

## Terms of Use

Effective Date: March 15, 2017

ALL USERS MUST READ THIS SECTION. PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, AND A CLAUSE THAT GOVERNS HOW AND WHERE DISPUTES WILL BE RESOLVED.

**ACCEPTANCE OF TERMS OF USE.** By creating a profile, subscribing to and/or accessing any Alpine Achievement Systems, Inc. service or system on [www.alpineachievement.com](http://www.alpineachievement.com) or [www.myalpine.com](http://www.myalpine.com), (the "Site"), you agree to the terms and conditions on behalf of your school district or organization (hereinafter "you" or "Client") in this Agreement between you and Alpine Achievement Systems, Inc. (hereinafter, "Alpine", "we", or "us"). If you do not wish to agree to the outlined terms and conditions (the "Terms of Use" or the "Agreement"), your only recourse is to discontinue use of the Site and, if you have previously subscribed to any Alpine service, notify Alpine in writing of your termination of the service.

Alpine reserves the right to make any changes to our Terms of Use and/or our Privacy Policy (which is incorporated herein by reference) provided that you are given 30 days notice prior to any changes going into effect; provided, however, that if such changes are required to comply with federal or state law such changes will become effective immediately upon notification thereof. If Alpine make changes to these Terms of Use and/or our Privacy Policy and you continue to use the Site after the 30 day notice period has been granted, or in the case of changes required by federal or state law immediately after notification of such change, you are impliedly agreeing to the updated Terms of Use and Privacy Policy expressed herein.

### USE OF SITE.

1. **Authorization of Organization.** You agree and acknowledges that you are subscribing to Alpine services for your organization and that you are fully authorized to do so on behalf of that organization, and in so doing bind all parties who make use of any Alpine service or system in connection with the organization's Alpine account to Alpine's Terms of Use. This may include parties within your organization, such as district/school administrators and teachers and also parties outside the direct purview of the organization, such as independent consultants whom you may grant access to your Alpine account.
2. **Contractor Status.** You agree and acknowledge that Alpine is a contractor working on your behalf and is therefore considered a "school official" for FERPA purposes. You certify that you have indicated in your annual FERPA notification to parents that you use contractors to provide certain services on behalf of your district/organization. If required by state or federal law, you agree and acknowledge that you have listed Alpine Achievement Systems, Inc. specifically as one of your contractors.
3. **Your Use of the Site.** You may use the Site only as permitted by these Terms of Use and only in a manner consistent with all applicable federal and state laws, rules and regulations, and generally accepted practices or guidelines in relevant jurisdictions, including any laws governing the export of data to or from the United States. You agree not to use any deep-linking, robots, spiders, data-mining, or other automatic or manual device, software, program, code, algorithm, or methodology to access, copy, or monitor any portion of the Site or Content, or in any way reproduce or circumvent the navigational structure or presentation of the Site or

Content, or obtain or attempt to obtain any materials or information through any means not purposely made available by us through the Site. We reserve the right to take measures to prevent any such activity. You further agree: (a) not to harvest or collect email addresses or other contact information of other users by electronic or other means for the purposes of sending unsolicited emails, or other unsolicited communications; (b) not to use this Site in any unlawful manner or in any other manner that could damage, disable, overburden, or impair the Site; (c) not to use automated scripts to collect information from or otherwise interact with the Site; (d) not to forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to us on or through the Site or any service offered on or through the Site; and/or, (e) not to impersonate or pretend that you are any other person or falsely claim you represent another person.

