

Copyright © 2018 Alkemygold Limited

These terms and conditions (together with the Schedules and documents referred to in the terms and conditions) ("Terms and Conditions") shall apply to your use of the Alps website (<https://alps-va.co.uk>) ("Site"), including the Data Transfer System and the Application(s) that are accessed via the Site, and your receipt of any Services which we offer.

We are a 'data processor' for the purposes of the current Data Protection Act 1998 and we will remain so under the GDPR and the legislation replacing the 1998 Act whilst conducting activity such as the preparation of Reports or Analysis (as defined below) on behalf of a school or college or where passing on information to other bodies (e.g. Local Authority or DfE) when requested by a school or college.

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 Alps and what we should do with it as well as retaining responsibility for assessing and applying Reports and Analysis.

There are various ways to receive any of our Services: (i) you or your local authority or MAT may have entered into a separate agreement for the provision of Services; (ii) you may wish to receive Services direct from us where there is no separate agreement between your local authority or MAT and us; or (iii) you may wish to receive additional Services from us to those provided under your local authority's 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.

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.

Please read these Terms and Conditions and the Privacy Policy (<https://alps-va.co.uk>) 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.

By using and/or uploading Data through the Site and/or accessing it via the Application and requesting receipt of Services, 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.

1. Definitions

"ADCS" means the 'Alps data collection software' which may be used as part of the Data Transfer System.

"Administrator" means a user authorised by you for managing terms and conditions and data contracts, Users granted access and Services purchased.

"Analysis" means the information generated at your instruction through the provision of your selected Services in relation to the Data you provide to us, including Reports and online analysis.

"Application" means the Connect or myAlps application (as applicable).

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

"Connect" means 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" means any data submitted by you, including Pupil Data, via the Data Transfer System or otherwise, required for us to provide the Services.

"Data Transfer System" means ADCS or Connect (as applicable) used by you to upload your Data and transfer it to us.

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

"Group Report" means analysis using your data together with that of other schools or colleges in a MAT or Local Authority area or other such group.

"MAT" means a 'Multi Academy Trust'.

"myAlps" means the myAlps web application accessed via the Site.

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

"Price" means the cost of the Reports, use of the Application or receipt of other Services as advertised from time to time by us to you or on the Site.

"Pupil Data" means Personal Data about pupils from your school or college supplied in connection with the Services.

"Reports" means such of the Alps reports that we offer from time to time including physical and electronic documents.

"Services" means (as appropriate) the processing of the Reports, use of the Application and any additional advice, training or any other services that may be provided by us to you in relation to the Reports, Application or otherwise.

"User" means a person authorised by you to access the Data Transfer System and to receive Reports and other Analysis.

"you" or **"your"** means the school, college or other such organisation (including a MAT or local authority) that has used the Site, Data Transfer System, Application and/or submitted Data to us.

2. Changes to these terms

- 2.1. 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.**

3. Reports and Services

- 3.1. You agree that by requesting any Services (by whatever method) and submitting Data to us via the Data Transfer System or otherwise you are making an offer to purchase the relevant Services for the Price and upon processing and posting 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.
- 3.2. In order to access some parts of the Application, you must have first purchased a Report from us. Purchased Reports will be made available to you via the Application (subject to your valid registration) wherever reasonably possible within 8 business days of receipt of the Data, or if longer, as soon as reasonably practicable. You will be informed of the availability of the Report(s) via your registered Administrator email address. The availability of Analysis from Services is dependent on the necessary Data being provided by you and the correctness of your Data.
- 3.3. Where you have purchased any Report(s), you may also access any Directories that you have been included in pursuant to paragraph 11.3.
- 3.4. The purchase of Reports will be charged in accordance with our published Prices. Your access to and use of the Application is subject to the purchase of a Reports or Reports.
- 3.5. Access to the Charged For Areas is subject to an additional payment of an annual fee (as published on the Site) and is from the date of purchase of the Services, which cannot be earlier than A level Results Day in any year, until the Monday before A level results day in the following calendar year ("**Closing Monday**"). The Report element of the Price may be payable separately from your access to the Application.
- 3.6. Access to Charged For Areas of the Application including Analysis accessed via the Application will expire on the Closing Monday. You will not be able to use the Data Transfer System to update or upload any Data between the Closing Monday until the date of purchase of the Services, which shall not be before the A level results day following the Closing Monday .
- 3.7. Unless we have had confirmation from your local authority or MAT that it is paying for all or part of the Services, invoices shall be payable by you within 14 days from receipt of an invoice from us.
- 3.8. We reserve the right to review and amend our Prices at our complete discretion from time to time. We will publish any amendments on the Site. We take reasonable care to ensure that the Prices specified on our Site are accurate, however if we discover an error in the price of the Services you have ordered we will inform you of this error. Prices advertised on our Site are not offers. 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.
- 3.9. The appearance of Reports, other Analysis and/or the Application may vary from that shown on images on the Site and/or in our promotional materials.
- 3.10. We shall not be required to process Reports 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.
- 3.11. Where a MAT of which you are a part has entered into a group contract which may include paying for all or part of the Services, by uploading Data your Administrator agrees that the MAT shall be able to access copies of the Reports and other Analysis and a Group Report generated from the Services and 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 3.11.

