Alignment Technology General Service Agreement and Terms of Use

Last modified 1 July 2024

This Alignment Technology General Service Agreement and Terms of Use (“**Agreement**”) set out the terms and conditions under which the Customer and any User may use Align’s AI-based customer feedback analytics software which is made available by Align as a service (“**Platform**”), and related services offered by Align (altogether the “**Services**” as defined below).

By subscribing to any paid or limited free trial (availability and duration of trial subject to the discretion of Align) plan of the Platform, you agree to become as a Customer a party to and accept this Agreement and the terms and conditions herein. By otherwise using or accessing the Platform in any way, you also agree to be bound by and shall be obliged to follow the terms and conditions set out herein.

In case a Customer has Users, each User shall be liable for using the Platform in accordance with this Agreement and shall abide by the obligations and restriction applicable to the Customer hereunder. Further ,the Customer warrants that all its Users shall at all times act in accordance with the Agreement. The Customer shall be liable for any actions and omissions of any of its Users as it is liable for its own actions and omissions and all actions and omissions of any of its Users shall also be regarded as the Customer’s actions and omissions.

# Definitions

Capitalised terms in the Agreement shall have the following meaning:

## **Administrative User** – a User with access to administrative features of the Platform (e.g. add and remove Users, manage Users’ access levels etc.);

## **Affiliate** – any person, firm or corporation which directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of or with Align or the Customer accordingly, whereas control shall be defined as having the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the relevant person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto;

## **Agreement** – this Alignment Technology General Service Agreement and Terms of Use;

## **Align** – Alignment Technology OÜ, an Estonian limited company, commercial register code 16718998, registered address Valukoja 8/1, Tallinn 11415, Estonia.

## **Confidential Information** – any information disclosed by a Party to the other Party, directly or indirectly, which, (i) if in written, graphic, machine-readable or other tangible form, is marked as “confidential” or “proprietary,” (ii) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving Party to be “confidential” or “proprietary” within 30 days of such disclosure, (iii) is specifically deemed to be confidential by the terms of this Agreement (e.g. Customer Content), or (iv) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself;

## **Customer** – a person who has entered into an Agreement with Align;

## **Customer Content** – all data and materials provided by the Customer to Align (including by way of transferring or inserting the data and materials onto the Platform) for use in connection with the Services. Customer Content is regarded as Confidential Information proprietary to the Customer;

## **Documentation** – any documentation provided or made available by Align to the Customer regarding the use or operation of the Services, including the Services’ technical specifications, user manual, training materials, etc.;

## **Force Majeure** – as defined in Section [11](#bookmark) of the Agreement;

## **Intellectual Property Rights** or **IPR** mean all intellectual and industrial property rights and similar rights of whatever nature anywhere in the world whether currently existing or coming into existence at some future time and all rights pertaining thereto, whether recorded or registered in any manner or otherwise, including (but not limited to) any copyrights and related rights, industrial design rights and other design rights, registered designs, moral rights, patents, utility models, inventions (whether or not patentable), trademarks, service marks, database and software rights, rights to layout-designs of integrated circuits, trade secrets, know-how, confidential information, business names, trade names, trade dress, brand names, domain names and all other legal rights anywhere in the world protecting such intangible property including, where applicable, all renewals, extensions and applications for registration, the right to apply for registration and the right to sue for damages for past and then-current infringement in respect of any of the same.

## **Order Form** – a form for ordering Other Services to be executed between the Parties. A template Order Form is provided as **Schedule 1** hereto.

## **Other Services** - means all technical and non-technical services performed or delivered by Align under a separately executed Order Form. Other Services may include implementing requests of additional functionality in the Platform, whereas all IPR related thereto shall be owned or retained by Align. Other Services will be provided on a time and material basis at such times or during such periods as agreed in the Order Form;

## **Parties** – Align and the Customer jointly;

## **Party** – Each of Align and the Customer individually;

## **Schedule** – any written document attached to the Agreement, including Documentation;

## **Services** – any services provided to the Customer under the Agreement, including Platform Services and Other Services;

## **Platform** – means Align’s proprietary AI-based customer feedback analytics solution hosted by Align’s cloud services provider to which the Customer and authorised Users are provided over the internet access as part of the Platform Services, including any modifications, updates or new versions thereto (as introduced in full discretion of Align). The Platform enables the Customer to, subject to variations in available subscription plans (as may be amended by Align from time to time and as published on Align’s website), (i) input, integrate, view, edit and delete certain data concerning their business, their customers and their employees into and from their dedicated exclusive access dashboards available on the Platform, to (ii) facilitate the capture and identification of trends in customer conversations and interactions with full client context, including keyword search and queries, and to (iii) generate other Customer-specific outputs utilising the results of the Platform’s data analysis.