4. **User Communications and User Content.** By submitting material to this Site ("User Communications"), including, but not limited to, information, suggestions, ideas, concepts, know-how, forum postings, comments on blogs, techniques, questions, comments or other communication, whether such submission is by a public feature of the Site (i.e. forum area, blog comments, etc.) or by private transmission (i.e. email to Alpine), you warrant that such content is original to you, that you own all applicable legal rights in such content, and that the content does not and will not infringe upon the rights of any other person or entity. Further, by submitting any User Communication, you agree and acknowledge that you have expressly granted Alpine a royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, and distribute such material (in whole or in part) worldwide and/or to incorporate it in other works in any form, media, or technology now known or hereafter developed for the full term of any copyright that may exist in such material. You also permit any other users to access, view, store, or reproduce the material if posted in a public area of the Site for that user's personal use. You hereby grant Alpine the right to edit, copy, publish and distribute any material made available on this Site by you, including, but not limited to, information, suggestions, ideas, events, comments, commentary, and other postings. You agree that we may use any User Communication for any purpose in our sole discretion, including reproduction, transmission, disclosure, publication, broadcast, development, manufacturing and/or marketing in any manner whatsoever for any or all commercial or non-commercial purposes provided that such User Communication does not contain any information protected under state or federal law. You agree that Alpine shall be under no obligation: (a) to maintain any User Communication in confidence; (b) to pay compensation for any User Communication; and/or, (c) to monitor, use, return, review or respond to any User Communication.
5. **Monitoring.** Alpine shall have the right to monitor the content of the Site at all times, including viewing of any personal information in a Member's account on the Site, to determine compliance with this Agreement and any operating rules established by Alpine, as well as to satisfy any applicable law, regulation, or authorized government request.
6. **Privacy.** Alpine cares about the privacy of our Users. View Alpine's Privacy Policy at [www.alpineachievement.com/privacy.html](http://www.alpineachievement.com/privacy.html), which is incorporated into this Agreement by reference.
7. **Payment.** You agree and acknowledge that you will make payments to Alpine with the services as agreed to in your account portal.

## ACCOUNT INFORMATION.

8. **Accounts.** Upon subscribing to an Alpine service, you will be given the option to set up user accounts to access the Client Data in the service. You agree and acknowledge that it is your responsibility to ensure that access to account information is in compliance with state and federal law. If you believe that any accounts have security issues, please contact Alpine immediately.

9. Passwords. You shall set up and maintain usernames and passwords in such a way as to ensure the privacy of Client Data, either using Alpine's built-in user account administration functionality, and/or by way of a secure single sign-on procedure which you interface with Alpine and otherwise administer and are fully responsible for yourself. Industry standards include: A) providing unique usernames and passwords for each user as opposed to maintaining one password for an entire school/organization; B) using strong unique passwords for each user, defined as at least ten characters in length and a combination of letters, numbers, and special symbols; C) reviewing regularly the list of users and deleting those who no longer have a legitimate educational interest in the Client Data available on the Site; and D) setting up user permission profiles in such a way as to provide and limit access to measures and students as is appropriate for each user's professional role. Alpine is not responsible for inappropriate sharing of logins and passwords within the Client's organization or with others outside of the organization.
10. Account Maintenance. The assignment and maintenance of logins, passwords, and permission profiles is the responsibility of Client. Upon request, Alpine will reset the username and password of existing full permission users only. All other requests for resetting usernames and passwords or for setting up new users that are sent to Alpine will be forwarded to the appropriate contact within you organization. Alpine shall only set up new users for the explicit purpose of assisting a client who is having trouble doing it him/herself or under the client's direct authorization to do so. The setup of permission levels and users for a Cooperative Services Agency or other outside organization with whom Alpine does not contract directly, shall be done by you. Alpine staff may assist in an advisory capacity in such relationships.
11. User Profiles. You will have the option to set up user profiles to grant users certain permissions regarding your Client Data. Alpine strongly recommends using such profiles to ensure that your organization maintains the confidentiality and integrity of your Client Data. Upon request, Alpine will assist you with creating such user profiles for future use.
12. Organization Contact. Each organization that uses Alpine is required to provide an organization contact for purposes of password/user verification. It is your responsibility to ensure that Alpine has current contact information for such contact.
13. Cookies. Logins are managed using "cookies" for user identification. Certain networks may be configured to share cookies among multiple computers and users on the network, which may cause undesired sharing of sensitive information. Alpine shall not be held liable for any consequences that may arise from such circumstances.

#### **USE OF CLIENT DATA.**

14. Client Data. You agree and acknowledge that you are contracting with Alpine to store information about students in your organization ("Client Data"). Such Client Data may include, but is not limited to, information received from third parties such as testing companies, information inputted into the Site manually by users, and information received directly from the organization. By using the Alpine system and services, you grant Alpine unlimited permission to parse, store, and manage any and all Client Data provided to Alpine by you or by a third party based on your request in order to provide you the Services.
15. Access of Client Data. You agree and acknowledge that FERPA requires that educational organizations use "reasonable methods" to ensure that their users obtain access only to those records for which they have a "legitimate educational interest." Therefore, you agree and acknowledge that you will set up and maintain user permission profiles within the Alpine system that appropriately restrict access to Client Data according to the user's roles and responsibilities.

