

# Alyne Terms and Conditions

## (Superseded 9 April 2021)

### Alyne Terms and Conditions

These Terms and Conditions (“**Terms**”) are between you and the applicable Alyne entity listed in clause 13 (Alyne contracting entity; governing law) below. These Terms shall govern your access to and use of the Alyne Service.

In these Terms, “**you**” or “**your**” means the entity you represent in accepting these Terms or, if that does not apply, you individually. You agree that you are not accepting these Terms as a private consumer as defined in applicable consumer law (including paragraph 13 of the German Civil Code (BGB)). If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to these Terms; (ii) you have read and understand these Terms; and (iii) you agree to these Terms on behalf of the party that you represent. If you don’t have the legal authority to bind your employer or the applicable entity, or if you do not agree to all of the Terms, please do not click “SIGN UP” (or similar button or checkbox) or use or access the Alyne Service. **PLEASE NOTE THAT IF YOU SIGN UP FOR OR ACCESS THE ALYNE SERVICE USING AN EMAIL ADDRESS FROM YOUR EMPLOYER OR ANOTHER ENTITY, THEN (A) YOU WILL BE DEEMED TO REPRESENT SUCH PARTY, (B) YOUR SIGN UP OR ACCESS WILL BIND YOUR EMPLOYER OR THAT ENTITY TO THESE TERMS, AND (C) THE WORD “YOU” IN THESE TERMS WILL REFER TO YOUR EMPLOYER OR THAT ENTITY.**

**These Terms are effective as of the date you first click “SIGN UP” (or similar button or checkbox) or use or access the Alyne Service or place an Order, whichever is earlier (the “Effective Date”). These Terms do not have to be signed in order to be binding. You indicate your assent to these Terms by clicking “SIGN UP” (or similar button or checkbox) or using or accessing the Alyne Service.**

These Terms were last updated on 30 April 2019 (the “**Version Date**”). To view previous versions of the Terms and Conditions, click **here**. Orders with any paying customers prior to the Version Date shall remain unchanged for the applicable Subscription Term, unless otherwise agreed between the parties. All Orders after the Version Date shall be governed by these updated Terms.

## 1. Alyne Service

- 1.1. Subject to these Terms and during the Subscription Term, you may access and use the Alyne Service for your own business purposes or personal use, as applicable, in accordance with these Terms, the applicable Order and the Alyne Policies. The rights granted to you in this clause 1.1 are non-exclusive, non-sublicensable and non-transferable.
- 1.2. You agree that your Order is based solely on Alyne Service functionality available at the time of purchase and not contingent on the delivery of future functionality or features, even if mentioned orally or in writing by Alyne.
- 1.3. Alyne reserves the right to make updates, enhancements and minor changes to the Alyne Service after your acceptance of these Terms, without impacting the validity of this agreement.

## 2. Customer restrictions and responsibilities

- 2.1. Except as otherwise expressly permitted in these Terms, you will not: (a) reproduce, modify, adapt or create derivative works of the Alyne Service; (b) rent, lease, distribute, sell, sublicense, transfer or provide access to the Alyne Service to a third party; (c) use the Alyne Service for the benefit of any third party; (d) incorporate any of the Alyne Service into a product or service you provide to a third party; (e) interfere with or otherwise circumvent mechanisms in the Alyne Service intended to limit your use; (f) reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any of the Alyne Service, except to the extent expressly permitted by applicable law (and then only upon advance notice to us); (g) remove or obscure any proprietary or other notices contained in any of the Alyne Service; (h) use the Alyne Service for competitive analysis or to build competitive products; (i) publicly disseminate information regarding the performance of the Alyne Service; (j) use the Alyne Service in any way that disrupts performance or integrity of the service; (k) upload or use unlawful, discriminatory, racist, sexist, violent or otherwise inappropriate content with the Alyne Service; (l) use the Alyne Service to introduce, run or spread malicious software including, but not limited to viruses, trojan horses or worms; or (m) encourage or assist any third party to do any of the foregoing.
- 2.2. You and your use of the Alyne Service (including use by your End Users) must comply at all times with these Terms, Alyne Policies and all Laws. You represent and warrant that: (a) You have obtained all necessary rights, releases and permissions to submit all Your Data to the Alyne Service and to grant the rights granted to us in these Terms; and (b) Your Data and its submission and use as you authorise in these Terms will not violate: i) any Laws; ii) any third-party intellectual property, privacy, publicity or other

rights; or iii) any of your or third-party policies or terms governing Your Data. Other than our express obligations under clause 10 (Privacy), we assume no responsibility or liability for Your Data, and you are solely responsible for Your Data and the consequences of submitting and using it with the Alyne Service. Although Alyne has no obligation to monitor your use of the Alyne Service, Alyne may do so and may prohibit any use of the Alyne Service it believes may be (or alleged to be) in violation of the foregoing.

- 2.3. You will not submit to the Alyne Service (or use the Alyne Service to collect) any Sensitive Data. You also acknowledge that we are not acting as your Business Associate or subcontractor (as such terms are defined and used in HIPAA). The Alyne Service is neither HIPAA nor PCI DSS certified. Notwithstanding any other provision to the contrary, we have no liability under these Terms for Sensitive Data.
- 2.4. You and your End Users must keep their account credentials (login ID and password) confidential and may not disclose or share among multiple individuals. Account credentials must be sufficiently protected and only stored in sufficiently encrypted form.
- 2.5. You are responsible for procuring and maintaining sufficient infrastructure to access the Alyne Service. This includes, but is not limited to: (a) a high speed internet connection; (b) network connections connecting you, and your End Users to the internet; (c) access to current browser software installed on devices using the Alyne Service; and (d) current devices with sufficient capability to process current browser based software. Alyne will assume no responsibility for the reliability, security, availability or performance of any of these components not operated by Alyne.
- 2.6. You shall make all of your End Users aware of these Terms before allowing them to access and use the Alyne Service.

### 3. Confidentiality

Each party will protect each other's confidential information from unauthorised use, access or disclosure in the same manner as each protects its own confidential information, but with no less than reasonable care. Except as otherwise expressly permitted in these Terms, each party may use each other's confidential information solely to exercise our respective rights and perform our respective obligations under these Terms and shall disclose such confidential information: a) solely to those of our respective employees, representatives and subcontractors who have a need to know such confidential information for such purposes and who are bound to maintain the confidentiality of, and not misuse, such confidential information; b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or c) as reasonably necessary to comply with any Laws. The

provisions of this clause 3 shall supersede any non-disclosure agreement by and between the parties that would purport to address the confidentiality and security of data stored using the Alyne Service and such agreement shall have no further force or effect with respect to data stored using the Alyne Service.