## **Platform Services** – The provision of over the internet access to the Platform by Align to the Customer and authorised Users, whereas the functionality and features available to the relevant Customer and authorised Users depends on the subscription plan selected by the Customer on Align’s website;

## **Subscription Fee** – the non-refundable and non-cancellable monthly or annual (as per the terms of the subscription plan selected by the Customer) recurring fee payable during the Subscription Term for provision of the Platform Services by Align to the Customer. The amount of the Subscription Fee depends on the subscription plan selected by the Customer. Additional fees (e.g. for additional Users or additional features) may apply as set out in the subscription plans. Subscription plans and pricing details are available on Align’s website, and are subject to amendments from time to time (excluding amendments to the Subscription Fee for the prepaid period of the Subscription Term);

## **Subscription Term** – the period during which the Customer is subscribed to the Platform Services and during which Align renders Platform Services to the Customer, subject to payment of the Subscription Fee. The Subscription Term automatically renews for recurring unlimited monthly or annual periods (as per the terms of the subscription plan selected by the Customer), each beginning on the same calendar day as the initiation of the Subscription Term until terminated in accordance with the Agreement;

## **Customer Support Services** – on-demand services by Align regarding technical support of the Platform and Platform Services to correct faults, or to improve performance or other attributes;

## **System Availability** – the number of minutes in each calendar month in which the key components of the Platform Services are operational as a percentage of the total number of minutes in such calendar month, excluding downtime resulting from (i) scheduled maintenance, (ii) events of Force Majeure in the Agreement, (iii) malicious attacks on any core element of the Platform Services, (iv) issues associated with the Customer’s computing devices, local area networks or internet service provider connections, or (v) inability to deliver Platform Services because of acts or omissions of Customer or any User (listed circumstances together regarded as "permitted downtime");

## **User** – an individual duly authorised to access the Platform on behalf of the Customer, including each Administrative User. Each individual designated to have access to the Platform is regarded as a separate User. The sharing of one access between multiple Users is strictly prohibited.

# PLATFORM AND Platform Services

## The Customer and its authorised Users have a non-exclusive, non-assignable, non-sub-licensable, worldwide right to access and use the Platform over the internet (i.e. receive Platform Services) strictly in accordance with the Agreement. The use of any Platform Services is subject to the Customer duly paying the Subscription Fee, and such Platform Services shall be rendered under the same aforementioned license terms and in accordance with the terms of the subscription plan selected by the Customer.

## The number of maximum authorised Users per Customer is determined by the subscription plan selected by the Customer. Each User shall be required to use and liable for using the Platform Services in accordance with the Agreement and the Documentation, including by following the obligations and restrictions applicable to the Customer. Additionally, the Customer shall be liable for any actions and omissions of any if its User as it is liable for its own actions and omissions and all actions and omissions of any of its Users shall also be regarded as the Customer’s actions and omissions Align shall not be liable for any loss of data or functionality caused directly or indirectly by the Customer or the Users.

## Nothing in this Agreement shall be construed as a transfer of title, ownership, or interest in any Intellectual Property Rights of Align or any Affiliate of Align or any other third party related to the provision of the Services. The aforementioned persons retain all title, ownership, and interest in any of their Intellectual Property Rights, including without limitation Intellectual Property Rights related to all services (including Platform Services), software programs (including the Platform together with any and all modifications, improvements, fixes, updates, upgrades whether at Align’s own initiative or if requested in an Order Form by a Customer etc.), and anything developed and delivered by the aforementioned persons under this Agreement. Should any Intellectual Property Rights created by or on behalf of Align in provision of the Services or otherwise fulfilling the Agreement or exercising any rights hereunder at any time vest in the Customer, it is regarded that the Customer has without the right for any compensation assigned to Align the full title and ownership to such Intellectual Property Rights to the maximum extent possible under applicable law.