Reports. Client may choose to share reports and access to information in paper and/or electronic formats that contain Client Data downloaded and/or printed from the Site with others outside of their organization. Client is responsible for complying with all state and federal laws regarding any use of the Client Data.

16. **Training.** You are responsible for providing adequate training to your users with regard to all state and federal laws regarding the use of student data, including, but not limited to, the Family Educational Rights Privacy Act ("FERPA"), computer ethics, and appropriate data use. Topics may include issues such as: using email to transfer student identifiable data, sharing logins/accounts, allowing a computer to save your password, saving student identifiable information on a publicly available computer, the appropriate masking of student identities when sharing data publicly.
17. **Site Security.** You agree and acknowledge that Client Data provided to Alpine is maintained on secure, dedicated web servers and is encrypted during transfer (both upload and download) using SSL encryption software. Alpine will make every reasonable effort to maintain the confidentiality of information that can identify individual students during transfer within Alpine's infrastructure. However, Alpine cannot guarantee any confidentiality for Client Data that is downloaded to user's systems.
18. **Summary Reporting.** Client assumes all responsibility for any the potential identifiable individual students whether by name or by inference according to FERPA guidelines when presenting data in a public forum. Alpine provides a setting that allows some users to adjust the group size for summary reporting. Even with a group size large enough to mask students under most circumstances, there are some situations where it is possible to infer student identities. The user is responsible for auditing all reports before sharing them in a public forum to ensure student privacy rights are protected.
19. **Use of Client Data by Alpine.** To ensure quality and protect privacy, Alpine includes a fully randomized subset of de-identified data records as the foundation of new datasets used for internal testing and feature development, and to generate sample reports for potential new clients and for training purposes. Alpine may periodically produce collapsed summaries of results and report them in the form of reports, supporting documents, and/or incorporate them into the Client Data as reference values. These analyses are specifically to improve Client Data use (e.g., local norms, cut score analyses, predictive analyses, correlations). Both clients and Alpine have permission to share/discuss the findings from official reports outside of Alpine.
20. **Misuse.** You agree and acknowledge that Alpine is not responsible for misuse or misinterpretation of Client Data by the district, school, anyone else in connection in any other way with the Client's Alpine account, or by the public.
21. **Errors and Omissions.** Alpine is not responsible for any errors in the information about the district, schools, students, or scores that are entered or imported from outside sources such as the State Department of Education (including historic test scores), student information system, test publisher files, or files created locally (e.g., Excel) or through hand entry.
22. **Third Party Formats.** Alpine depends upon the accuracy, written documentation, and timeliness of information from third party sources in order to produce reports and support documents for clients, most frequently, in the form of test vendor file layouts. Clients and Alpine may be unaware of changes to file layouts until a data file containing the changes is imported. Changes and corrections will be incorporated into the system as they are brought to our attention, but they may slow down the typical load time into the system.

## UPTIME AND EQUIPMENT

23. Security and Uptime. You acknowledge that the Internet is not a secure environment and sometimes there are interruptions in service or events that are beyond the control of Alpine. While Alpine makes reasonable precautions against loss or theft of Client Data, Alpine shall not be responsible for any Client Data lost or stolen while transmitting information on the Internet. While it is Alpine's objective to make the Site accessible 24 hours per day, 7 days per week, the Site may be unavailable at any time for any reason including, without limitation, routine maintenance. Therefore, it is your responsibility to keep copies of any Client Data you upload to the Site.
24. Equipment. You are responsible for obtaining and maintaining all internet connections, computer hardware, printers, and other equipment needed for access to and use of this Site, including purchasing any software necessary to view or use parts of the Site. You are responsible for all charges related to the obtaining and maintaining of that equipment, including any charges for software or charges to access the Internet. Alpine shall not be liable for any damages to a user's equipment resulting from the use of this Site. Be aware that browser version updates and software updates to frequently used tools such as Adobe Acrobat and Excel, may change the way Alpine renders on your devices.