## 4. Proprietary rights

- 4.1. You shall own all right, title and interest in and to Your Data, in the form submitted to the Alyne Service. You shall be the sole controller and responsible for maintaining the accuracy of Your Data. Before terminating this agreement, you are responsible for extracting Your Data, if required.
- 4.2. Subject to these Terms, and solely to the extent necessary to provide the Alyne Service to you, you grant Alyne a worldwide, limited term licence to access, use, process, copy, transmit, distribute, perform, export, and display Your Data. Solely to the extent that reformatting Your Data for display in the Alyne Service constitutes a modification or derivative work, the foregoing licence also includes the right to make modifications and derivative works. We may also access your accounts, End User accounts, and your instance of the Alyne Service with End User permission in order to respond to your support requests.
- 4.3. You grant Alyne a worldwide, perpetual, irrevocable, royalty-free licence to use and incorporate any suggestion, enhancement request, recommendation, correction or other feedback provided by you or your End Users into the Alyne Service.
- 4.4. Alyne shall own and retain all right, title and interest in and to: (a) the Alyne Service, all improvements, enhancements or modifications thereto; (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support; and (c) all intellectual property rights related to any of the foregoing. No rights or licences are granted except as expressly set out in these Terms. Nothing in this contract shall operate to assign or transfer any intellectual property rights from Alyne to you.
- 4.5. All of the Alyne Service and related documentation is the copyrighted work of Alyne. Unauthorised copying, distribution, modification, public display, or public performance of copyrighted works is an infringement of the copyright holder's rights.
- 4.6. Selecting a value for a variable in an Alyne Control Statement, adding a custom value to an Alyne Control Statement, creating a Custom Control Set or Funnel or Assessment or generating an Alyne Report does not affect Alyne's intellectual property rights or provide you usage rights beyond the Subscription Term.

## 5. Payment of Fees

- 5.1. You shall pay Alyne the fees described in the Order for the Alyne Service and Implementation Services in accordance with the terms stated on the Order (the **"Fees"**). If your use of the Alyne Service exceeds the User Quota set out on the Order or otherwise requires the payment of additional fees (per these Terms), you shall be billed for such usage and you agree to pay the additional fees in the manner provided in this clause. Alyne reserves the right to change the Fees or applicable charges and to institute Fees and charges at the end of the Initial Term or then current renewal term, upon 30 days' prior notice to you (which may be sent by email). If you believe that Alyne has billed you incorrectly, you must contact Alyne no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to [support@alyne.com](mailto:support@alyne.com).
- 5.2. Alyne may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Alyne no later than 30 days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Failure to pay may result in immediate termination of Alyne Service.
- 5.3. Your Fees under these Terms exclude any taxes or duties payable in respect of the Alyne Service in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Alyne, you must pay to Alyne the amount of such taxes or duties in addition to any fees owed under these Terms. Notwithstanding the foregoing, if you have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed, you may provide Alyne with such exemption information, and Alyne will use reasonable efforts to provide you with invoicing documents designed to enable you to obtain a refund or credit from the relevant revenue authority, if such a refund or credit is available.
- 5.4. Purchased subscriptions and paid Fees are not refundable. Partial refunds of usage costs for the current month are also not refundable upon termination.
- 5.5. If you make any purchases through an authorised partner or reseller of Alyne (**"Reseller"**):
  - (a) instead of paying Alyne, you will pay the applicable amounts to the Reseller, as agreed between you and the Reseller. Alyne may suspend or terminate your rights to use the Alyne Service if it does not receive the corresponding payment from the Reseller.

(b) your order details (for example, the User Quota, the Initial Term, etc.) will be as stated in the order placed with Alyne by the Reseller on your behalf, and the Reseller is responsible for the accuracy of any such Order as communicated to Alyne.

(c) if you are entitled to a refund under these Terms, then unless Alyne otherwise specifies, it will refund any applicable fees to the Reseller and the Reseller will be solely responsible for refunding the appropriate amounts to you.

(d) Resellers are not authorised to modify these Terms or make any promises or commitments on Alyne's behalf, and Alyne is not bound by any obligations to you other than as set forth in these Terms.

## 6. Term and termination

- 6.1. Subject to earlier termination as provided below, this agreement is for the Initial Term as specified in the Order, and shall be automatically renewed for additional periods of the same duration as the Initial Term (collectively, the **"Subscription Term"**), unless either party requests termination at least 30 days prior to the end of the then-current term. For the avoidance of doubt, if you terminate before the end of the Subscription Term you shall not be entitled to any refund of any prepaid amounts.
- 6.2. Either party may also terminate this agreement upon 30 days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this agreement. You will pay in full for the Alyne Service up to and including the last day on which the Alyne Service is provided.
- 6.3. Upon any termination, you must cease use of the Alyne Service and delete (or at our request, return) all confidential Information and intellectual property of Alyne in your possession.
- 6.4. Upon any termination, Alyne will make Your Data available to you for electronic retrieval for a period of 30 days, but thereafter Alyne may, but is not obligated to, delete Your Data.
- 6.5. If you terminate these Terms in accordance with clause 6.2, we will refund you any prepaid Fees covering the remainder of the then current term after the effective date of termination. If we terminate these Terms in accordance with clause 6.2, you will pay any unpaid Fees covering the remainder of the then current term after the effective date of termination. In no event will termination relieve you of your obligation to pay any fees payable to us for the period prior to the effective date of termination.

- 6.6. Except where an exclusive remedy may be specified in these Terms, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under these Terms, by law or otherwise.
- 6.7. All clauses of this agreement which by their nature should survive termination will survive termination or expiration of these Terms, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, indemnities and limitations of liability.
- 6.8. In addition to any other remedies it may have, Alyne reserves the right to suspend your access to the Alyne Service, without prior notice, if: (a) any amount you owe to Alyne is more than 30 days overdue; or (b) if Alyne believes you or your End Users have violated any of these Terms.

## 7. Warranty and disclaimer

- 7.1. Alyne shall use commercially reasonable efforts consistent with prevailing industry standards to maintain the Alyne Service in a manner which minimises errors and interruptions in the Alyne Service and shall perform the Implementation Services in a professional and workmanlike manner. The Alyne Service may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Alyne or by third-party providers, or because of other causes beyond Alyne's reasonable control, but Alyne shall use commercially reasonable efforts to provide advance notice by email of any scheduled service disruption. The Alyne Service may also be temporarily unavailable due to circumstances beyond our control, including, but not limited to, natural disasters, acts of governments, civil unrest, acts of terror, strike, cyber security incidents or service provider failures.
- 7.2. Alyne will provide basic support to you at no additional cost. Support requests may be raised by emailing [support@alyne.com](mailto:support@alyne.com) and Alyne will take commercially reasonable efforts to respond within 2 business days. Alyne reserves the right to define additional commercial arrangements for the resolution of complex support requests.
- 7.3. Except as expressly set out in this clause 7, the Alyne Service, the Implementation Services and any support is provided "as is", without any warranties of any kind. Alyne disclaims all warranties and representations of any kind, whether express, implied or statutory including, but not limited to, any warranty of functionality, merchantability, fitness for a particular purpose, title or non-infringement. Alyne does not warrant that your use of the Alyne Service will be uninterrupted, secure, timely, error-free, bug-free or free from malicious software, that we will review Your Data for accuracy or that we will preserve or maintain Your Data without loss.

7.4. Alyne Content (including Control Statements, Control Sets, Reports, Assessments and Funnels) are advisory in nature and do not constitute assurance, legal advice or audit results. Consequently, no opinions or conclusions intended to convey assurance are expressed through the Alyne Service. Due to the nature of the Alyne Assessment approach, it is possible that errors, unidentified risks or other irregularities may occur and remain undetected. Alyne cannot guarantee completeness of its content libraries or your usage of the Alyne Service. Relying solely on the results produced through the Alyne Service does not alleviate your Management's responsibility to implement and maintain adequate controls over your entire operation, or to detect and prevent fraud and other violations of regulatory or legal responsibilities.