## Third party technology and/or services (including technology and services of large language model services’ providers, integration aggregators, machine translation service providers and hosting services by cloud services’ providers) are or may be used in provision of the Services.

## Align reserves the right to make unilateral modifications in the functionality and features of the Platform and the Platform Services rendered. Unless such modifications or updates are required due to changes in legal acts or regulatory requirements, Align shall aim not to make any modifications or updates to the Platform or the Platform Services that will materially reduce the functionality of the Platform. Nevertheless, as Align is continuously developing the Platform, the Customer agrees that the Platform may change from time to time and that Align gives no warranty, representation or other commitment in relation to the continuity of any functionality of the Platform.

# Customer’S obligations

## The Customer shall comply with all applicable laws in connection with its use of the Services, including those laws related to data protection. The Customer shall ensure it has all necessary permits and authorisation to carry out its business activities in using the Services. The Customer shall ensure it has a lawful basis for entering any data (including personal data concerning its customers, business, or employees) into the Platform.

## The Customer shall not, and shall not permit anyone under its control to: (i) copy or republish the Services or Platform, (ii) make the Services or Platform available to any person other than authorised Users, (iii) modify or create derivative works based upon the Services or the Platform, (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the Services or the Platform, (vi) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Platform, or (vii) access or use the Services or Platform in order to build a similar or competitive product.

## The Customer shall: (i) notify Align immediately of any unauthorized use of any password or user ID or any other known or suspected breach of security with regard to the Services or the Platform, (ii) report to Align immediately and use reasonable efforts to stop any unauthorized use of the Services that is known or suspected by the Customer or any User, and (iii) not provide false identity information to gain access to or use the Services.

## The Customer shall provide commercially reasonable information and assistance to Align as may be requested by Align from time to time to enable Align to deliver the Service.

# Customer COntent

## The Customer acknowledges that Align exercises no control over the content of the information entered into and transmitted by the Customer or Users through the Platform Services. The Customer or any relevant third party service provider (any person feeding or providing Customer Content to the Platform) is responsible for collecting, inputting and updating all Customer Content, and for ensuring that a legal basis exists for the aforementioned and that the Customer Content does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, (ii) contain anything that is illegal, obscene, defamatory, harassing, offensive or malicious, and (iii) infringe any applicable legal acts concerning the processing and protection of personal data.

## The Customer retains ownership and intellectual property rights in and to its Customer Content (insofar as such Customer Content is protected by ownership and intellectual property rights). The Customer:

### grants to Align a limited, royalty-free, non-exclusive, and non-transferable (other than in connection with transfer of the Agreement to a third party in accordance with the regulation herein) license valid during the period of provision of the Services to the Customer to copy, store, configure, perform, display and transfer Customer Content as necessary for the due provision of Services and fulfilment of Agreement by Align, subject to any retention periods stated in Align’s privacy policy;

### grants to Align a royalty-free, non-exclusive, irrevocable, and non-transferable (other than in connection with transfer of the Agreement to a third party in accordance with the regulation herein) license valid for the whole period of validity of any relevant rights, whether IPR or otherwise, to in strictly internal business operations and in accordance with confidentiality obligations hereunder use anonymised Customer Content in order for Align to improve and develop Align’s Services.

## The Customer represents and warrants to Align that the Customer has (as relevant in each case) the necessary right, title, interest and/or consent, to grant Align the licenses mentioned in Sections [4.2.1](#bookmark1) and [4.2.2](#bookmark2), and to permit Align the use of Customer Content under the terms and conditions of the Agreement.

## Align may create anonymised content structure examples of the Customer Content which cannot be linked to or associated with an entity or individual and Align may use such resulting data in order to improve its Services, including to train its models. Align represents and warrants to the Customer that otherwise the Customer Content shall not be used to train Align’s models.

# Other Services

## Other Services are provided as agreed in an Order Form signed by the Parties. Agreements on provision of Other Services shall set out the scope, deliverables (including required functionalities and features, if applicable), timeline and fees payable for the Other Services. Any order for Other Services shall be notified by the Customer to Align at least 5 business days in advance and shall only be rendered if the Parties agree on the terms of the Other Services.