## INTELLECTUAL PROPERTY

25. Copyright. All content on the Site, including, but not limited to, designs, text, graphics, pictures, video, information, music, sound, and other files, and their selection and arrangement (the "Site Content"), are the proprietary property of Alpine with all rights reserved. No Site Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without Alpine's prior written permission. Any violation of this policy may result in a copyright, trademark, or other intellectual property right infringement that may subject a User to civil and/or criminal penalties. This Site contains copyrighted material, trademarks, and other proprietary information, including, but not limited to, text, software, photos, video, graphics, music, sound, and the entire contents of Alpine protected by copyright as a collective work under the United States copyright laws. Alpine owns a copyright in the selection, coordination, arrangement, and enhancement of such content, as well as in the content original to it. You may not modify, publish, transmit, participate in the transfer or sale, create derivative works, or in any way exploit, any of the content, in whole or in part. You may not upload or republish Site Content on any Internet, Intranet, or Extranet site or incorporate the information in any other database or compilation. Alpine does not permit use of any data mining, robots, scraping, or similar data-gathering or extraction methods. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication, or otherwise. The foregoing provisions of this Section apply equally to and are for the benefit of Alpine, its subsidiaries, affiliates, third party content providers, and licensors, and each shall have the right to assert and enforce such provisions directly or on its own behalf. **Alpine specifically agrees and acknowledges that its claim of copyright for information on the Site does not apply to any Client Data which shall remain the sole property of Client.**
26. Trademarks. Alpine Achievement Systems and our logo are trademarks of Alpine Achievement Systems, Inc. All rights in respect of these trademarks are hereby expressly reserved. Trademarks that are located on the Site shall not be deemed to be in the public domain but rather the exclusive property of Alpine Achievement Systems, Inc, unless such site is under license from the trademark owner thereof in which case such license is for the exclusive benefit and use of Alpine, unless otherwise stated.
27. Use of Client Data Reports. All tables, graphs, and reports generated using Client Data from the Site may be

posted your district and school websites as long as appropriate credit is noted.

### **THIRD PARTY SITES**

28. **Third Party Websites and Content.** The Site may contains links to other web sites ("Third Party Sites") as well as articles, photographs, text, graphics, pictures, designs, information, or items belonging to or originating from third parties (the "Third Party Content"). Such Third Party Sites and Third Party Content are not investigated, monitored, or checked for accuracy, appropriateness, or completeness by Alpine. Alpine is not responsible for any Third Party Sites accessed through the Site or any content posted by any Website Users on this Site or any Third Party Sites regarding Alpine. If you decide to leave the Site and access the Third Party Sites, you do so at your own risk and you should be aware that Alpine's terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from this Site.
29. **Third Party Content.** Any opinions, advice, statements, services, offers, or other information or content expressed or made available by third parties are those of the respective author(s) and not of Alpine. Neither Alpine nor any third-party provider of information guarantees the accuracy, completeness, or usefulness of any content, nor its merchantability or fitness for any particular purpose.

### **WARRANTIES, DISCLAIMERS**

30. **Disclaimer of Warranty; Limitation of Liability.** YOU EXPRESSLY AGREE THAT USE OF THIS SITE IS AT YOUR SOLE RISK. IN NO EVENT WILL ALPINE OR ITS DIRECTORS, MEMBERS, EMPLOYEES, AFFILIATES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES ARISING FROM YOUR USE OF THE SITE. NEITHER ALPINE, ITS AFFILIATES NOR ANY OF THEIR DIRECTORS, MEMBERS, RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS OR LICENSORS WARRANT THAT USE OF THE SITE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO (I) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THIS SITE, OR (II) THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION OR SERVICE PROVIDED ON THIS SITE IF SUCH INFORMATION IS RECEIVED FROM A THIRD PARTY. THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY, EITHER BODILY OR FINANCIALLY, CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION RESULTING FROM THE USE OF THIS SITE. IN NO EVENT SHALL ALPINE, OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DISTRIBUTING THIS SITE OR THE CONTENTS HEREOF, INCLUDING ANY REPORTS, TABLES, OR OTHER INFORMATION THAT YOU DOWNLOAD FROM THE SITE, BE LIABLE FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THIS SITE. WEBSITE USER HEREBY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONTENT ON THIS SITE.
31. **Limitation of Liability.** ALPINE'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID TO ALPINE IN THE SIX MONTHS PRIOR TO THE INCIDENT RESULTING IN LIABILITY. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO ALPINE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM ALPINE, REGARDLESS OF THE CAUSE OF ACTION.

