agree that We will use User and Administrators contact details for the purposes of providing the Services and it shall be for You to advise us of any changes in Users or Administrators.
  - g. agree:
    - i. for information provided by You to be included in any Directories as notified to You by us (in accordance with the criteria that is specified at the time of such notification); and
    - ii. that all fair processing notices required to be given in accordance with paragraph are wide enough in scope to capture the Processing of Pupil Data or other personal data within Your Data under this paragraph, unless You notify us in writing (within the timeframe specified at the time of notification) that You do not wish to be so included in such Directories.
6. When Processing Pupil Data or other personal data within Your Data for the Purpose as a Data Processor section 7 below will apply. Section 7 will not apply where we are Processing personal data as a Data Controller.
7. When Processing Pupil Data or other personal data within your Data for the Purpose We shall:
  - a. only Process the Pupil Data or other personal data within Your Data for the Purpose, and only in accordance with Your documented instructions (including those set out in the Terms and Conditions);
  - b. maintain appropriate technical and organisational processes, procedures and security measures in place, to safeguard against any unauthorised or unlawful Processing and against accidental loss or destruction of, or damage to the Pupil Data or other personal data within Your Data. These measures will be appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Pupil Data or other personal data within Your Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Pupil Data or other personal data within Your Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - c. only appoint sub-contractors as Data Processors where such Data Processors are engaged on terms no less onerous than the terms set out in this schedule and You agree to such appointment of sub-contractors as Data Processors;
  - d. ensure that Our employees only have access to the Pupil Data or other personal data within Your Data where this is necessary for the Purpose or for things related to the Purpose, that Our employees are contractually obliged to keep Pupil Data or other personal data within Your Data confidential and that Our employees are reliable and aware of their obligations under the Data Protection Laws;

- e. ensure that We will not disclose any Pupil Data or other personal data within Your Data to third parties (other than Our sub-contractors appointed in accordance with this schedule) unless You tell us to do so or where it is necessary for the Purpose PROVIDED THAT the Services may include:
  - i. instructing us to disclose Pupil Data or other personal data within Your Data to Your Local Authority, MCC, MAT or similar body on request and
  - ii. authorising us to use and disclose Pupil Data or other personal data within Your Data to a Regional Schools Commissioner, Head Teacher Association or such other body in order to provide the Directories in accordance with the applicable terms and conditions;
- f. apply the Retention Schedule to the Pupil Data or other personal data within Your Data and other Data;
- g. except as required by law, on termination of these Terms and Conditions, however caused, or as otherwise requested deal with the Pupil Data or other personal data within Your Data and other Data in accordance with the Retention Schedule;
- h. not transfer any of the Pupil Data or other personal data within Your Data outside of the United Kingdom or the European Economic Area (EEA) without the following conditions being fulfilled or Your written consent for us to do so:
  - i. there are appropriate safeguards in place to transfer the Pupil Data or other personal data within Your Data;
  - ii. the data subjects have enforceable rights and effective legal remedies;
  - iii. We comply with Our obligations under the Data Protection Laws where and to the extent that they specify adequate levels of protection to any Pupil Data or other personal data within Your Data that is transferred; and
  - iv. We comply with Your reasonable instructions with respect to the processing of the Pupil Data or other personal data within Your Data.
- i. Where the processing of Your Pupil Data by transmission to You, where You are located in:
  - i. a country outside of the United Kingdom, but within a country located in EEA; or
  - ii. a country that has been confirmed by the UK government as having an adequate level of protection
  - iii. then we shall conduct the processing in accordance with these terms and the Data Protection Laws.
- j. Where the processing of Your Pupil Data by transmission to You, where you are located outside the United Kingdom, the EEA or any other country that has been confirmed by the UK government as having an adequate level of protection, then the Standard Contractual Clauses in the Standard Contractual Clauses Schedule shall apply.
- k. assist You, at Your cost, in responding to any request from a Data Subject and in ensuring compliance with Your obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- l. maintain complete and accurate records and information to demonstrate our compliance with this clause 7 and allow for, or assist with, audits by you or your designated auditor. If you would like to arrange an audit please contact us at [support@alps.education](mailto:support@alps.education).
- m. notify You in the event that We receive a data subject request or correspondence from the Information Commissioner's Office (the "ICO") in relation to the Processing of the Pupil Data or other personal data within Your Data;

- n. notify You if We are obliged to make a disclosure of the Pupil Data or other personal data within Your Data under any statutory requirement, such notification to be made in advance of such disclosure or immediately thereafter unless prohibited by law;
  - o. notify You without undue delay on becoming aware of a Personal Data breach affecting Pupil Data or other personal data within Your Data; and
  - p. where We use information extracted from the Pupil Data or other personal data within Your Data for Owner Research, We shall be responsible for anonymising or de-identifying the Pupil Data or other personal data within Your Data and shall not be entitled to use or re-constitute from other data in Our possession un-anonymised or re-identified Pupil Data or other personal data within Your Data. We shall only use such anonymised or de-identified data for Owner Research and shall not identify, influence decisions about or do anything likely to cause substantial damage or distress to individual pupils.
8. In case the Data Protection Laws change in a way that these Terms and Conditions are no longer adequate for the purpose of governing lawful data processing exercises, the parties both agree that we will negotiate in good faith to review these Terms and Conditions in light of the new legislation.