## 8. Limitation of liability

- 8.1. Notwithstanding anything to the contrary in these Terms, Alyne and its Affiliates, suppliers, officers, representatives, contractors and employees shall not be responsible or liable to you or any End Users with respect to any subject matter of these Terms for: a) error or interruption of use, loss of use, loss or inaccuracy or corruption of any data, cost of procurement of substitute goods, services or technology, loss or interruption of business, costs of delay, or loss of profits, or; b) any indirect, exemplary, incidental, reliance, special or consequential damages; c) any failure of security mechanism; d) any matter beyond Alyne's reasonable control; or e) for any amounts that, together with amounts associated with all other claims, exceed the fees paid by you to Alyne for the Alyne Service under this agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not Alyne has been advised of the possibility of such damages.
- 8.2. Notwithstanding anything to the contrary herein, these limitations do not apply in the case of malicious intent, wilful misconduct or gross negligence or negligence resulting in personal injury.
- 8.3. The parties agree that the waivers and limitations specified in this clause 8 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in these Terms is found to have failed of its essential purpose.

## 9. Indemnity

You agree to indemnify and hold harmless Alyne (and its Affiliates, suppliers, officers, representatives, contractors and employees) and from and against any claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) resulting from any claim arising from or related to: (a) any claims or disputes brought by your End Users arising out of their use of the Alyne Service; (b) your breach (or alleged breach) of clause 2 (Customer restrictions and responsibilities); or (c) Your Materials.

## 10. Privacy

- 10.1. You understand and agree that Alyne collects, uses, stores and otherwise processes Your Data, including your or your End Users' personal information, utilisation data and any data created, stored or uploaded through you, and your End Users using the Alyne Service and may share such data with third party service providers for the purposes of improving or providing the Alyne Service.
- 10.2. Processed data includes your name, email address, postal address including this data from your End Users. If you have provided credit card details, our PCI-DSS compliant payment processor will store and use this data for purposes of performing authorised payment transactions.
- 10.3. All personal data will be treated confidentially and in compliance with the EU General Data Protection Regulation 2016/679 ("**GDPR**") and other applicable legislation.
- 10.4. You agree that Alyne may access, preserve and disclose your personal information and Your Data created, stored or uploaded to the Alyne Service if required to do so by law or to comply with a legal process.
- 10.5. Without prejudice to the restrictions in clause 2.3, you further agree to inform Alyne if you are using the Alyne Service to process Sensitive Data.
- 10.6. Alyne shall use domestic and international service providers to support the provision of the Alyne Service. Alyne will apply the Terms as defined in clauses 10 and 11 to the contracts with these subcontractors. A subcontractor outside of the European Economic Area will only be selected by Alyne, if an adequate level of data privacy and protection is provided.

## 11. Commissioned data processing

- 11.1. If you are operating in the European Union and intend on processing personally identifiable information (as defined in the GDPR) with the Alyne Service, the requirements from Article 28 of the GDPR apply to these Terms.
- 11.2. Alyne will not assume data ownership or control of Your Data and will only process this data on your behalf and upon your request.
- 11.3. You will be responsible for implementing the requirements defined in the GDPR as the data controller, while Alyne will be responsible for technical and organisational protection measures for Your Data.

- 11.4. If the requirements stated in clause 11.1 of these Terms are met you can request that Alyne and you agree a contractual addendum meeting the legal requirements for commissioned data processing.

## 12. Miscellaneous

- 12.1. If any provision of this agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this agreement will otherwise remain in full force and effect and enforceable.
- 12.2. This agreement is not assignable, transferable or sublicensable by you except with Alyne's prior written consent. Alyne may transfer and assign any of its rights and obligations under this agreement without consent.
- 12.3. This agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this agreement.
- 12.4. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.
- 12.5. The Alyne Service and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Alyne and you each represent that it is not named on any U.S. government denied-party list. You will not permit any End User to access or use the Alyne Service in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation.
- 12.6. No agency, partnership, joint venture, or employment is created as a result of this agreement and you do not have any authority of any kind to bind Alyne in any respect whatsoever.
- 12.7. In any action or proceeding to enforce rights under this agreement, the prevailing party will be entitled to recover costs and attorneys' fees.
- 12.8. All notices under this agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognised overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. There are no third-party beneficiaries under this agreement.

- 12.9. We may identify you as an Alyne customer in our promotional materials, without disclosing any further detail of your usage of the Alyne Service or any other commercial arrangements. We will promptly stop doing so upon your request sent to [support@alyne.com](mailto:support@alyne.com).

## 13. Alyne contracting entity; governing law

- 13.1. The Alyne entity entering into these Terms, the law that will apply in any dispute or lawsuit arising out of or in connection with these Terms, and the courts that have jurisdiction over any such dispute or lawsuit, shall depend on where you are domiciled. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to these Terms. The Uniform Computer Information Transactions Act (UCITA) will not apply to these Terms regardless of when or where adopted. Each party agrees to the applicable governing law below without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts below.
- 13.2. If you are domiciled in **the United States of America or a country in Europe or the United Kingdom** the Alyne entity entering into this agreement is **Alyne GmbH** (a German corporation), the governing law is the laws of **Germany**, and the courts of **Munich**, Germany, shall have exclusive jurisdiction.
- 13.3. If you are domiciled in **Australia or New Zealand** the Alyne entity entering into this agreement is **Alyne Australia Pty Ltd** (an Australian corporation), the governing law is the laws of the State of **Victoria, Australia**, and the courts of **Victoria, Australia**, shall have exclusive jurisdiction.
- 13.4. If you are domiciled in **any other country** the Alyne entity entering into this agreement is **Alyne GmbH** (a German corporation), the governing law is the laws of **Germany**, and the courts of **Munich**, Germany, shall have exclusive jurisdiction.

## 14. Definitions

Certain capitalised terms used in the Terms are defined in this clause 14, and others are defined contextually in these Terms.

**"Affiliate"** means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where "control" means the power to direct the management or affairs of an entity, and "ownership" means the beneficial ownership of greater than 50% of the voting equity securities or other equivalent voting interests of the entity.

**“Alyne Policies”** means Alyne’s standard published policies, as updated from time to time.

**“Alyne Service”** means the Alyne Software as a Service, including Alyne’s content libraries (specifically the Alyne Control Statement Library and the Alyne Risk Library), reference material, glossary, and help text purchased by You and made available online by Alyne.

**“End User”** means an individual you or an Affiliate permits or invites to use the Alyne Service. For the avoidance of doubt: (a) individuals invited by your End Users, (b) individuals under managed accounts, and (c) individuals interacting with the Alyne Service as your customer are also considered End Users.

**“HIPAA”** means the Health Insurance Portability and Accountability Act, as amended and supplemented.

**“Implementation Services”** means the implementation services (if any) specified in the applicable Order.

**“Initial Term”** means your initial permitted subscription period for the Alyne Service, as set out in the applicable Order.

**“Laws”** means all applicable local, state, federal and international laws, regulations and conventions, including those related to data privacy and data transfer, international communications and the exportation of technical or personal data.

**“Order”** means Alyne’s approved ordering document or process describing the Alyne Service you are ordering from Alyne, including the agreed: (i) User Quota; (ii) Initial Term; (iii) Implementation Services (if any); and (iv) Fees.

**“PCI DSS”** means the Payment Card Industry Data Security Standards.

**“Sensitive Data”** means any: (i) categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation; (ii) patient, medical or other protected health information regulated by HIPAA; (iii) credit, debit or other payment card data subject to PCI DSS; (iv) other information subject to regulation or protection under specific laws such as the Gramm-Leach-Bliley Act (or related rules or regulations); (v) social security numbers, driver’s licence numbers or other government ID numbers; or (vi) any data similar to the foregoing that is protected under foreign or domestic laws or regulations.

