

## ALKEMYGOLD LIMITED TERMS AND CONDITIONS

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### IMPORTANT NOTICE:

These Terms and Conditions regulate the purchasing of the Reports and Services (as defined in these Terms and Conditions).

The Reports and Services are provided by Alkemygold Limited (also trading as “Alps”) (“**we/our/us**”). 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.

If your local authority has entered into a separate agreement for the provision of Reports and/or Services or if you want to commission Reports and/or Services and there is no separate agreement between your local authority and us, or you wish to receive additional Reports and/or Services to those provided under your local authority's agreement these Terms and Conditions will form the agreement between us and you in relation to the commissioning and paying for the production of the Reports and/or the provision of Services.

It is agreed as follows:

### Definitions

“**Data**” means data submitted by you and required for us to provide the Services.

“**Data Transfer System**” means the software to upload Your Data and transfer it to our server.

“**myAlps**” means the myAlps web application.

“**Paid Services**” means the services provided to you by us through myAlps, for a fee.

“**Price**” means the cost of the Reports or Services as advertised from time to time by letter by us to you or on the Site.

“**Reports**” means such of the Alps reports that we offer from time to time.

“**Services**” means (as appropriate) the processing of the Reports and any additional advice, the provision of Paid Services and any additional advice, training or other services that may be provided by us to you in relation to the Reports, Paid Services or otherwise.

“**Site**” means our website which includes the myAlps web application.

“**Software**” means the Alps Data Collection Software and the Data Transfer System.

“**you**” or “**your**” means the school college or other such organisation that has loaded or submitted Data to us.

## 1. AGREEMENT

You agree that by requesting the Services (by whatever method) and submitting Data to us whether by the Data Transfer System, the Site, the Software 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 Services we are accepting your offer in return for payment of the Price.

## 2. TERM

2.1 These Terms and Conditions are effective until either:

- 2.1.1 any of the Services referred to in paragraph 5 below have been completed and any payment due from you has been made;
- 2.1.2 you choose to no longer use the Software; or
- 2.1.3 we terminate the agreement if you have failed to abide by these Terms and Conditions or for any other reason that we deem reasonable.

2.2 Upon termination you agree to destroy all copies of the Software and its documentation including any Software stored on the hard disk of any computer under your control.

### **3. INTELLECTUAL PROPERTY RIGHTS**

3.1 We shall at all times retain ownership of the Software as originally downloaded by you and all subsequent downloads of the Software by you and all intellectual property rights in the Software.

3.2 We shall at all times retain ownership of all copyright and other intellectual property rights in all Reports generated, any deliverables relating to the Services, and 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.

3.3 You are, on a permanent basis, permitted to reproduce extracts of, and otherwise use, for the purpose of analysing your Data for the purpose of identifying areas of strengths and weaknesses and improving standards and for other internal educational purposes that relate to you, including as evidence of performance for inspections or in discussions with your local authority, the hardcopy and electronic contents of the Reports generated and advice or training given as part of the provision of the Services.

### **4. LIMITATION OF OUR LIABILITY**

4.1 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.

4.2 To the extent permitted by law, we exclude all conditions, warranties, representations, representations or other terms which may apply to us whether express or implied.

4.3 We will not be liable to 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, our Services, our Site or our Software.

4.4 We will not be liable for loss of profits, sales, businesses, or revenue, business interruption, loss of anticipated savings, loss of business opportunity, goodwill or reputation or any indirect or consequential loss or damage.

4.5 In relation to the supply of any Services to you as described more fully in paragraph 5, in addition to the limitation of liability set out in paragraphs 4.1 to 4.4, 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 claim.

4.6 We do not warrant that the Software will meet your requirements or that the operation of the Software will be uninterrupted or error-free or that defects in the Software will be corrected. In no event will we be liable to you for any form of lost profits or consequential loss arising from your use of or inability to use the Software or from errors or deficiencies in it whether caused by negligence or otherwise. We shall also not be liable for any failure by the Software to provide any functions not specified in its instructions or associated documentation.

### **5. SERVICES AND PAYMENT**

5.1 If you use the Data Transfer System (or other means) to submit your data to us and request Services, we shall process your request and assume that you are making a relevant offer to purchase the relevant

Services and agree to pay the Price upon receiving the Services. Where we supply you with a Report, we shall process this using the Data submitted and post this to you by Royal Mail Second Class, where reasonably possible within 8 days of receipt of the Data, or if longer as soon as reasonably practicable.