## By reference to Section [2.3](#bookmark3) of this Agreement, all title and ownership to Intellectual Property Rights associated with the deliverables under an Order Form (e.g. any additional functionality developed and added to the Platform) shall be retained and owned by Align (regardless of payments for Other Services made by the Customer to Align), and there shall be no transfer of title nor ownership thereto.

# CUSTOMER Support services

## Standard Customer Support Services are included in the subscription plan. For requests outside of standard working hours or standard tasks of the customer support the Parties shall agree on the terms of such Customer Support Services, including with regard to payable fees.

## Align’s standard Customer Support Services are available at the business hours outlined below in Section [6.4](#bookmark4). All customer support requests shall be addressed to [support@getalign.com](mailto:support@getalign.com). A ticket (“**Ticket**”) shall be created by Align for each Customer Support Services request.

## The following information is required from the Customer when requesting Customer Support Services, whereas Align may request additional information from the Customer in order to solve the issue.

### Contacting person name, email address and phone number;

### The URL(s) / systems affected;

### Beginning time of the incident or time when it was noticed;

### A detailed description of the incident;

### The end user location(s) suffering from the incident;

### The end user(s) suffering from the incident;

### Extent of the incident as known by the contacting person;

### Description of attempts made by the Customer/User to resolve the incident;

### Screenshot of the incident.

## Align is obliged to register the Customer’s requests and to respond according to the following principles, whereas the terms used below shall have the following meaning: (i) “Business Hours” means 9AM-5PM Estonian time, Monday to Friday; (ii) “Problem” means a defect in Platform that significantly degrades the Platform; (iii) “Respond” means acknowledgement of Problem received containing assigned support engineer name, date and time assigned, and severity assignment; (iv) “Workaround” means a change in the procedures followed or data supplied by Customer to avoid a Problem without substantially impairing the Customer’s use of the Platform; (v) “Fix” means the repair or replacement of Platform component to remedy the Problem. Align shall reasonably and objectively assess the severity of the Problem and shall classify the Problem as set out below, whereas during the time a Ticket remains open and a partial resolution for a Problem is implemented, Align has sole authority to re-categorise the Ticket for the remainder of the resolution:

|  |  |  |
| --- | --- | --- |
| **Severity** | **Response (during Business Hours)** | **Goals (during Business Hours)** |
| **BLOCKER.** Critical Platform issue affecting all Users. Includes Platform unavailability and data integrity issues with no Workaround available. | Align will Respond in 1 Business Hour. | Upon confirmation of receipt, Align begins continuous work on the Problem, and a Customer resource must be available at any time to assist with Problem determination. Customer Support will provide reasonable effort for a Fix within 8 Business Hours, once the Problem is reproducible or once Align has identified the Platform defect. |
| **CRITICAL**. The Problem is creating a significant impact to the Customer’s business function preventing that function from being executed. Acceptable Workaround available. | Align will Respond in 4 Business Hours | Upon confirmation of receipt, Align begins continuous work on the Problem, and a Customer resource must be available at any time to assist with Problem determination. Customer Support will provide reasonable effort for Workaround or Fix within 16 Business Hours, once the Problem is reproducible or once Align has identified the Platform defect. Align may incorporate Fix in future release of Platform. |
| **MAJOR**. The Problem moderately affects the Customer’s business function. Acceptable Workaround available. | Align will Respond in 8 Business Hours | Customer support will provide reasonable effort for Workaround or Fix within 40 Business Hours, once the Problem is reproducible. Align may incorporate Fix in future release of Platform. |
| **MINOR**. The Problem is not critical and the Platform has not failed. The issue has been identified and does not hinder normal operation. Acceptable Workaround available. | Align will Respond in 24 Business Hours | Customer support will provide reasonable effort for Workaround or Fix within 80 Business Hours, once the Problem is reproducible. Align may incorporate Fix in future release of Platform. |
| **TRIVIAL**. The Problem is non-critical, general questions, enhancement requests, or the functionality does not match documented specifications. | If deemed necessary, Align will Respond in 72 Business Hours | Fix of Problem may appear in future release of Platform. |

## When the Customer receives information of a Fix or Workaround, the Customer shall immediately confirm if the Problem is solved. In case the Problem persists, the Customer shall re-contact Align’s Customer Support Services team with reference to the same Ticket number requesting the reopening of the Ticket. In case the request is approved by Align, the Ticket is re-opened and the applicable resolve time shall recommence running from its previous point in time at the time of the initial resolve.