**“Subscription Term”** has the meaning given in clause 6.1.

**“User Quota”** means the User Quota specified in the Order.

**“Your Data”** means any data, content, code, video, images or other materials of any type that you (including any of your End Users) submit to the Alyne Service, including personal information of you or your End Users, comments, object descriptions, file attachments, and fully custom created control statements or risks. In this context, “submit” (and any similar term) includes submitting, uploading, transmitting or otherwise making available Your Data to or through the Alyne Service.

**“Your Materials”** means your materials, systems, personnel or other resources.

# Alyne Terms and Conditions (Superseded 30 April 2019)

These Terms and Conditions (“Terms”) constitute a contract between You and Alyne (as defined in clause 1.1). These Terms shall govern the use of the Alyne Service (as defined in clause 2) during both any free trial period and the paid service.

Please note that these Terms have been updated on 3 September 2018 (the “Effective Date”). To view a copy of the previous Terms and Conditions click [here](#). Contracts with any paying customers prior to the Effective Date shall remain unchanged for the contract duration, unless otherwise agreed between the parties. All contracts after the Effective Date shall be governed by these updated terms.

## 1. Applicability

### 1.1 Contract Parties

This contract shall exist between Alyne GmbH (“Alyne”), Hiltenspergerstr. 35, 80798 Munich, Germany, Amtsgericht Munich, HRB: 220987 and You or the entity, company, organisation and its affiliates You are authorised to represent and not a private consumer as defined in Paragraph 13 of the German Civil Code (BGB) (in the following referred to as “You” or “Your”).

### 1.2 Acceptance

By accepting these Terms or using the Alyne Service, You agree to be bound by these Terms. If You do not have authority to represent an entity, company, organisation or its affiliates or You do not agree with these Terms, You must not accept these Terms and must not use the Alyne Service.

## **1.3 Start Date**

These Terms are effective between You and Alyne as of the time and date You accept these Terms or use the Alyne Service, in accordance with clause 1.2 above.

## **1.4 Alternative Arrangements**

Any alternative or additional arrangements to these Terms must be agreed in writing.

Your Terms and Conditions (if any), even if accepted by Alyne, shall not form part of this contract.

# **2. Scope**

## **2.1 Alyne Service**

Alyne shall provide You access to the Alyne Service for the duration of this contract. The Alyne Service shall consist of the usage of the Alyne Software as a Service including Alyne's content libraries, specifically the Alyne Control Statement Library and the Alyne Risk Library. The software shall allow users to view Control Statements and Control Sets, create Assessments based on the Control Statements, visualise Assessment outcomes and identify related risks from the Risk Library. The Alyne Service shall further include reference material, glossary, help texts and website text and blog entries from the [alyne.com](http://alyne.com) website.

## **2.2 Free Trial**

### **2.2.1 Start of Trial Period**

Before signing up for the paid service, You may be registered for the Alyne trial period, providing limited access to the content libraries and Alyne Service functionality.

## **2.2.2 Deletion of Unused Trial Accounts**

After more than 12 months of inactivity following a trial period, Alyne reserves the right to remove Your account and delete all related data. You shall be responsible for extracting any required data before that time.

## **2.2.3 Limitations during the Trial Period**

The usage of the Alyne Service during the trial period shall be excluded from all warranty or support through Alyne.

# **2.3 Changes in Service**

## **2.3.1 Minor Deviations**

All offers made by Alyne shall be non-binding in nature. Alyne reserves the right to make minor deviations to the Alyne Service after Your acceptance of these Terms, without impacting the validity of this contract.

## **2.3.2 Updates**

Alyne further reserves the right to update or enhance the Alyne Service after Your acceptance of these Terms, without impacting the validity of this contract.

# **2.4 Contract Duration**

The contract shall remain in place until: (a) You or Alyne terminate the contract in writing; or (b) You have been inactive for more than 12 months in the free trial period, whichever is earlier.

# **2.5 Survival**

Your confidentiality obligations, Your obligations in relation to Intellectual Property and Your obligations to pay amounts owed to Alyne defined in this contract shall survive termination of Your use of the Alyne Service. Upon any termination of Your use of the Alyne Service, You must cease use of all confidential Information and Intellectual Property of Alyne, and / or services and destroy all confidential Information and Intellectual Property of Alyne in Your possession or control.

## **3. Payment**

### **3.1 Subscription to Alyne**

#### **3.1.1 Purchase**

You may purchase access to the Alyne Service for Your users through the Alyne Service or by contacting Alyne Support (“User Quota”). You may only purchase access after providing accurate billing details.

#### **3.1.2 Users**

Alyne agrees to provide access to the Alyne Service and, following any free trial period, You agree to pay for the Alyne Service, based on the number of Your named users that access the Alyne Service within the defined contract duration.

Should You exceed Your purchased User Quota, Alyne may charge and invoice You for any exceeded usage and/or suspend You from further usage of the Alyne Service until You purchase additional User Quotas.

#### **3.1.3 Refunds**

Purchased subscriptions are not refundable. Partial refunds of usage costs for the current month are also not refundable upon termination.

#### **3.1.4 Auto-Renewal, Cancellation**

For any paid service, Your subscription to the Alyne Service shall auto-renew at the end of the contract period for the next 12 months, unless cancelled through written notice at

least 30 days before end of the contract period. If cancelled, Your access to the Alyne Service will be suspended until You purchase a new User Quota.

### **3.1.5 Bonus and Discounts**

We may, at our sole discretion, choose to offer discounted prices for usage of the Alyne Service. Discounts have no monetary or cash value and shall only be used by You to offset cost of Alyne subscription purchases. Bonus codes and discount codes may only be used by You and may not be transferred or sold. Additional terms and limitations may be defined for each bonus or discount code including, but not limited to, expiry dates or specific usages.

### **3.1.6 Future Functionality**

You agree that Your subscription purchases are based solely on Alyne Service functionality available at the time of purchase and not contingent on the delivery of future functionality or features mentioned orally or in written form by Alyne.

### **3.1.7 Price Changes**

Alyne reserves the right to change the purchase price for usage of the Alyne Service at its sole discretion. Pricing changes shall not affect purchased subscriptions in any way or the validity of this contract.

## **3.2 Invoicing**

Subscription durations are 12 months and payment is due upon contract start. Alyne shall provide an invoice to You after each subscription purchase reflecting the amounts owed by You for usage of the Alyne Service.

## **3.3 Taxation**

All prices displayed in the Alyne Service are exclusive of applicable taxes, levies, duties or similar governmental assessments. These will be raised on the invoice as legally required.

## 3.4 Payment

You will provide Alyne with a valid billing address, a valid purchase order, valid credit card details or an alternative document reasonably acceptable to Alyne. In case You have selected credit card payments, You hereby authorise Alyne or Alyne's payment processor, to deduct such charges You incur through purchases of credit packages. If You have selected any other payment type, Alyne will send You an invoice immediately following your purchase. Invoiced charges are due upon receipt of the invoice and You must pay the full invoiced amount to Alyne no later than 30 days after the date of the invoice.

## 3.5 Late Payment

Alyne will notify You of late payments. Alyne reserves the right to accrue and charge interest or late fees on the outstanding balance as permitted by law.

## 3.6 Suspension of Service and Termination

Subject to clauses 2.5 and 3.1.3, either party may elect in writing to terminate Your account for the Alyne Service. You may request termination by submitting a support request to [support@alyne.com](mailto:support@alyne.com) or in written form to Alyne's German Business Address at least 30 days prior to contract end. For the avoidance of doubt, if You terminate before the end of the contract period you shall not be entitled to any refund of any purchased subscriptions.

