

## ONLINE YOUTH MANAGER AGREED TERMS

### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Authorised Users:** those responsible persons who are authorised by the Customer to use the Services and the Documentation in relation to the Customer's individual organisation or scout group.

**Back-Up Policy:** means the policy, available at <https://www.onlinescoutmanager.co.uk/security.html>, that OYM has in force from time to time in relation to the regularity and location of copies of Customer Data held by OYM or its suppliers in order to recover lost data in the event of an OYM system failure.

**Basic Version:** means the free version of the software provided by OYM. This does not include the additional functionality of the Paid Version.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Change of Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.6 or clause 10.7.

**Customer Data:** the data inputted by the Customer, Authorised Users, or OYM on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter:

- (a) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then

(b) any successor legislation to the GDPR or the Data Protection Act 1998.

**Documentation:** the document made available to the Customer by OYM online to the Customer from time to time which sets out a description of the Services and/or any user instructions for the Services.

**Effective Date:** the date of this agreement.

**Initial Subscription Term:** the initial term of this agreement of twelve (12) months.

**Normal Business Hours:** 9.00am – 5pm local UK time, each Business Day.

**OYM:** Online Youth Manager Limited a company registered in England and Wales with registered office address: 12 West Links Tollgate, Chandler's Ford, Eastleigh, SO53 3TG and company number 08084641.

**Paid Version:** means any version of the Software provided by OYM that the Customer pays for.

**Renewal Period:** the period described in clause 13.1.

**Services:** the subscription services provided by OYM to the Customer under this agreement via <https://www.onlinescoutmanager.co.uk> or any other website notified to the Customer by OYM from time to time, as more particularly described in the Documentation.

**Software:** the online software applications provided by OYM as part of the Services.

**Subscription Fees:** the subscription fees for the Paid Version payable by the Customer to OYM for the User Subscriptions, as made available online at <https://www.onlinescoutmanager.co.uk/plans.html>.

**Subscription Term:** has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**User Subscriptions:** the user subscriptions attributed to the Customer pursuant to clause 8.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes email but not faxes. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## **2. USER SUBSCRIPTIONS**

- 2.1 Subject to the Customer acquiring the User Subscriptions in accordance with clause 2.5 and clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, OYM hereby grants to the

Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal organisation operations.

2.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and OYM reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.3 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - (c) use the Services and/or Documentation to provide services to third parties; or
  - (d) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and
- 2.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify OYM.
- 2.5 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3. SERVICES**

- 3.1 OYM shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 3.2 OYM shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 12.00 am to 2.00 am UK time; and
  - (b) unscheduled maintenance performed as required in an emergency situation without any notice and at any time.

### **4. CUSTOMER DATA**

- 4.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility

for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

- 4.2 OYM shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at the website address as may be notified to the Customer from time to time, as such document may be amended by OYM in its sole discretion from time to time. In the event of any loss or damage to Customer Data as a result of an OYM system failure, the Customer's sole and exclusive remedy against OYM shall be for OYM to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by OYM in accordance with the archiving procedure described in its Back-Up Policy. OYM shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer, Authorised Users or any third party (except those third parties sub-contracted by OYM to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 4.8).
- 4.3 OYM shall, in providing the Services, comply with data protection laws relating to the privacy and security of the Customer Data. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 4.4 The parties acknowledge that:
- (a) if OYM processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the data controller and OYM is the data processor for the purposes of the Data Protection Legislation (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
  - (b) Schedule 1 sets out the scope, nature and purpose of processing by OYM, as approved by the Customer, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.
  - (c) Schedule 2 sets out the 'TSA Data Sharing Arrangement' which is in active during the partnership between The Scout Association and Online Youth Manager for customers that agree to the arrangement.

- 4.5 Without prejudice to the generality of clause 4.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to OYM for the duration and purposes of this agreement so that OYM may lawfully use, process and transfer the Personal Data in accordance with this agreement on the Customer's behalf.
- 4.6 Without prejudice to the generality of clause 4.3, OYM shall, in relation to any Personal Data processed in connection with the performance by OYM of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless OYM is required by the laws of any member of the European Union or by the laws of the European Union applicable to OYM to process Personal Data (**Applicable Laws**). Where OYM is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, OYM shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit OYM from so notifying the Customer;
  - (b) not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
    - (i) the Customer or OYM has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) OYM complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) OYM complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (c) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (d) notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - (e) at the written direction of the Customer, delete Personal Data (and copies thereof) on termination of the agreement unless required by Applicable Law to store the Personal Data or if back-up copies are retained as part of the Suppliers usual back-up process then until those are deleted in accordance with its normal processes; and
  - (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 4.
- 4.7 Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, encryption, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 4.8 The Customer consents to OYM appointing hosting and IT, communications, administration and payment services providers as a third-party processors of Personal Data under this agreement. OYM confirms that it has entered or (as the case may be) will enter with any third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 4. As between the Customer and OYM, OYM shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 4.
- 4.9 OYM may, at any time on not less than 30 days' notice, revise this clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).