## Retention Schedule

1. Analysis from Personal Data as provided by You will be deleted automatically after 8 years. Our online service will keep a record of your analysis for 8 years and our analysis tables show four-year trends.
2. Personal Data as provided by You will be deleted within 28 days of Your confirmed request for deletion
3. Personal Data as provided by You will be deleted within 28 days if You do not confirm a re-subscription within one year and six months of the end of the Academic Year within which your Subscription lapsed.
4. Anonymised or de-identified data will be held for 6 Academic Years and automatically deleted afterwards.

## LA Sharing Schedule

Where this Schedule applies:

1. The Data Protection Schedule shall be modified so that
  - a. The Purpose shall include the following "LA Sharing Purpose"
    - i. Your Data will be included in Summit and / or an Alps Group report received by the Local Authority (or as the case may be the MAT or MCC) in relation to which You have agreed that this Schedule shall apply ("the LA") and shall include school level and subject level analysis. It will not identify or include student level data.
    - ii. The LA will also receive a copy of the School Analysis which includes student level data, but within which the student names have been anonymised or de-identified.
    - iii. The purpose of receiving this data is for the LA to understand the quality of provision within the schools and colleges in its area, in order to support the schools and colleges in facilitating the sharing of good practice and to inform performance improvement strategies across the LA. The data is not to be shared with the general public and only to be used for internal professional purposes.
  - b. The following information is requested by Alps and uploaded by You to enable the processing of the Analysis, and may be included in the School Analysis, Summit and the Group Report ("Shared Data")
    - i. Personal Data:
      - Unique pupil Identifiers:
      - Admission number
      - UPN (Unique Pupil Number)
      - Student Name (Surname and Forename)
      - Date Of Birth
      - Gender
      - Ethnic Origin
      - Pupil Premium Indicator
      - Ever In Care Status
      - Free School Meals 6 year Status
      - Tutor Group
      - Teaching Subject
      - Teaching Set
      - Teacher
      - Study Year
      - Subject
      - Grade
      - Year of Examination
      - KS2 Fine Score or component parts as specified from by the DfE to calculate
      - Average Welsh National Test score or the component parts to calculate
      - Average GCSE Score or the component parts to calculate from student's previous results
    - ii. Special Category Information:
      - Ethnic Origin
    - iii. Other information You elect to upload.
2. Before We undertake any sharing in accordance with the LA Sharing Purpose the LA shall have agreed (in a form enforceable by You as a third party) to
  - a. act in accordance with all applicable Data Protection Laws as a data controller

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- b. act as a data controller of the relevant Pupil Data and other personal data included in the information shared for the LA Sharing Purpose on the basis that the purpose of processing is agreed to be the LA Sharing Purpose and the manner of processing shall be in accordance with the applicable Data Protection Laws
  - c. inform You of a point of contact within the LA in relation to Your Pupil Data or other Data shared with the LA pursuant to this Schedule
  - d. provide reasonable assistance as is necessary to You to enable You to comply with Subject Access Requests relating to Shared Data and to respond to any other queries or complaints from Data Subjects
  - e. provide reasonable assistance as is necessary to You to facilitate the handling of any Data Security Breach in an expeditious and compliant manner
  - f. ensure that any Shared Data are returned to You (or us as Your processor) or destroyed once processing of the Shared Data is no longer necessary for the LA Sharing Purpose
  - g. in the event of a dispute or claim brought by a data subject or Regulator concerning the processing of Shared Data against any party, the LA will inform You about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.
3. You agree (with the intention that this commitment shall be enforceable by the LA) that
- a. Your Administrator shall be the point of contact for any dealing with the LA in relation to Your Pupil Data or other Data shared with the LA pursuant to this Schedule
  - b. You will provide reasonable assistance as is necessary to the LA to enable it to comply with Subject Access Requests relating to Shared Data and to respond to any other queries or complaints from Data Subjects
  - c. You will provide reasonable assistance as is necessary to the LA to facilitate the handling of any Data Security Breach in an expeditious and compliant manner
  - d. in the event of a dispute or claim brought by a data subject or Regulator concerning the processing of Shared Data against any party, You will inform the LA about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

## Standard Contractual Clauses Schedule

We as data importer and You as data exporter (together “parties” and each a “party”),

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

### Clause 1

#### Definitions

For the purposes of the Clauses:

- (a) ‘personal data’, ‘special categories of data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘commissioner’ shall have the same meaning as in the UK GDPR;
- (b) ‘the data exporter’ means the Controller who transfers the personal data;
- (c) ‘the data importer’ means the Processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system covered by UK adequacy regulations issued under Section 17A Data Protection Act 2018 or Paragraphs 4 and 5 of Schedule 21 of the Data Protection Act 2018;
- (d) ‘the sub-processor’ means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) ‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the UK;
- (f) ‘technical and organisational security measures’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

### Clause 2

#### Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

### Clause 3

#### Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.