Alyne reserves the right, without limiting its other rights and remedies, to suspend Your access to the Alyne Service if: (a) any amount You owe to Alyne is more than 30 days overdue; or (b) if Alyne believe You, and / or Your End Users have violated any of these Terms. Any fraudulent, abusive or illegal activity by You, and / or Your End Users may be referred to appropriate government authorities at Alyne's sole discretion.

# 4. Confidentiality

Each party will protect each other's confidential information from unauthorised use, access or disclosure in the same manner as each protects its own confidential information, but with no less than reasonable care. Except as otherwise expressly permitted in these Terms, each party may use each other's confidential information solely to exercise our respective rights and perform our respective obligations under these Terms and shall disclose such confidential information: (a) solely to those of our respective employees, representatives and subcontractors who have a need to know such confidential information for such purposes and who are bound to maintain the confidentiality of, and not misuse, such confidential information; (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or (c) as reasonably necessary to comply with any applicable law or regulation. The provisions of this clause 4 shall supersede any non-disclosure agreement by and between the parties that would purport to address the confidentiality and security of data stored using the Alyne Service and such agreement shall have no further force or effect with respect to data stored using the Alyne Service.

# 5. Responsibilities

## 5.1 Alyne Responsibilities

### 5.1.1 Availability

Alyne will take commercially reasonable efforts to make the Alyne Service available to You 24 hours a day, 7 days a week, except for: (a) planned downtime for maintenance of which we will aim to inform You electronically at least 8 hours before the downtime; and (b) any downtime caused by circumstances beyond our control, including, but not limited to, natural disasters, acts of governments, civil unrest, acts of terror, strike, cyber security incidents or service provider failures.

### 5.1.2 Support

Alyne will provide basic support to You at no additional cost. Support requests may be raised through the Alyne Service and Alyne will take commercially reasonable efforts to respond within 2 business days. Alyne reserves the right to define additional commercial arrangements for the resolution of complex support requests.

### **5.1.3 Privacy**

You understand and agree that Alyne collects, uses, stores and otherwise processes Your personal information, utilisation data and any data created, stored or uploaded through You, and / or Your End Users using the Alyne Service and may share such data with third party service providers for the purposes of improving or providing the Alyne Service.

Processed data includes Your name, email address, postal address including this data from Your End Users. If You have provided credit card details, our PCI-DSS compliant payment processor will store and use this data for purposes of performing authorised payment transactions.

All personal data will be treated confidentially and in compliance with the EU General Data Protection Regulation 2016/679 (“GDPR”) and other applicable legislation.

You agree that Alyne may access, preserve and disclose Your personal information and / or Data created, stored or uploaded to the Alyne Service if required to do so by law or to comply with a legal process.

You further agree to inform Alyne if you are using the Alyne Service to process special categories of personally identifiable information as defined in the GDPR, Article 9.

### **5.1.4 Subcontractors**

Alyne shall use domestic and international service providers to support the provision of the Alyne Service. Alyne will apply the Terms as defined in clauses 5.1.3 and 6 to the contracts with these subcontractors. A subcontractor outside of the European Economic Area will only be selected by Alyne, if an adequate level of data privacy and protection is provided.

## **5.2 Customer Responsibilities**

## **5.2.1 Authorised Users**

Your Users shall include all End Users You provide with access to the Alyne Service, including End Users within Your organisation and such End Users that are external to Your organisation.

## **5.2.2 Account Credentials**

You, and / or Your End Users must keep their account credentials (login ID and password) confidential and may not disclose or share among multiple individuals. Account credentials must be sufficiently protected and only stored in sufficiently encrypted form.

## **5.2.3 Connectivity**

You are responsible for procuring and maintaining sufficient infrastructure to access the Alyne Service. This includes, but is not limited to: (a) a high speed internet connection; (b) network connections connecting You, and / or Your End Users to the internet; (c) access to current browser software installed on devices using the Alyne Service; and (d) current devices with sufficient capability to process current browser based software. Alyne will assume no responsibility for the reliability, security, availability or performance of any of these components not operated by Alyne.

## **5.2.4 Copyright and Content Usage**

You are granted a limited term, non-exclusive, non-transferable licence to the Alyne Service via an internet connection to the Alyne Content (including, but not limited to, Alyne Control Statement Library, Alyne Risk Library, Support Texts, Homepage Texts, Alyne Reports) for the duration of this contract.

All Alyne Software, Alyne Content and related documentation is the copyrighted work of Alyne. Unauthorised copying, distribution, modification, public display, or public performance of copyrighted works is an infringement of the copyright holder's rights.

You may not sub-license and must not purport to sub-license any rights granted under this clause 5.2.4.

As used in these Terms, "Intellectual Property Rights" includes, but is not limited to, design rights, content libraries, algorithms, processes, invention rights, copyrights, trademarks, service marks, trade secret or confidentiality rights, and any other

intangible property rights including applications for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

Selecting a value for a variable in an Alyne Control Statement, adding a custom value to an Alyne Control Statement, creating Custom Control Sets or Funnel or Assessments or generating an Alyne Report does not affect Alyne's Intellectual Property Rights or provide You usage rights beyond the duration of this contract.

Upon termination or suspension of this contract, all access rights covered in clause 5.2.4 are terminated and You are no longer authorised to use Alyne's Intellectual Property.

Nothing in this contract shall operate to assign or transfer any Intellectual Property Rights from Alyne to You.

## **5.2.5 Misuse of the Service**

You agree not to: (a) modify, adapt or otherwise hack the Alyne Service apart from the intended customisation options; (b) falsely imply membership or affiliation with Alyne; (c) reverse engineer or otherwise access Alyne's source code; (d) use the service to violate a third party's Intellectual Property rights; (e) use the service in any way that disrupts performance or integrity of the service; (f) use the Alyne Service in an unlawful manner; (g) upload and use unlawful, discriminatory, racist, sexist, violent or otherwise inappropriate content with the Alyne Service; (h) use the service to introduce, run or spread malicious software including, but not limited to viruses, trojan horses or worms; or (i) use the Alyne Service in violation of existing laws such as, but not limited to, unsolicited contacting of individuals or misuse for mass marketing.

## **5.2.6 Your Data**

You shall be the sole data owner and controller and responsible for maintaining sufficient accuracy of Your data uploaded or created using the Alyne Service, including: (a) personal information of You and / or Your End Users; (b) comments; (c) object descriptions; (d) file attachments; (e) images / graphics; and (f) fully custom created control statements and / or risks. Before terminating this contract, You are responsible for extracting this data, if required.

You hereby grant Alyne a worldwide, limited term license to host, copy, transmit and display Your Data as necessary for us to provide the Alyne Service as defined in these Terms. You further permit Alyne to monitor limited aspects of user activity for the

purpose of securing and improving the Alyne Service. Alyne acquires no right, title or interest to Your Data.

### **5.2.7 Informing Users**

All users You provide the Alyne Service to must be aware of the Terms of this contract before using the service.

### **5.2.8 License to use Your Feedback and Reference**

You hereby grant Alyne a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Your End Users into the Alyne Service.

You furthermore grant Alyne the worldwide, perpetual, royalty-free license to reference your organisation's usage of the Alyne Service towards other clients, without disclosing any further detail of Your usage of the Alyne Service or any other commercial arrangements.