32. State Law Limitations. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

#### **TERMINATION.**

33. Termination by Client. If Client chooses to discontinue using Alpine services, Alpine will archive and retain its copy of the student level data for one year unless a written request by Client to destroy the data sooner is received. All data should be exported by the client prior to requesting the deletion of data. If a written request to destroy the Client Data is received, all Client Data files will be removed from all production servers, which renders them inaccessible during the normal course of business. Client agrees and acknowledges that Client Data may be kept in archive logs for up to seven years following termination even if a request for deletion of Client Data is made for archival purposes only.
34. Termination by Alpine. Alpine may terminate this Agreement at any time. Without limiting the foregoing, Alpine shall have the right to immediately terminate and/or suspend any account of any user and/or the complete account of any organization/district:
- in the event of any conduct by that account user that Alpine, in its sole discretion, considers to be unacceptable;
  - in the event of any breach of this Agreement;
  - for failure to pay for the service as required on the Site; and/or
  - in the case that Alpine believes that the user is violating state or federal law.

#### **MISCELLANEOUS.**

35. Disputes. Alpine and Client agree and acknowledge that it is in our individual and mutual best interest to work together quickly and amicably to resolve any disputes which may arise with respect to the provisions of these Terms of Use. In the event that such an issue does arise for Client, Client agrees to notify Alpine directly and promptly, and to provide reasonable time for Alpine to respond and, if applicable, for Alpine to propose and/or take appropriate action toward resolving the issue.
36. Release of Client Data. Alpine shall not redisclose identifiable data records unless required by court order or with the express written consent of the district/organization. Any court order or other such request/demand for data shall be communicated immediately to you if allowed by law. At your sole discretion and expense, you can take legal action to quash any subpoena served on Alpine for Client Data.
37. Changes to Service. Client understands and agrees that they are subscribing to the services they select as they exist as of the time the subscription order is submitted. Alpine may, during the term of Client's subscription, and at Alpine's sole discretion unless otherwise agreed separately in writing, add or enhance services or features, make corrections, alter navigation or display layouts or elements, and/or develop and implement suggestions, ideas, and recommendations by clients, any or all of which Alpine may offer as enhancements to existing services or as additional services for an additional charge. Alpine agrees that within each subscription package and term, it will only remove features if it provides an equivalent or better replacement at no additional charge to the Client.
38. Additional Services. Client may choose to participate in additional optional services with Alpine that require a separate annual agreement, such as Electronic Records Transfer (ERT). Such agreements are separate from and

in addition to these Terms of Use.

39. **Waiver.** The waiver by Alpine of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by Alpine.
40. **Severability.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of any other provisions contained in this Agreement and the remaining portions of this Agreement shall continue in full force and effect.
41. **Governing Law; Venue and Jurisdiction.** By using the Site, you agree that the laws of the State of Colorado, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and Alpine or any of Alpine's affiliates. You agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of Colorado located in Denver, Colorado, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of Colorado.
42. **Attorney Fees and Collection Costs.** In the event that litigation results from or arises out of this Agreement or the performance thereof, you agree that should Alpine prevail, you will reimburse Alpine's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled, including, but not limited to, any costs of collection.
43. **Indemnity.** To the extent allowed under state and federal law, you agree to indemnify and hold Alpine, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners, and employees, harmless from and against any loss, liability, claim, demand, damages, costs, and expenses, including reasonable attorneys fees, arising out of or in connection with any use of the Site, your conduct in connection with the Site, or with other users of the Site, or any violation of this Agreement or of any law or the rights of any third party.
44. **Successors and Assigns.** Rights and obligations created by this contract shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
45. **Alpine does not hire or otherwise employ any employees or independent contractors that are not legally able to work in the United States and does not knowingly subcontract with any companies that hire individuals that are not legally able to work in the United States.**