# Fees and Payments

## The Customer shall pay for the Platform Services in accordance with the Agreement and the selected subscription plan. All Platform Services are provided on the basis of prepaid Subscription Fees for each monthly or annual (depending on the subscription plan selected by the Customer) billing period of the Subscription Term. Except as expressly otherwise provided, all fees, including Subscription Fee prepayments are non-refundable. All fees are stated exclusive of any taxes, duties and levies which shall be added as applicable. Payment methods are specified on Align’s website. Align may use third-party service providers in order to set up automatically recurring payments.

## Current valid Subscription Fees are available on Align’s website. Align may from time to time amend the Subscription Fees, whereas such amendments have no effect on the Customer’s current prepaid period of the Subscription Term, and shall take effect from the next billing period.

## All fees due by the Customer under the Agreement are invoiced by Align. Fees are stated in euros and must be paid by the Customer in euros.

## Automatic recurring payments shall be charged 5 Business Days prior to the commencement of the next billing period. In case the Customer does not opt for automatic recurring payments, Align shall issue invoices with a payment term of at least 10 days, whereas invoices shall be due 5 Business Days prior to the commencement of the next billing period. For late payments, a delay penalty at a rate of 0.1% of the delayed sum per each day of delay shall apply until payment is made.

# Term, Termination, and SUSPENSION

## The Agreement is regarded as having entered into force between the Parties as of the Customer subscribing to a paid or free trial (if available) plan of the Platform Services. Unless renewed or otherwise terminated in accordance with the Agreement, the Agreement is valid until expiry of the Subscription Term or expiry of the free trial. The termination of the Agreement results in the simultaneous termination of the then-valid period of the Subscription Term. The obligations and restrictions in the Agreement also apply to any person using or accessing the Platform.

## In case the Customer has committed a material breach of the Agreement as assessed by Align, e.g. by breaching its payment obligations or obligations under Section [3](#bookmark5), Align shall have the right to immediately suspend the provision of the Services and/or immediately terminate the Agreement.

## In case Align has committed a material breach of the Agreement, the Customer shall have the right to terminate the Agreement with respect to all Services (whereas with regard to service levels and System Availability the exclusive remedies are set out in Section [13](#bookmark6) of the Agreement), provided that a cure period of at least 10 business days has been granted to Align and unsuccessfully lapsed.

## The suspension of the Services or termination of the Agreement due to circumstances attributable to the Customer does not constitute grounds for reclamation of any prepaid Subscription Fees. Further, the Customer agrees that Align shall not be liable to the Customer or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the Services or termination of the Agreement resulting from circumstances attributable to the Customer.

## The provision by Align and the Customer’s access to any Platform Services shall automatically terminate upon expiry of the Subscription Term, including in case of the Customer’s failure to by the relevant due date set out in the subscription plan prepay the Subscription Fee for the following monthly or annual (as relevant) billing period of the Subscription Term.

## Upon termination of the Agreement: (i) Align shall immediately cease provision of the Services and all licenses and other usage rights granted under this Agreement shall terminate; (ii) Customer shall pay all payables (including Subscription Fees) for any Services rendered until termination of the Agreement; (iii) unless the Agreement is terminated due to material breach of the Agreement by Align, the Subscription Fee payments for any remaining portion of the current Subscription Term shall become immediately due and payable (e.g. for agreements with an annual Subscription Term and a monthly Subscription Fee billing cycle); (iv) upon written request by the disclosing Party, the receiving Party of tangible Confidential Information shall immediately return or destroy such information and provide written certification of such destruction, provided that the receiving Party may retain one archival copy of such information in the event of a subsequent dispute between the Parties.

## Section [3.2](#bookmark7), Sections [8](#bookmark8) through [12](#bookmark9) and Sections [14](#bookmark10) through [22](#bookmark11) shall survive the expiration or termination of this Agreement.