## **6. Commissioned Data Processing**

### **6.1 Data covered by Commissioned Data Processing**

If You are operating in the European Union and intending on processing personally identifiable information (as defined in the GDPR) with the Alyne Service, the requirements from Article 28 of the GDPR apply to this contract.

### **6.2 Data Ownership**

Alyne will not assume data ownership or control of Your Data as defined in 5.2.6 of this contract and will only process this data on your behalf and upon Your request.

## **6.3 Responsibilities for Data Processing**

You will be responsible for implementing the requirements defined in the GDPR as the data controller, while Alyne will be responsible to technical and organisational protection measures for Your Data.

## **6.4 Contractual Addendum**

A contractual addendum meeting the legal requirements for commissioned data processing must be confirmed between You and Alyne if the requirements stated in 6.1 of these Terms are met.

# **Disclaimers, Liability and other Terms**

## **7.1 Liability**

To the extent allowable by applicable law, Alyne and its officers, employees, partners and licensors shall not be liable to You or any user of the Alyne Service for any direct, indirect, incidental, special, punitive, consequential or exemplary damages, including, but not limited to, damages for loss of profit, anticipated savings, revenue, income, goodwill, use, production, data, database, software or loss of business, contracts or opportunities, or other intangible losses (even if Alyne has been advised of the possibility of such damages), however caused, whether in contract, tort, or otherwise resulting from the inability to access the Alyne Service, advice derived from Alyne

Content, Alyne Software of any kind, the cost of procuring substitute services, unauthorised modification of or access to Your data or any matter relating to the Alyne Service.

Notwithstanding anything to the contrary herein, these limitations do not apply in the case of malicious intent or gross negligence by Alyne or negligence by Alyne resulting in personal injury.

Alyne Content (including Control Statements, Control Sets, Reports, Assessments and Funnels) are advisory in nature and do not constitute assurance, legal advice or audit results. Consequently, no opinions or conclusions intended to convey assurance are expressed through the Alyne Service. Due to the nature of the Alyne Assessment approach, it is possible that errors, unidentified risks or other irregularities may occur and remain undetected. Alyne cannot guarantee completeness of its content libraries or Your usage of the Alyne Service. Relying solely on the results produced through the Alyne Service does not alleviate Your Management's responsibility to implement and maintain adequate controls over Your entire operation, detect and prevent fraud and other violations of regulatory or legal responsibilities. You acknowledge that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this contract, Alyne gives no warranty or representation that the Alyne Service will be wholly free from defects, errors and bugs.

## 7.2 Indemnity

You agree to indemnify Alyne, its officers, employees, partners and licensors and hold Alyne harmless from any claim or demand made by any third party alleging your usage of the Alyne Service infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret.

## 7.3 Warranty

To the extent allowable by law, the Alyne Service is provided "as is", without any warranties of any kind. Alyne disclaims any and all kind of warranties, expressed or implied including, but not limited to, merchantability, fitness for a specific purpose, and non-infringement. Alyne does not warrant that the Alyne Service is uninterrupted, secure, timely, error-free or free from malicious software.

## 7.4 Jurisdiction

These terms shall be governed by German law excluding conditions defined by the UN convention on Contracts for the International Sale of Goods.

## 7.5 Severability

If any of these provisions in these Terms is held by a court of law to be unenforceable, such provisions shall be modified by the court so as to best meet the intent of the original provision to the fullest extent permitted by law. The remaining provisions of these Terms shall remain effective.

## 7.6 Trademark

Alyne is a registered trademark of the Alyne GmbH and You are prohibited now or in the future, to claim any rights on the trademark, degrade the distinctiveness of the trademark, or use the trademark to disparage or misrepresent Alyne, the Alyne Service or other Alyne products.

## 7.7 Export Controls

You agree that Your use of the Alyne Service will be in compliance with U.S. and EU export control laws and executive orders. It is Your obligation to verify and comply with all applicable laws and regulations limiting the use of “controlled” information as defined by U.S. law. The Alyne Service may not be accessed or used by any national of certain countries or groups against which the United States and / or European Union have instituted sanctions, Specially Designated Nationals, and other proscribed persons who are listed on the Denied Parties List.

## **7.8 Changes to the Terms of Service**

Should Alyne plan any changes to these Terms following Your acceptance, we will inform you more than 30 days prior to the planned changes. Any changes or additions to these Terms must be agreed in writing.

# Alyne Terms and Conditions

## (Superseded 3 September 2018)

These Terms of Service constitute a contract between You and Alyne (as defined in chapter 1). The Terms of Service (“Terms”) shall govern the acquisition and use of the Alyne Service (as defined in chapter 2) both during the free trial period and paid service.

Please note that these Terms have been updated on 6. September 2016 effective 6. October 2016. Contracts with any paying customers prior to this date remain unchanged for the contract duration. All contracts after this date shall be governed by these updated terms. Please refer to our blog for details of the updates.

## 1. Applicability

### 1.1 Contract Parties

This contract shall exist between Alyne GmbH (“Alyne”), Hiltenspergerstr. 35, 80798 Munich, Germany, Amtsgericht Munich, HRB: 220987 and You or the entity, company, organisation and its affiliates You are authorised to represent and not a private consumer as defined in Paragraph 13 BGB (in the following referred to as “You” or “Your”).

### 1.2 Acceptance

By accepting these Terms of Service or using the Alyne Service, You agree to be bound to these Terms. If You do not have such authority to represent an entity, company, organisation or its affiliates or You do not agree with these Terms of Service, You must not accept these Terms and must not use the Alyne Service.

### 1.3 Start Date

This document was last updated on 30. September 2016. It is effective between You and Alyne as of the time and date You are accepting these Terms.

## **1.4 Alternative Arrangements**

Any alternative or additional arrangements to these Terms of Service must be agreed in writing. Your Terms and Conditions, even if accepted by Alyne, shall not be part of this contract.

# **2. Scope**

## **2.1 Alyne Service**

Alyne shall provide You access to the Alyne Service for the duration of this contract. The Alyne Service shall consist of the usage of the Alyne Software as a Service including Alyne's content libraries, specifically the Alyne Control Statement Library and the Alyne Risk Library. The software shall allow users to view Control Statements and Control Sets, create Assessments based on the Control Statements, visualise Assessment outcomes and identify related risks from the Risk Library. The Alyne Service shall further include reference material, glossary, help texts and website text and blog entries from the alyne.com website.

## **2.2 Free Trial**

### **2.2.1 Start of Trial Period**

Before signing up for a usage tier, You will be registered for the Alyne trial period, providing limited access to the content libraries and Alyne Service functionality.

### **2.2.2 Deletion of Unused Trial Accounts**

After more than 12 months of inactivity following a trial period, Alyne reserves the right to remove Your account and delete all related data. You shall be responsible for extracting any required data before that time.

### **2.2.3 Limitations during the Trial Period**

The usage of the Alyne Service during the trial period shall be excluded from all warranty or support through Alyne.

## **2.3 Changes in Service**

### **2.3.1 Minor Deviations**

All offers made shall be non-binding in nature. Alyne reserves the right of minor deviations to the service after Your acceptance.

### **2.3.2 Updates**

Alyne further reserves the right to update or enhance the service after Your acceptance without impacting the validity of this contract.

## **2.4 Contract Duration**

The contract shall remain in place until (a) You or Alyne terminate the contract in writing or (b) You have been inactive for more than 12 months in the free trial period.