## **5. THIRD PARTY PROVIDERS**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. OYM makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not OYM. OYM recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. OYM does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **6. OYM'S OBLIGATIONS**

- 6.1 OYM undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to OYM's instructions, or modification or alteration of the Services by any party other than OYM or OYM's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, OYM will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, OYM:
  - (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to

limitations, delays and other problems inherent in the use of such communications facilities.

- 6.3 This agreement shall not prevent OYM from entering into similar agreements with third parties, or from independently developing, using, selling or licensing products and/or services which are similar to those provided under this agreement.
- 6.4 OYM warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

## **7. CUSTOMER'S OBLIGATIONS**

7.1 The Customer shall:

- (a) provide OYM with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by OYM;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement including the data protection legislation;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, OYM may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for OYM, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

- (f) ensure that its network and systems comply with the relevant minimum specifications provided by OYM from time to time, but in any event at least 1GB of RAM and at least a 1GHz processor with over 1Mb internet speed running the latest version of Google Chrome, Firefox, Safari or Internet Explorer without any additional plugins/extensions installed; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to OYM's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7.2 The Customer warrants and represents that it has full authority to enter into this agreement on behalf of the group or committee it represents and shall fully indemnify and hold harmless OYM from any claims or losses arising from a breach of this representation.

## **8. CHARGES AND PAYMENT**

- 8.1 Where the Customer uses the Paid Version the Customer shall pay the Subscription Fees to OYM for the User Subscriptions in accordance with this clause 8.
- 8.2 Where applicable, the Customer shall on the Effective Date provide to OYM's payment processor valid, up-to-date and complete credit card details or approved purchase order or other payment information acceptable to OYM and any other relevant valid, up-to-date and complete contact and billing details or, if the Customer provides:
  - (a) its credit card details to OYM's payment processor, the Customer hereby authorises OYM to bill such credit card:
    - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
    - (ii) subject to clause 13.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
- 8.3 If OYM has not received payment or if the payment otherwise fails for some reason then the Customer's license for the Software shall be downgraded

from the Paid Version to a free license for the Basic Version at the discretion of OYM at any time on or after the expiry of the license for the Paid Version:

- 8.4 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
  - (b) are, subject to clause 12.3(b) and clause 13.2, non-cancellable and non-refundable;
  - (c) are inclusive of value added tax.
- 8.5 OYM shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon 90 days' prior notice to the Customer.

## **9. PROPRIETARY RIGHTS**

- 9.1 The Customer acknowledges and agrees that OYM and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 9.2 OYM confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## **10. CONFIDENTIALITY**

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute OYM's Confidential Information.
- 10.7 OYM acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9 The above provisions of this clause 10 shall survive termination of this agreement, however arising.

## **11. INDEMNITY**

- 11.1 The Customer shall defend, indemnify and hold harmless OYM against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) OYM provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 OYM shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) OYM is given prompt notice of any such claim;
  - (b) the Customer provides reasonable co-operation to OYM in the defence and settlement of such claim, at OYM's expense; and
  - (c) OYM is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, OYM may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4 In no event shall OYM, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than OYM; or
  - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by OYM; or

- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from OYM or any appropriate authority.

11.5 The foregoing and clause 12.3(b) state the Customer's sole and exclusive rights and remedies, and OYM's (including OYM's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **12. LIMITATION OF LIABILITY**

12.1 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. OYM shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to OYM by the Customer in connection with the Services, or any actions taken by OYM at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

12.2 Nothing in this agreement excludes the liability of OYM:

- (a) for death or personal injury caused by OYM's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.3 Subject to clause 12.1 and clause 12.2:

- (a) OYM shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or

consequential loss, costs, damages, charges or expenses however arising under this agreement; and

- (b) OYM's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.
- (c) For the avoidance of doubt, OYM shall not accept liability for data loss where the Customer (unintentionally or otherwise) deletes or causes to be removed any data from the system.
- (d) OYM shall not be liable for any loss of data except as set out below:
  - (i) In the event of a system-wide failure, OYM's liability shall be limited to restoring the most recent back-up or other copy of the data to the system.
  - (ii) Under normal circumstances, the data will be restored from contemporaneous back-up services which are kept updated in synchronous with the system. However, in the event of a catastrophic failure where such systems fail, OYM's liability for data loss, and the sole remedy of the Customer, shall be limited to the most recent back-up which may be up to one (1) week old.