# Warranties

## This Section sets forth the sole and exclusive warranty given by Align (express or implied) with respect to the subject matter of this Agreement. The Services and the Platform are provided by Align on an "as is" basis, without any representations, warranties, or conditions of any kind. Align, along with its Affiliates, licensors, and suppliers, expressly disclaims any representations, warranties, or conditions, whether express, implied, statutory, or otherwise, concerning the Services and the Platform provided to the Customer and Users. This disclaimer specifically includes any implied representations, warranties, or conditions related to merchantability, quality, non-infringement, durability, title, and fitness for a particular purpose. Furthermore, the Customer and the Users acknowledge that Align makes no representation or warranty, nor provides any conditions, that the Services or the Platform will be free of errors or operate without interruptions, or that all errors will be corrected. Align nor any of its Affiliates, licensors or suppliers shall be liable for unauthorised alteration, theft or destruction of Customer’s or any User’s data, files, or programs, if caused by any acts or omissions of the Customer or User or otherwise due to circumstances outside of Align’s control.

# Limitations of Liability

## Align shall not be liable for any indirect, incidental, special, or consequential damages, including, without limitation, damages for lost business, profits, data or use of any service, incurred by the Customer, User or any third party in connection with this Agreement, regardless of the nature and basis of the claim. Align shall without limitation not be liable for any damage incurred as a direct or indirect consequence of any outage, failure in or breakdown of the communication facilities associated with the Agreement, any interruption or degradation of the facilities, regardless of the cause or duration thereof.

## Align’s aggregate liability for damages under this Agreement, regardless of the nature of the claim, shall not exceed the Subscription Fees paid by the Customer under this Agreement during the 12 months immediately preceding the circumstances providing grounds for a claim of damages arising.

## The limitations in this Section do not apply in case the breach by Align is caused intentionally in provision of the Services, or in case such limitations are otherwise prohibited by law.

# Force Majeure

## Either Party will be excused from performance of the Agreement, except for monetary obligations, for any period during which, and to the extent that, such Party or any subcontractor is prevented from performing any obligation or Services, in whole or in part, as a result of causes beyond its reasonable control (“**Force Majeure**”), and without its fault or negligence, including without limitation, acts of god, strikes, lockouts, riots, acts of terrorism or war, epidemics, communication line failures, and power failures.

# Indemnification

## If a third party makes a claim against the Customer that the Services infringes any patent, copyright or trademark, or misappropriates any trade secret, Align shall defend the Customer and its directors, officers and employees against the claim at Align’s expense and subject to the limitations on liability set out in the Agreement, Align shall, subject to Align’s liability limitations set out in the Agreement, pay all losses, damages and expenses finally awarded against such parties or agreed to in a written settlement agreement signed by Align, to the extent arising from the claim. Align shall have no liability for any claim based on (i) the Customer Content, (ii) unauthorized modification of the Services, (iii) use of the Services other than in accordance with the Agreement; (iv) the Customer’s, User’s or any other Customer’s controlled third party’s errors and omissions in using the Services. For any intellectual property infringement claims, Align may, at its sole option and expense, procure for the Customer the right to continue use of the Services, modify the Services in a manner that does not materially impair the functionality, or terminate the Agreement and repay to the Customer any prepaid amounts.

## If a third party makes a claim against Align that the Customer Content infringes any patent, copyright or trademark, misappropriates any trade secret or breaches any legal acts concerning data processing or data protection (including but not limited to claims regarding the unauthorised or otherwise illegal processing of personal data), the Customer shall defend Align and its directors, officers and employees against the claim at the Customer’s expense and the Customer shall pay all losses, damages and expenses finally awarded against such parties or agreed to in a written settlement agreement signed by the Customer, to the extent arising from the claim.

## A Party seeking indemnification under this Section shall in order to have a valid claim towards the other Party (i) promptly notify the other Party of the claim, (ii) give the other Party sole control of the defence and settlement of the claim, (iii) refrain from settling, satisfying or otherwise acknowledging the claim, and (iii) provide, at the other Party’s expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other Party in the defence and settlement of the claim. Should a Party not follow the procedure set out in this Section [12.3](#bookmark12), the relevant Party loses its right to seek indemnification with regard to the relevant claim.