4. Our Obligations

- 4.1. We will:
 - 4.1.1. use our reasonable endeavours to deliver the Services as purchased in accordance with these Terms;
 - 4.1.2. comply with applicable laws in performance of the Services including without limitation as required by Schedule 1.

5. Your Obligations

- 5.1. You warrant that:
 - 5.1.1. you will comply with all applicable laws including without limitation as required by Schedule 1;
 - 5.1.2. your Administrators have the authority to bind any organisation on whose behalf any of them uses the Site to purchase the Services;
 - 5.1.3. 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;
 - 5.1.4. you will obtain and at all times maintain all necessary licences and consents necessary for the provision of our Services; and
 - 5.1.5. 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 Reports and Analysis.

5.2. You warrant that where and to the extent that sharing of Reports and/or 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 Reports and/or Analysis you have all necessary permissions and consents and have undertaken all such compliance steps (including without limitation as provided for in Schedule 1) 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 Reports and/or 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.

6. Intellectual Property Rights

- 6.1. 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.
- 6.2. We shall at all times retain ownership of all copyright and other intellectual property rights in all and any Reports, 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, subject to paragraph 6.3, nothing shall be deemed as a release, transfer, assignment or other disposal of our rights.
- 6.3. We grant you a non-exclusive, non-transferable, revocable licence to reproduce extracts of, and otherwise use the Reports and 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 or MAT.
- 6.4. 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.
- 6.5. 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.
- 6.6. If you breach any provisions of this paragraph 6, we are entitled to disable or delete your access to the Site, Data Transfer System and/or Application and your receipt of any Services.

7. Content of the Site

- 7.1. 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.
- 7.2. The Reports, 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.
- 7.3. 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.
- 7.4. We do not guarantee that the Site, any element of it or any content on it, will be free from errors or omissions.

8. Use and access to the Site

- 8.1. 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.
- 8.2. 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.

9. Your account and password

- 9.1. 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 through input of a valid email address and creation of a password. 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.
- 9.2. If you wish to access secure information that is specific and confidential to you in the Application, you will be required to enter a secure section of the Application ("**Secure Area**"). In order to access the Secure Area, we will provide your Administrator with a unique user identification code and password. You must treat all passwords and identification codes as confidential and must not disclose them to any third party outside of your organisation. 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. It is your responsibility for ensuring that you validate as suitable, any Authorised Person who is permitted by you to access the Secure Area.

- 9.3. 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. 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.
- 9.4. 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 support@alps-va.co.uk or by telephone on 01484 887 600.
- 9.5. 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.
- 9.6. If you decide to no longer use the Site, or we choose to disable or delete your account in accordance with paragraph 9.5, 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.

10. Use of the Data Transfer System and Application

- 10.1. In order to upload your Data and transfer it to us to be viewed in the Application (subject to the purchase of such Services and in consideration of the Price), we grant to you a limited, revocable licence to use either ADCS or Connect (as applicable) as the Data Transfer System. You are permitted to load ADCS into your computer system and use it, or use Connect to:
 - 10.1.1. submit Data to us in order for us to provide the Services; and
 - 10.1.2. generate internal reports and target grades for current students for internal educational purposes only.
- 10.2. You are able to download ADCS from the Site if available.
- 10.3. The correct use of ADCS is an important part of the technical and organisational measures we provide to maintain the integrity and security of Data.
- 10.4. The use of the ADCS or Connect (as applicable) 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 download ADCS onto your computer or 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 load ADCS onto your computer or use Connect (as applicable) as the Data Transfer System or use the Application. If ADCS is no longer offered for use by us and/or you do not use ADCS, you will use Connect to transfer Data to us as the Data Transfer System.
- 10.5. 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.
- 10.6. You and any Authorised Users are not permitted:
 - 10.6.1. 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 reports 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;
 - 10.6.2. 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;
 - 10.6.3. 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;
 - 10.6.4. modify, adapt, edit, abstract, create derivative works of, sell or in any way commercially exploit any part of the Application or Site;
 - 10.6.5. to frame or mirror any part of the Data Transfer System or Application without our express written consent;
 - 10.6.6. 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
 - 10.6.7. 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.
- 10.7. 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.

11. Uploading Data to the Site

- 11.1. 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.
- 11.2. Where you upload Data to the Site, you grant us a royalty-free, non-transferable, non-exclusive licence: (i) for the term of our agreement to process on your behalf the Data to the extent necessary to perform the Services; and (ii) to use anonymised or de-identified information extracted from the Data for our own analytical, research purposes; ("**Owner Research**").
- 11.3. Participation in a Directory
 - 11.3.1. 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.
 - 11.3.2. Where we process your Data to produce a Directory the Data will be de-identified or anonymised.
- 11.4. 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 and 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.
- 11.5. 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.
- 11.6. 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.