12.4 Where the Customer has a license to use the Basic Version, the Software shall be provided on an "as-is" basis and regardless of any other provision or term of this agreement, OYM's total liability shall be limited as far as permitted by law and OYM's warranties shall only subsist to the extent they cannot be lawfully excluded or otherwise limited. Where the Customer has a license to use the Paid Version, this clause 12.4 shall not apply.

### **13. TERM AND TERMINATION**

13.1 This agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term of twelve (12) months and, thereafter, this agreement



shall be automatically renewed for successive periods of twelve (12) months (each a **Renewal Period**), unless:

- (a) The Customer fails to make payment for a Paid Version, in which case this Agreement shall continue, unless otherwise terminated, on the terms applicable to a Basic Version;
- (b) the section or account is deleted/closed or the Customer otherwise terminates the agreement or downgrades from the Paid Version to the Basic Version; or
- (c) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

- 13.2 Notwithstanding clause 13.1 above, OYM may, in its absolute discretion, upon specific request from the Customer, allow the Customer to terminate the agreement within the first thirty (30) days of commencement of the agreement for any Paid Version and may allow the Customer either to continue to use the Basic Version, or permit termination of the agreement. In this instance OYM may, in its absolute discretion provide a refund of any Charges paid by the Customer be that pro-rata or otherwise taking into account OYM's reasonable costs associated with such a termination.
- 13.3 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 45 days after being notified in writing to do so;
  - (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 13.4 On termination of this agreement (where it does not continue under a Basic Version license) for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any Documentation and other items (and all copies of them) belonging to the other party;
- (c) OYM may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 4.6(c).
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

#### **14. FORCE MAJEURE**

OYM shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of OYM or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of OYMs or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

#### **15. CONFLICT**

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

#### **16. VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**17. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**18. RIGHTS AND REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**19. SEVERANCE**

19.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

19.2 If any provision or part-provision of this agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**20. ENTIRE AGREEMENT**

20.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

20.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **21. ASSIGNMENT**

- 21.1 The Customer shall not, without the prior written consent of OYM, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 21.2 OYM may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## **22. NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **23. THIRD PARTY RIGHTS**

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **24. NOTICES**

- 24.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's relevant point of contact as may be updated from time to time by notice in writing to the other party.
- 24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the time stamp obtained by the sender).

## **25. GOVERNING LAW**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## **26. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**This agreement** has been entered into on the date stated below.

Signed by: Daniel Reynolds

Signature: Daniel Reynolds

Role: GSL

Date: 29/07/2020

Address: 35 Moel Gron, Mynydd Isa, Mold CH76XE

Applicable sections: 1st Mynydd Isa Scout Group: Beavers (ID:41718)  
1st Mynydd Isa Scout Group: Cubs (ID:41719)  
1st Mynydd Isa Scout Group: Scouts (ID:41720)  
1st Mynydd Isa: Waiting List (ID:42444)  
1st Mynydd Isa Scout Group: Adults (Leaders and Exec) (ID:51268)  
1st Mynydd Isa Scout Group: Flintshire Explorers : Isa ESU (ID:56230)

## **SCHEDULE 1- Processing, Personal Data and Data Subjects**

### **1. PROCESSING BY OYM**

- 1.1 OYM shall store and make available the Personal Data, during the Term of the agreement or any applicable Retention Period, to the Customer through use of the Services and shall only use the Personal Data in this way unless otherwise properly instructed by the Customer.

### **2. TYPES OF PERSONAL DATA**

- 2.1 The following categories of Personal Data will usually be provided in every case:
- (a) Names;
  - (b) Dates of birth;
  - (c) Dates joined current section of Customer's organisation; and
  - (d) Dates individuals joined organisation/ Scouting Association.
- 2.2 The Customer, as Data Controller, may provide any type of personal data that it wishes on to the System. The types of personal data will generally include:
- (a) Contact and identity data for members of the Customer's organisation;
  - (b) Details of the membership of the individual, payments, length of membership;
  - (c) Records of activities relating to the individual including achievements and other records of participation; and
  - (d) Special categories of data as required to ensure the protection of the individual, to manage their lifestyle preferences and protect their vital interests in emergency situations.

### **3. CATEGORIES OF DATA SUBJECT**

- 3.1 Youth members of the organisation established or managed by the Customer and other participants or volunteers as the Customer may include on the system.

## **SCHEDULE 2 – TSA Data Sharing Arrangement**

### **1. APPLICABLE SECTIONS**

This schedule only applies for customers that have consented to the TSA Data Sharing Arrangement within Online Scout Manager, and it is only applicable while the partnership between Online Youth Manager and The Scout Association is active.