3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

## **Clause 4**

### **Obligations of the data exporter**

The data exporter agrees and warrants:

- a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the Commissioner) and does not violate the relevant provisions of applicable data protection law;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not covered by adequacy regulations issued under Section 17A Data Protection Act 2018 or Paragraphs 4 and 5 of Schedule 21 Data Protection Act 2018;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the Commissioner if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

## Clause 5

### Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorised access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the Commissioner with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the Commissioner;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## Clause 6

### Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties agree that if one party is held liable for a violation of the clauses committed by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.

Indemnification is contingent upon:

- a. the data exporter promptly notifying the data importer of a claim; and
- b. the data importer being given the possibility to cooperate with the data exporter in the defence and settlement of the claim.

## Clause 7

### Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the Commissioner;
  - (b) to refer the dispute to the UK
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## **Clause 8**

### **Cooperation with supervisory authorities**

1. The data exporter agrees to deposit a copy of this contract with the Commissioner if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

## **Clause 9**

### **Governing law**

The Clauses shall be governed by the law of England and Wales.

## **Clause 10**

### **Variation of the Contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from (i) making changes permitted by Paragraph 7(3) & (4) of Schedule 21 Data Protection Act 2018; or (ii) adding clauses on business related issues where required as long as they do not contradict the Clause.

## **Clause 11**

### **Sub-Processing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses (3). Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the country of the UK in which the data exporter is established, namely England and Wales.
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the Commissioner.

## **Clause 12**

### **Obligation after the termination of personal data-processing services**

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the Commissioner, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

## Appendix 1 to the Standard Contractual Clauses

This Appendix forms part of the Clauses.

The parties may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

### **Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

Schools and colleges using our services in accordance with these terms and conditions.

### **Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

Alkemygold Limited ( trading as "Alps"). We are registered in England and Wales under company number 04258920 and Our registered office is Kevin Conway House, Longbow Close, Bradley, Huddersfield, HD2 1GQ.

### **Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

Pupils and staff from schools and colleges supplied in connection with our services in accordance with these terms and conditions.

### **Categories of data**

The personal data transferred concern the following categories of data (please specify):

Pupil Data about pupils from your school or college supplied in connection with our services and these terms and conditions.

### **Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify):

Pupil Data about pupils from your school or college supplied in connection with our services and these terms and conditions.

### **Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

The Services in accordance with these terms and conditions.

## Appendix 2 to the Standard Contractual Clauses

This Appendix forms part of the Clauses.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

As set out in paragraph 7 of the Data Protection Schedule to these terms and conditions and accordance with Article UK 32 GDPR.

## Annex A

### Summary of changes to the Alps Terms and Conditions since January 2021 (version 2020.03)

#### 1. Definitions:

- a. GDPR: Definition removed.
- b. Group Analysis: definition amended to reflect removal of Reports.
- c. Group Contract: New definition.
- d. Indexation: New definition.
- e. MCC: New definition.
- f. Pupil Data: definition amended to create a separate definition of Purchased Analysis.
- g. Purchased Analysis: Definition amended to reflect removal of Reports.
- h. Reports: Definition removed to reflect change to online Analysis.
- i. RPI: New definition.
- j. Services: Definition amended to reflect removal of Reports.
- k. UK GDPR: New definition.
- i. You or Your: Definition amended to reflect inclusion of MCC definition.

#### 2. Summary of Terms and Conditions:

- a. Amended to reflect changes to data protection legislation.

#### 3. Detailed Terms and Conditions:

- a. Paragraph 1 amended to reflect Subscription model.
- b. Paragraph 5-8 amended to reflect Subscription model.

#### 4. Purchased Analysis:

- a. Paragraph 13-15 amended to reflect Subscription model.

#### 5. Pricing and Payment:

- a. Paragraphs 17-21 amended to reflect Subscription model.

#### 6. Training:

- a. Paragraphs 33-39 inserted to reflect Subscription model.

#### 7. Obligations and Warranties:

- a. Paragraphs 54-56 amended to reflect Subscription model.

#### 8. Renewal, Non-Renewal and Cancellation

- a. Clause inserted to reflect Subscription model and new auto-renewal provisions.



## **9. Termination:**

- a. Paragraph 62 amended to reflect Subscription model.

## **10. General Terms:**

- a. Paragraph 66 amended to reflect updated data protection legislation.
- b. Paragraph 70 amended to reflect inclusion of Subscription model.
- c. Paragraph 75 amended to reflect Subscription model.

## **11. Data Protection Schedule:**

- a. Paragraph 1 and 5 amended to reflect updated data protection legislation.
- b. Paragraph 5 and 7 amended to reflect Subscription model.

## **12. Standard Contractual Clauses Schedule:**

- a. Definitions amended to reflect updated data protection legislation.
- b. Clauses 4 – 12 amended to reflect updated data protection legislation.

## **13. Appendix 1 to the Standard Contractual Clauses:**

- a. Appendix amended to reflect updated data protection legislation.