12. Viruses

- 12.1. We do not guarantee that the Site will be free from errors, interruptions, bugs or viruses.
- 12.2. 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.
- 12.3. 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.
- 12.4. 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.

13. Linking to the Site

- 13.1. 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.
- 13.2. 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.
- 13.3. 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.
- 13.4. We reserve the right to withdraw linking permission without notice.

14. Third Party Links

- 14.1. 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.

15. Term

- 15.1. These Terms and Conditions are effective until the first to occur of:
 - 15.1.1. any of the Services you have purchased below have been completed and any payment due from you has been made;
 - 15.1.2. you notify us that you no longer wish to use the Site or Application; or
 - 15.1.3. we terminate your account where:
 - 15.1.3.1. 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); or

15.1.3.2. you have failed to pay any amount due under these Terms and Conditions on the due date and such amount remains unpaid for 14 business days after you have received a written notification from us that the payment is overdue; or

15.1.4. the expiry of the academic year, which shall be deemed to be 1 September to 31 August each year ("Academic Year").

15.2. Termination of these Terms and Conditions is without prejudice to any rights and remedies which may have accrued up to the date of termination.

15.3. Upon termination or expiry:

15.3.1 the right to access any Services provided will terminate immediately;

15.3.2 you will if required by us destroy (and certify to us the destruction of) all copies of ADCS and its documentation including if ADCS is stored on the hard disk of any computer under your control; and

15.3.3 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.

16. Limitation of Our Liability

16.1. 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.

16.2. 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.

16.3. 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).

16.4. We will not be liable for any:

16.4.1 loss of profits, sales, business, or revenue;

16.4.2 loss of business interruption or anticipated savings;

16.4.3 loss of business opportunity, goodwill or reputation; or

16.4.4 indirect or consequential loss or damage.

16.5. In relation to the supply of any Services, in addition to the limitations of liability set out in paragraphs 16.1 to 16.4, 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.

17. Entire Agreement

17.1. 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.

17.2. 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.

18. Waiver of Remedies

18.1. 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.

19. Applicable Law

19.1. 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.

20. Events Outside Our Control

20.1. 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. An "Event Outside Our Control" is defined below in paragraph 20.2

20.2. An "Event Outside Our Control" means 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 or other natural disaster, or failure of public or private telecommunications networks.

20.3. If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract:

20.3.1 we will contact you as soon as reasonably possible to notify you; and

20.3.2 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. 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.

21. Rights of Third Parties

21.1. 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.

22. Anti-bribery

22.1. For the purposes of this paragraph 22 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.

22.2. 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:

22.2.1 all of that party's personnel;

22.2.2 all others associated with that party; and

22.2.3 all of that party's subcontractors; involved in the performance of these Terms and Conditions so comply.

22.3. Without limitation to paragraph 22.2, 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.

22.4. Us or you shall immediately notify the other party as soon as it becomes aware of a breach of any of the requirements in this paragraph 22.

23. Freedom of Information

23.1. 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”).

23.2. You shall, before responding to any request for information pursuant to FOIA, notify us, 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.

24. General

24.1. 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.

24.2. You may only transfer your rights or your obligations under these Terms and Conditions to another person if we agree in writing.

24.3. 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.

If you have any concerns about these Terms and Conditions, please write to Mary Ahern, Alkemygold Limited, Kevin Conway House, Longbow Close, Bradley, Huddersfield, HD2 1GQ.

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.

Updated May 2018

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 1998, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation ((EU) 2016/679) (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, Sensitive Personal Data, Special Category Data, Personal Data Breach**, 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: (a) produce Reports and Analysis in accordance with these Terms and Conditions; (b) anonymise or de-identify for the purposes of carrying out Owner Research; and (c) 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) 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.
- 4) 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 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.
 - 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 Reports and Analysis, (ii) otherwise anonymised or de-identified research or (iii) Group Reports where applicable;
 - e) 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;
 - f) 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.
- 5) 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;

- 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: (a) instructing us to disclose Pupil Data or other personal data within your Data to your local authority, MAT or similar body on request and (b) 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 and European Economic Area 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) 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;
- j) 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;
- k) 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;
- l) notify you without undue delay on becoming aware of a Personal Data breach affecting Pupil Data or other personal data within your Data; and
- m) 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.

Retention Schedule

- 1) Personal Data as provided by you will be deleted automatically after 5 years (Wales) or 4 years (England) - this is how long the Data are needed for continued services, as we show four year trends in our analysis.
- 2) Personal Data as provided by you will be deleted within 28 days of your confirmed request for deletion or college or termination of your contract.
- 3) Personal Data as provided by you will be deleted within 28 days if you do not confirm a contract renewal within 3 months of the start of the Academic Year, which shall be deemed to be 1 September each year.
- 4) Reports will be retained for 6 years from production (including for each version of a Report where you provide additional Data affecting the Report).
- 5) 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) The School's Data will be included in an Alps Group report received by the Local Authority 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 Authority will also receive a copy of the School Report 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 Report 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
 - 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