For the purposes of the arrangement, OSM refers to "Software".

### **2. DATA SHARING ARRANGEMENT**

OYM has entered into a collaborative partnership agreement with The Scout Association (incorporated by Royal Charter under registration no RC000547 and charity registered in England and Wales under registration no 306101 and in Scotland under registration no SC038437 registered at Gilwell Park, Chingford, London, E7 7QW) (TSA) a charity whose aims are to engage and support young people in their personal development and empowering them to make a positive contribution.

This data sharing arrangement has been provided to be transparent and details the data that may be accessed by TSA, the purpose for doing so and the obligations of both TSA and the local Scout Groups.

#### **Purpose**

The objectives of the partnership are:

- Protecting children more effectively by helping our Safeguarding team access critical contact information faster in exceptional circumstances, in a controlled and transparent manner.
- Gaining important real time insights into Scouting nationally that we can use to improve the support provided for local groups and increase external funding of Scouting. This will not involve any personally identifiable data

The personal data is only accessible by the safeguarding team, used to protect children. Their access will be logged within OSM's audit trail for Scout Groups to see. Any data taken out of OSM will be managed via secure child protection systems at HQ, with details kept only as long as the case records are required. All data processing by TSA will be in accordance with its own Data Protection Policy which can be found here [www.scouts.org.uk/DPPolicy](http://www.scouts.org.uk/DPPolicy), this data sharing arrangement and the applicable Data Protection Legislation.

#### **Personal data to be accessed**

The safeguarding team may access specific personal details (name/DOB/contact details) of members and their parents/guardians in OSM as a last resort if the information cannot be obtained through the usual channels or in the event of an emergency.

### **Basis for processing**

The Scout Group is the data controller for the personal data it adds to the OSM platform. For the data that TSA may access via OSM it will act as an independent data controller. This is because TSA will determine any purpose for the onward processing of this data in accordance with its safeguarding policies and procedures, its own Data Protection Policy which can be found here: [www.scouts.org.uk/DPPolicy](http://www.scouts.org.uk/DPPolicy) and all applicable Data Protection Legislation.

### **Third parties**

In compliance with statutory or regulatory responsibilities TSA may be required to share personal data with other third parties including but not limited to the Police, Local Authorities, and other statutory or regulatory bodies.

### **Obligations**

The Scout Groups shall be responsible for ensuring that the relevant data subjects have been provided with all necessary information in respect of this data sharing arrangement between the Scout Group and TSA via OSM.

In processing the personal data TSA shall:

- take appropriate steps to ensure the reliability of TSA staff and any third parties who have access to the personal data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of personal data and comply with the Data Protection Legislation;
- implement appropriate technical and organisational security measures for the personal data volume and sensitivity;
- comply with all applicable laws including the Data Protection Legislation in relation to all processing of the personal data;
- not process the personal data for any purposes other than defined in this data sharing arrangement or TSA Data Protection Policy unless it has any other legal basis do so;
- not disclose the personal data to any third parties other than as specified above and where they are subject to obligations equivalent to those of TSA under this agreement; and

TSA warrants and undertakes that in carrying out its obligations under this agreement it will not breach the Data Protection Legislation or do or omit to do anything that might cause the Scout Group to be in breach of the Data Protection Legislation.

### **Duration**

TSA shall only retain the personal data for as long as is necessary for the defined purposes in accordance with its Data Retention Policy, which can be found here: <https://www.scouts.org.uk/about-us/policy/data-retention-policy>. For clarity the retention periods defined for this type of data processing is as follows, however the Data Retention Policy should be reviewed for the most up to date detail:



<b>Data Process</b>	<b>Data Type</b>	<b>Retention</b>	<b>Justification</b>
Safeguarding – Young person - Welfare	Personal and Sensitive data (special category)	Young Person – 7 years after last communication with the Young Person or Family	Required for evidence requests from statutory agencies
Safeguarding – Young person perpetrator	Personal and Sensitive data (special category)	Young Person – 100 years after case closure. Will include all case notes, including those of witnesses and adult volunteers along with any litigation correspondence, until it is appropriate to reduce this to a detailed summary of the case. In the event that the allegation is actually disproved or is found to have been mis-recorded in the first place, the record will include a statement that the data subject has been exonerated and the data will be subject to the joining data process retention period.	Required for evidence requests from statutory agencies
Incident – personal injury details (including sexual abuse/psychological damage)	Personal and Sensitive data (special category)	4 years after incident, or 4 years after alleged victim turns 18 if later	Fight a case – Limitation act 1980

# Audit Trail

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