## **2.5 Survival**

Your confidentiality obligations defined in this contract shall survive termination of Your use of the Alyne Service. Upon any termination of Your use of the Alyne Service, You must cease use of Confidential Information and Intellectual Property, and / or Services and destroy all Confidential Information and Intellectual Property of Alyne in Your possession or control.

# 3. Payment

## 3.1 Subscription to Alyne Usage Tiers

### 3.1.1 Purchase

You may purchase access to Alyne Usage Tiers through the Alyne Service or by contacting Alyne Support. You may only purchase access after providing accurate billing details.

### 3.1.2 Usage Tiers

Alyne provides access to the Alyne service based on defined usage tiers limiting (a) the number of concurrent Business Users, (b) number of concurrent Expert or Admin Users, (c) the number of assessed objects and (d) the number of concurrently active funnels within the defined contract duration.

Should You exceed one or more thresholds defined in your subscribed usage tiers, You shall be prevented from further usage of these types or may subscribe to a higher usage tier.

### 3.1.3 Refunds

Purchased subscriptions in a usage tier are not refundable. Partial refunds of usage costs for the current month are also not refundable upon termination.

### 3.1.4 Auto-Renewal, Cancellation and Revert to free trial period

Alyne subscription contracts auto-renew at the end of the contract period for the next 12 months unless cancelled through written notice at least 30 days before end of the

contract period. In this case, the organisation's administrators return to a free trial period. Business and Expert users will not be able to access the Alyne organisation, until a new subscription to a usage tier is signed.

### **3.1.5 Bonus and Discounts**

We may, at our sole discretion, choose to offer discounted usage tiers for Alyne. Discounts have no monetary or cash value and shall only be used by You to offset cost of Alyne subscription purchases. Bonus codes and discount codes may only be used by You and may not be transferred or sold. Additional terms and limitations may be defined for each bonus or discount code including, but not limited to, expiry dates or specific usages.

### **3.1.6 Future Functionality**

You agree that Your subscription purchases are based solely on Alyne Service functionality available at the time of purchase and not contingent on the delivery of future functionality or features mentioned orally or in written form by Alyne.

### **3.1.7 Price Changes**

Alyne reserves the right to change the price of usage tiers at our sole discretion. Pricing changes shall not affect purchased subscriptions in any way or the validity of this contract.

## **3.2 Invoicing**

Subscription duration are twelve (12) months and payment is due upon contract start. Alyne shall provide an invoice to You after each subscription purchase reflecting the amount confirmed by You in the Alyne Service and potentially applicable discounts applied.

## **3.3 Taxation**

All prices displayed in the Alyne Service are excluding applicable taxes, levies, duties or similar governmental assessments. These will be raised on the invoice as legally required.

## 3.4 Payment

You will provide Alyne with a valid billing address, a valid purchase order, valid credit card details or an alternative document reasonably acceptable to Alyne. In case You have selected credit card payments, You hereby authorise Alyne or Alyne's payment processor, to deduct such charges You incur through purchases of credit packages. If You have selected any other payment type, Alyne will send You an invoice immediately following your purchase. Invoice charges are due upon receipt of the invoice with payment no later than thirty (30) days after the invoice date.

## 3.5 Late Payment

Alyne will notify You of late payments. Alyne reserves the right to accrue and charge interest or late fees on the outstanding balance as permitted by law.

## 3.6 Suspension of Service and Termination

Either party may elect to terminate Your account for the Alyne Service. You may request termination by submitting a support request to [support@alyne.com](mailto:support@alyne.com) or in written form to Alyne's Business Address at least thirty (30) days prior to contract end.

Alyne reserves the right, without limiting Alyne's other rights and remedies, to suspend Your access to the Alyne Service (revert Administrative Users to a Free Trial Period, suspend access to the Alyne Service for Expert and Business Users) if (a) any amount You owe to Alyne is more than thirty (30) days overdue, or (b) if we believe You, and / or Your End Users have violated these Terms. Any fraudulent, abusive or illegal activity by You, and / or Your End Users may be referred to appropriate government authorities at Alyne's sole discretion.

# 4. Confidentiality

Each party will protect each other's Confidential Information from unauthorised use, access or disclosure in the same manner as each protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted in these Terms, each party may use each other's Confidential Information solely to exercise our respective rights and perform our respective obligations under these Terms and shall disclose such Confidential Information (a) solely to those of our respective employees, representatives and subcontractors who have a need to know such Confidential Information for such purposes and who are bound to maintain the confidentiality of, and not misuse, such Confidential Information; (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or (c) as reasonably necessary to comply with any applicable law or regulation. The provisions of this Section 4 shall supersede any non-disclosure agreement by and between the parties that would purport to address the confidentiality and security of data stored using the Alyne Service and such agreement shall have no further force or effect with respect to data stored using the Alyne Service.

# 5. Responsibilities

## 5.1 Alyne Responsibilities

### 5.1.1 Availability

Alyne will take commercially reasonable efforts to make the Alyne Service available to You 24 hours a day, 7 days a week, except for (a) planned downtime for maintenance of which we will aim to inform You electronically at least 8 hours before the downtime and (b) any downtime caused by circumstances beyond our control, including, but not limited to, natural disasters, acts of governments, civil unrest, acts of terror, strike, cyber security incidents or service provider failures.

### 5.1.2 Support

Alyne will provide basic support to You at no additional cost. Support requests may be raised through the Alyne Service and Alyne will take commercially reasonable efforts to respond within two (2) business days. Alyne reserves the right to define additional commercial arrangements for the resolution of complex support requests.

### **5.1.3 Privacy**

You understand and agree that Alyne collects, uses, stores and otherwise processes Your personal information, utilisation data and any data created, stored or uploaded through You, and / or Your End Users using the Alyne Service and may share such data with third party service providers for the purposes of improving or providing the Alyne Service.

Processed data includes Your name, email address, postal address including this data from Your End Users. If You have provided credit card details, our PCI-DSS compliant payment processor will store and use this data for purposes of performing authorised payment transactions.

All personal data will be treated confidentially and in compliance with the Federal German Data Protection Act (Bundesdatenschutzgesetz) and other applicable legislation.

You agree that Alyne may access, preserve and disclose Your personal information and / or Data created, stored or uploaded to the Alyne Service if required to do so by law or to comply with a legal process.

You further agree to inform Alyne if you are using the Alyne Service to process sensitive personally identifiable information as defined in the Federal German Data Protection Act Paragraph 3 Section 9.

### **5.1.4 Subcontractors**

Alyne shall use domestic and international service providers to support the provision of the Alyne Service. Alyne will apply the Terms as defined in chapters 5.1.3 and 6 to the contracts with these subcontractors. A subcontractor outside of the European Economic Area will only be selected by Alyne, if an adequate level of data privacy and protection is provided.

## **5.2 Customer Responsibilities**

### **5.2.1 Authorised Users**

You may only permit the users and type of user accounts you have purchased within your usage tier to access the Alyne Service. A Business User, Expert User or Admin User is bound to the specific invited user and is not transferrable.

Your Users shall include all End Users You provide with access to the Alyne Service, including End Users within Your organisation and such End Users that are external to Your organisation.

### **5.2.2 Account Credentials**

You, and / or Your End Users must keep their account credentials (login ID and password) confidential and may not disclose or share among multiple individuals. Account credentials must be sufficiently protected and only stored in sufficiently encrypted form. Passwords must be regularly changed.