- 5.2 Please ensure that any Data provided to us by you is accurate as this will form the basis of the Reports and/or Services provided to you and we cannot refund any Price paid due to you uploading inaccurate Data.
- 5.3 For the steps you need to take to place an order for Reports and/or Services, please see <http://www.alps-va.co.uk/>. Every time you order Reports, Paid Services and/or Services from us, the Terms and Conditions applicable at the date of the order will apply to that order, including those relating to Price.
- 5.4 The appearance of Reports may vary from that shown on images on the Site.
- 5.5 Unless we have had confirmation from your local authority that it is paying for all or part of the Services you shall pay to us the cost of the Services as advertised from time to time by letter or on the Site within 14 days from receipt of an invoice from us. Invoices shall be issued after the relevant Report has been posted to you, relevant Services completed or, as is otherwise agreed.
- 5.6 We shall not be required to process Reports or complete Services if we do not receive the information from you to provide the Services after reasonable requests to you, if you have breached these Terms and Conditions or, in our reasonable opinion, you have not acted in good faith at any time.
- 5.7 The Price of the Services will be renewed from time to time and we reserve the right to amend the fee at our complete discretion. We will publish any amendments on the Site.
- 5.8 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. We will usually honour our 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. Where your local authority is paying for all or part of the Services you agree that your local authority shall be able to access copies of the Reports, generated from the Services.
- 5.9 On termination of this agreement for any reason, you will immediately pay to us any of our outstanding unpaid invoices and in respect of the Services supplied by us for which no invoice has been submitted, we will submit an invoice which will be payable by you immediately on receipt.

## 6. DATA PROTECTION

6.1 For the purposes of this paragraph 6:

- 6.1.1 **"Personal Data"**, **"Data Controller"**, **"Data Processor"**, **"Data Subject"** and **"Process"** shall have the meanings given in the Data Protection Act 1998 (**"DPA"**) and **"Processing"** shall be construed accordingly;
- 6.1.2 **"Pupil Data"** means Personal Data about pupils from your school or college that are studying or have taken A-level, AS-level and BTEC National examinations and results;
- 6.1.3 **"Purpose"** means the purposes of using Personal Data to produce Reports in accordance with these Terms and Conditions; and
- 6.1.4 **"Owner Research"** means research carried out by us using the Pupil Data you submit.

- 6.2 You agree that you will comply with the DPA in relation to the Pupil Data at all times when you are a Data Controller for such Pupil Data, including provision of fair processing notices to all pupils in relation to the processing for the purpose of us performing the Services and carrying out Owner Research.
- 6.3 You agree that when we are providing the Services you are the Data Controller for Pupil Data and that we act as a Data Processor for such Pupil Data.
- 6.4 When Processing Pupil Data as a Data Processor in accordance with paragraph 6.3, we shall:
- 6.4.1 only Process the Pupil Data for the purpose of providing the Services, and only in accordance with your instructions;
  - 6.4.2 only appoint sub-contractors as further Data Processors on your behalf if such further Data Processors are engaged on terms providing 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;
  - 6.4.3 ensure that our employees only have access to the Pupil Data where this is necessary for the Purpose or for things related to the Purpose and that its employees are reliable and aware of their obligations under the DPA;
  - 6.4.4 ensure that we will not disclose any Pupil Data to third parties (other than our sub-contractors appointed in accordance with paragraph 6.4.2) unless you tell us to do so (for the purposes of this paragraph you hereby instruct us to disclose Pupil Data to your local authority or similar body on request);
  - 6.4.5 ensure that we have 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; and
  - 6.4.6 except as set out in paragraph 6.5 on termination of these Terms and Conditions, however caused, immediately stop all Processing and at your request return or destroy the Pupil Data and let you know that this has been done.
- 6.5 You agree that we may use the Pupil Data for Owner Research and that in this situation both you and us are Data Controllers. We shall be responsible for anonymising the Pupil Data and shall not be entitled to use or re-constitute from other data in its possession un-anonymised Pupil Data. We shall only use such anonymised data for generic research and shall not identify, influence decisions about or do anything likely to cause substantial damage or distress to individual Data Subjects.
- 6.6 You consent to the collection and use by us of all or any of your school or college details inputted into the Software or Site or otherwise supplied to us (in manual, electronic or any other form) including staff data relevant to your school or college provided that we shall only use such details for internal processes or anonymised research.
- 6.7 In the event that your Regional Schools Commissioner/Headteacher Association or other such body has an agreement in place with us to provide a directory of good practice, we will notify you of the project and you agree that if you provide us with your data for a Report you also agree to be included in the directory (in accordance with criteria that is specified at the time) unless you notify us in writing that you do not wish to be so included.
- 7. ENTIRE AGREEMENT**
- 7.1 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 documents referred to within them.

7.2 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.

#### **8. WAIVER OF REMEDIES**

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.

#### **9. THIRD PARTIES**

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 term 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.

#### **10. APPLICABLE LAW**

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.

#### **11. CHANGES TO THESE TERMS**

We may revise these Terms and Conditions at any time by amending this page. Please check this page from time to time to take notice of any changes we make, in particular before you place any order for Services, as these terms are binding on you.

#### **12. GENERAL**

12.1 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.

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

12.3 Each of the paragraphs 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 questions concerning this Agreement please write to Mary Ahern, Alkemygold Limited, Kevin Conway House, Longbow Close, Bradley, Huddersfield, HD2 1GQ.

By submitting data to us or using our services you are deemed to agree to and be bound by these Terms and Conditions.