# Service level

## Platform Services shall achieve System Availability of at least 99.9% during each calendar month.

## For all occasions of permitted downtime, Align aims to notify the Customer at least 1 day in advance, in case such notification can reasonably be given. In extraordinary cases, the Customer will be notified as soon as reasonably possible.

## If Align fails to meet the required System Availability, Align shall upon a written request by the Customer within 10 days after the affected period of the Subscription Term issue a credit for the next period of the Subscription Term in an amount equal to 10% of the Subscription Fee for each 1% loss of System Availability. Such credit shall not exceed the sum total of the Subscription Fee for the affected period of the Subscription Term.

## The remedy stated in this Section [13](#bookmark13) is the Customer’s sole and exclusive remedy for any interruption in the Platform Services and Align’s failure to meet the required System Availability.

# Confidentiality

## During the term of this Agreement and for 3 years thereafter (and indefinitely for any Customer Content which is considered as Confidential Information hereunder), each Party shall treat as confidential all Confidential Information of the other Party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this Agreement, and shall not disclose such Confidential Information to any third party.

## Each Party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other Party. Each party shall promptly notify the other Party of any actual or suspected misuse or unauthorized disclosure of the other Party’s Confidential Information. Neither party shall reverse engineer, disassemble, or decompile any prototypes, software or other tangible objects which embody the other Party's Confidential Information and which are provided to the Party hereunder. Each party may disclose Confidential Information of the other Party on a need-to-know basis to persons who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the receiving Party, such as its contractors, accountants, attorneys, credit institutions and investors.

## Without otherwise limiting the foregoing, Confidential Information excludes information that: (i) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving Party, (ii) is known to the receiving Party, without restriction, at the time of disclosure or becomes known to the receiving Party, without restriction, from a source other than the disclosing Party not bound by confidentiality obligations to the disclosing Party, or (iii) is independently developed by the receiving Party without use of the Confidential Information. The receiving Party may disclose Confidential Information of the other Party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving Party shall use reasonable efforts to promptly notify the other Party prior to such disclosure to enable the disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure. The existence of this Agreement and the relationship of the Parties may be disclosed, together with publishing the names and logos of the other Party on its website or other media, only upon prior agreement between the Parties. Any press releases in relation thereto must be coordinated with and accepted by the other Party.

# Personal Data

## In providing the Services, Align will comply with applicable data protection laws. Align’s current privacy policy and any amendments thereto made at the discretion of Align, are automatically incorporated herein by reference.

## The Customer hereby acknowledges that Align’s performance of this Agreement will require Align to process the Customer’s internal notes, employees’ data and customers’ information.

## By submitting the above data to Align, the Customer understands and agrees that Align shall process personal data in accordance with this Agreement and its current privacy policy. In doing so, Align may act both as a data processor and a data controller as further set out in Align’s then effective privacy policy. The Customer is required to have lawful basis and to make all necessary disclosures before including personal data in Customer Content and using the Services. The Customer confirms that the Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness of any personal data that may be contained in Customer Content, including any information which any User shares with Align on the Customer’s behalf.

# Notices

## Except as otherwise permitted in this Agreement, notices under this Agreement shall be in writing and shall be deemed to have been delivered (i) 5 business days after handing over the notice to a postal service provider if sent by registered mail, (ii) 1 business day after sending the notice if sent by e-mail, or (ii) when delivered if delivered personally or sent by courier. All notices shall be sent to the other Party at the address or e-mail address set forth in the Special Terms, unless the other Party has informed of the change of address in accordance with the above.

# Amendments

## Align may at any time amend this Agreement upon notice to the Customer by e-mail or as a Platform notice. In case the amendments in the Agreement materially adversely affect the Customer’s rights hereunder (excluding such amendments which are required due to changes in applicable laws, regulations or requirements established by any relevant supervisory body or authority which require no notification), Align shall provide the Customer with 30 days’ advance notice of the amendments in the Agreement, and in such case the Customer may terminate the Agreement by e-mail notice sent to Align prior to the amendments taking effect. In case of such termination, any prepaid Subscription Fees shall in a prorated amount be returned to the Customer for the unused portion of the relevant period of the prepaid Subscription Term. Should the Customer continue to use the Services, it will be regarded that the Customer has accepted the amended Agreement.