### **5.2.3 Connectivity**

You are responsible for procuring and maintaining sufficient infrastructure to access the Alyne Service. This includes, but is not limited to, (a) a high speed internet connection, (b) network connections connecting You, and / or Your End Users to the internet, (c) access to current browser software installed on devices using the Alyne Service and (d) current devices with sufficient capability to process current browser based software. Alyne will assume no responsibility for the reliability, security, availability or performance of any of these components not operated by Alyne.

### **5.2.4 Copyright and Content Usage**

You are granted a limited term license to the Alyne Service via an internet connection to the Alyne Content (including, but not limited to, Alyne Control Statement Library, Alyne Risk Library, Support Texts, Homepage Texts, Alyne Reports) and the Alyne Service for the duration of this contract.

All Alyne Software, Alyne Content and related documentation is the copyrighted work of Alyne. Unauthorised copying, distribution, modification, public display, or public

performance of copyrighted works is an infringement of the copyright holder's rights. As used herein, "Intellectual Property Rights" includes, but is not limited to, design rights, content libraries, algorithms, processes, invention rights, copyrights, trademarks, service marks, trade secret or confidentiality rights, and any other intangible property rights including applications for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

Selecting a value for a variable in an Alyne Control Statement, adding a custom value to an Alyne Control Statement, creating Custom Control Sets or Funnel or Assessments or generating an Alyne Report does not affect Alyne's Intellectual Property Rights or provide You usage rights beyond the duration of this contract.

Upon termination or suspension of this contract, all access rights covered in section 5.2.4 are terminated and You are no longer authorised to use Alyne's Intellectual Property.

## **5.2.5 Misuse of the Service**

You agree not to (a) modify, adapt or otherwise hack the Alyne Service apart from the intended customisation options, (b) falsely imply membership or affiliation with Alyne, (c) reverse engineer or otherwise access Alyne's source code, (d) use the service to violate a third party's intellectual property rights, (e) use the service in any way that disrupts performance or integrity of the service, (f) use the Alyne Service in an unlawful manner, (g) upload and use unlawful, discriminatory, racist, sexist, violent or otherwise inappropriate content with the Alyne Service, (h) use the service to introduce, run or spread malicious software including, but not limited to viruses, trojan horses or worms or (i) use the Alyne Service in violation of existing laws such as, but not limited to, unsolicited contacting of individuals or misuse for mass marketing.

## **5.2.6 Your Data**

You shall be the sole data owner and controller and responsible for maintaining sufficient accuracy of Your data uploaded or created using the Alyne Service, including (a) personal information of You and / or Your End Users, (b) comments, (c) object descriptions, (d) file attachments, (e) images / graphics and (f) fully custom created control statements and / or risks. Before terminating this contract, You are responsible for extracting this data, if required.

You hereby grant Alyne a worldwide, limited term license to host, copy, transmit and display Your Data as necessary for us to provide the Alyne Service as defined in these Terms. You further permit Alyne to monitor limited aspects of user activity for the purpose of securing and improving the Alyne Service. Alyne acquires no right, title or interest to Your Data.

### **5.2.7 Informing Users**

All users You provide the Alyne Service to must be aware of the Terms of this contract before using the service.

### **5.2.8 License to use Your Feedback and Reference**

You hereby grant Alyne a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Your End Users into the Alyne Service.

You furthermore grant Alyne the worldwide, perpetual, royalty-free license to reference your organisation's usage of the Alyne Service towards other clients, without disclosing any further detail of Your usage of the Alyne Service or any other commercial arrangements.

## **6. Commissioned Data Processing**

### **6.1 Data covered by Commissioned Data Processing**

If You are operating in the European Union and intending on processing personally identifiable information with the Alyne Service as defined in the Federal German Data Protection Act, the requirements from Paragraph 11 of the Federal German Data Protection Act (Auftragsdatenverarbeitung) apply to this contract.

## **6.2 Data Ownership**

Alyne will not assume data ownership or control of Your Data as defined in 5.2.6 of this contract and will only process this data on your behalf and upon Your request.

## **6.3 Responsibilities for Data Processing**

You will be responsible for implementing the requirements defined in the Federal German Data Protection Act as the data controller, while Alyne will be responsible to technical and organisational protection measures for Your Data.

## **6.4 Contractual Addendum**

A contractual addendum meeting the legal requirements for commissioned data processing must be confirmed between You and Alyne if the requirements stated in 6.1 of these Terms are met.

# **Disclaimers, Liability and other Terms**

## **7.1 Liability**

To the extent allowable by applicable law, Alyne and its officers, employees, partners and licensors shall not be liable to any User of the Alyne Service for any direct, indirect, incidental, punitive, consequential or exemplary damages, including, but not limited to, damages for loss of profit, revenue, goodwill, use, data, or other intangible losses (even

if Alyne has been advised of the possibility of such damages), however caused, whether in contract, tort, or otherwise resulting from the inability to access the Alyne Service, advice derived from Alyne Content, Alyne Software of any kind, the cost of procuring substitute services, unauthorised modification of or access to Your Data or any matter relating to the Alyne Service.

Notwithstanding anything to the contrary herein, these limitations do not apply in the case of malicious intent or gross negligence by Alyne or negligence by Alyne resulting in personal injury.

Alyne Content (Control Statements, Control Sets, Reports, Assessments, Funnels) are advisory in nature and do not constitute assurance or audit results. Consequently, no opinions or conclusions intended to convey assurance are expressed through the Alyne Service. Due to the nature of the Alyne Assessment approach, it is possible that errors, unidentified risks or other irregularities may occur and remain undetected. Alyne cannot guarantee completeness of our content libraries or Your usage of the Alyne Service. Relying solely on the results produced through the Alyne Service does not alleviate Management's responsibility to implement and maintain adequate controls over Your entire operation, detect and prevent fraud and other violations of regulatory or legal responsibilities.

## 7.2 Indemnity

You agree to indemnify Alyne, its officers, employees, partners and licensors and hold Alyne harmless from any claim or demand made by any third party alleging your usage of the Alyne Service infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret.

## 7.3 Warranty

To the extent allowable by law, the Alyne Service is provided "as is", without any warranties of any kind. Alyne disclaims any and all kind of warranties, expressed or implied including, but not limited to, merchantability, fitness for a specific purpose, and non-infringement. Alyne does not warrant that the Alyne Service is uninterrupted, secure, timely, error-free or free from malicious software.

## 7.4 Jurisdiction

These terms shall be governed by German law excluding conditions defined by the UN convention on Contracts for the International Sale of Goods.

## 7.5 Severability

If any of these provisions in these Terms is held by a court of law to be unenforceable, such provisions shall be modified by the court so as to best meet the intent of the original provision to the fullest extent permitted by law. The remaining provisions of these Terms shall remain effective.

## 7.6 Trademark

Alyne is a registered trademark of the Alyne GmbH and You are prohibited now or in the future, to claim any rights on the trademark, degrade the distinctiveness of the trademark, or use the trademark to disparage or misrepresent Alyne, the Alyne Service or other Alyne products.

## 7.7 Export Controls

You agree that Your use of the Alyne Service will be in compliance with U.S. and EU export control laws and executive orders. It is Your obligation to verify and comply with all applicable laws and regulations limiting the use of “controlled” information as defined by U.S. law. The Alyne Service may not be accessed or used by any national of certain countries or groups against which the United States and / or European Union have instituted sanctions, Specially Designated Nationals, and other proscribed persons who are listed on the Denied Parties list.

## **7.8 Changes to the Terms of Service**

Should Alyne plan any changes to these Terms, we will inform you more than thirty (30) days prior of the planned changes. Any changes or additions to these Terms must be agreed in writing.