# Non-exclusivity

## The Services are provided on a non-exclusive basis. Nothing in this Agreement shall be deemed to prevent or restrict Align’s ability to provide the Services or other technology, including any features or functionality first developed for the Customer, to third parties.

# Entire Agreement

## The Agreement is the entire Agreement between the Parties regarding the subject matter of the Agreement, superseding any and all verbal or written undertakings or agreements preceding the Agreement.

# Assignment

## The Agreement and the rights and obligations thereunder are binding on the Parties. The Customer may not, without prior written consent of the Align, transfer or assign its rights and/or obligations hereunder to a third person. Align may without consent of the Customer transfer or assign the Agreement or any rights or obligations hereunder to its Affiliates or a third-party in case of transfer of Align’s business to such third party.

# Severability

## If any clause in the Agreement or part thereof is or becomes void or invalid, this does not result in the entire Agreement being void or invalid. In the event such invalidity becomes a fact, the clause that is closest in its economic content to the invalid clause shall be applied.

# Governing law and Jurisdiction

## The Agreement is governed by and construed in accordance with the legislation of the Republic of Estonia. Disputes hereunder shall be resolved by means of amicable negotiations. If negotiations fail, the disputes shall be settled in the courts of the Republic of Estonia, whereas the court of first instance is the Harju County Court, unless a different mandatory jurisdiction arises from applicable law.

##### ANNEX 1 – Order Form Template

Order Form – Order No. […]

Submitted under Alignment Technology General Service Agreement

**[insert date of execution]**

*If not otherwise defined, the capitalised terms used in this Order Form have the meaning assigned to them in the Alignment Technology General Service Agreement (*“***GSA****”). The execution of this Order Form creates a binding agreement between the Parties hereto.*

# Parties

## **Align (Service Provider)**

|  |  |  |
| --- | --- | --- |
| **Business name, company type** | **Registry code, country** | **Registered address** |
| Alignment Technology, limited company | 16718998, Estonia | Valukoja 8/1, Tallinn 11415, Estonia |
| **Phone No.** | **General e-mail address** | |
| +372 […] | […] | |
| **Representative/signatory** | **Basis of representation** | |
| Georg Vooglaid (management board member) | Statutory | |
| **General contact person** | **General contact person’s phone No.** | **General contact person’s e-mail address** |
| Georg Vooglaid | +372 53939703 | [georg@getalign.com](mailto:georg@getalign.com) |
| **Invoicing e-mail address** | **VAT No.** | |
| […] | […] | |

## **Customer**

|  |  |  |
| --- | --- | --- |
| **Business name, company type** | **Registry code, country** | **Registered address** |
| […] | […] | […] |
| **Phone No.** | **General e-mail address** | |
| […] | […] | |
| **Representative/signatory** | **Basis of representation** | |
| […] | […] | |
| **General contact person** | **General contact person’s phone No.** | **General contact person’s e-mail address** |
| […] | […] | […] |
| **Invoicing e-mail address** | **VAT No.** | |
| […] | […] | |

# ORDER FOR OTHER SERVICES

## The Parties have agreed that Align shall render the following services (Other Services as defined in the GSA) to the Customer under the following terms and conditions, subject to payment of the fees as set out in this Section [2](#bookmark14) and Section [3](#bookmark15):

|  |  |  |  |
| --- | --- | --- | --- |
| **Service** | **Deliverables (“Deliverables”), e.g. description of required features and functionalities** | **Applicable term(s)** | **Fees (excl. VAT)** |
| **[…]** | […] | […] | […] |

# PAYMENT TERMS

## The fee set out in Section [2](#bookmark16) above shall be paid by the Customer to Align as follows:

### [description of payment terms, e.g. full or partial prepayment, payment under a schedule etc.]

## Align shall issue invoices hereunder with a [10-day] payment term. A delay penalty at a rate of 0.1% of the delayed sum per each day of delay shall apply until due payment.

# General

## The Order Form shall be deemed executed upon signing by the Parties. The Order Form forms an inseparable part of the Agreement and is regulated by the Agreement to the extent not regulated herein.

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Align**  Signed by the representative/signatory named in the Order Form | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Customer**  Signed by the representative/signatory named in the Order Form |