



**pendium Ltd**

## **Online Safety Agreement**

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# 1 Definitions

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

- (a) *Anonymised (Data)* – Data for which personal identifiers such as user names and IP addresses have been removed. It is not possible to guarantee that these data can never be deanonymised given a large enough data set and analysis time, but *Opendium's* policy is to prevent any deanonymisation attempt.
- (b) *Business Day* – Monday to Friday except for English and Welsh public holidays.
- (c) *Customer* – The party identified as the customer in section 12 of this agreement.
- (d) *Data Subject* – A natural person to which data relates.
- (e) *GDPR* – Regulation (EU) 2016/679 (General Data Protection Regulation).
- (f) *Opendium* – Opendium Limited is a company registered in England and Wales with company number 5465437.
- (g) *Opendium System* – An Opendium Web Gateway, Opendium UTM or Opendium Icen system.
- (h) *Opendium Website* – Opendium's main website, which is located at <https://www.opendium.com/>
- (i) *Pseudonymised (Data)* – Data for which personal identifiers such as user names and IP addresses have been replaced by identifiers that cannot be linked back to the original user. It is not possible to guarantee that these data can never be deanonymised given a large enough data set and analysis time, but *Opendium's* policy is to prevent any deanonymisation attempt.
- (j) *Service Duration* – How long *Opendium* will supply services under this agreement.
- (k) *Service End Date* – The last date that *Opendium* will supply services under this agreement. The *Service End Date* is defined as the *Service Start Date* plus the *Service Duration*, rounded to the nearest last day of the month; for example a customer with a *Service Duration* of 3 years and a *Service Start Date* of September 5th 2018 will have a *Service End Date* of August 31st 2021.
- (l) *Service Start Date* – The date that *Opendium* begins supplying services under this agreement. For new customers, this is defined as the earliest agreed installation date, irrespective of whether installation is eventually rearranged for a later date. For existing customers, this is the start date of the most recently renewed agreement; for example If a customer arranges installation to be carried out on September 5th but then postpones installation to October 12th, the *Service Start Date* will be September 5th.



## 2 Service Level Agreement

2.1 This document is intended to be read in conjunction with the service level agreement. The revision of the service level agreement that was current on the commencement date (see section 12) forms part of this agreement.

2.2 The latest revision of the service level agreement is published on the *Opendium Website* and updated from time to time.

## 3 Warranty

3.1 *Opendium* warrants that:

- (a) *Opendium* software and hardware will conform in all material respects with the standard specification for a period of 90 days from the service start date;
- (b) *Opendium* hardware will be free from material defects; and
- (c) services provided by *Opendium* will be carried out by appropriately skilled personnel

3.2 In respect of third party hardware and software, *Opendium* will use reasonable endeavours to pass on to the customer the warranty terms provided by the respective supplier.

3.3 Except for third party hardware, *Opendium* shall provide a limited three year return to base hardware warranty unless otherwise agreed in writing.

3.4 In the event of hardware failure, at their discretion, *Opendium* may make temporary replacement hardware available to the customer strictly to avoid loss of service while awaiting replacement equipment.

3.5 The *Customer* shall accept that any software may have errors and may encounter unexpected problems, possibly resulting in a loss of service to the *Customer*. The *Customer* shall put in place reasonable internal procedures and processes to enable it to minimise the impact of any such error.

## 4 Installation

4.1 Where required, *Opendium* will arrange a suitable installation date of the *Opendium System* with the *Customer* and carry out installation in accordance with the quote, for which a fee may be charged. Any rescheduling of installation work must be agreed at least two business days ahead of the previously agreed installation date.

4.2 Prior to installation, the *Customer* shall:

- (a) provide all information reasonably required by *Opendium*;
- (b) prepare the installation location to receive any hardware that *Opendium* is supplying;
- (c) implement any changes that have been agreed;
- (d) provide all necessary access and facilities; and
- (e) engage any necessary third parties.



4.3 In the event that *Opendium* is prevented from carrying out the installation on the agreed date, the *Customer* shall remain liable for the installation fee for the specified date and must agree a new installation date with *Opendium*, for which a new quote will be provided.

## 5 Hardware

5.1 *Opendium* may supply hardware in accordance with the quote.

5.2 Hardware shall remain the property of *Opendium* until paid for in full. Until that time, the *Customer* shall insure and store the hardware in satisfactory conditions.

5.3 The *Customer's* right to take possession of hardware shall terminate immediately if the *Customer* fails to make any payment to *Opendium* by its due date. Upon *Opendium's* request, the *Customer* shall return any such hardware to *Opendium*, at the customer's expense.

## 6 Software and Database Licence

6.1 *Opendium* products contain both proprietary and open source software. The *Customer* shall fully comply with all software licences supplied and delivered by *Opendium*. This includes the *Opendium* software licence and third party software licences, including open source software licences.

6.2 Neither during nor after the term of this agreement shall the *Customer* access, attempt to access or disseminate any proprietary databases contained within *Opendium* products or otherwise supplied by *Opendium* in connection with this agreement, nor allow any third party to do the same.

6.3 The *Customer* shall not acquire any title to any software or database under this agreement.

## 7 Data Processing

7.1 An *Opendium System* must collect and process a large amount of data relating to the users of the *Customer's* network in order to carry out its function of protecting both the users and the network itself.

7.2 These data are stored on the *Customer's Opendium System* and the majority of the data processing is automatically carried out by the *Opendium System* itself. It is therefore the *Customer's* responsibility to ensure that the appropriate organisational and technical security measures are implemented to protect these data. However:

- (a) in order to provide technical support, *Opendium* engineers generally have access to data stored on the *Customer's Opendium System*. Therefore *Opendium* is regarded as a data processor; and
- (b) *Opendium* is the controller of the following personal data relating to the *Customer's Opendium System*:
  - i. data that are collected for network security reasons and automated fault reporting in accordance with Recital 49 of *GDPR*; and
  - ii. personal data that are provided directly to *Opendium* by the *Data Subject*.



7.3 This document outlines *Opendium's* role as processor of data that the *Customer* controls. Please see the data protection policy for information regarding *Opendium's* role as a data controller. The data protection policy is published on the *Opendium Website* and updated from time to time.

## Types of personal data

7.4 The following personal data may be routinely collected by an *Opendium System*:

- (a) user names;
- (b) real names;
- (c) contact information, such as email addresses;
- (d) ages or year groups;
- (e) passwords;
- (f) notes / comments made by the system administrator;
- (g) emails;
- (h) network addresses; and
- (i) network traffic and web browsing history, including decrypted traffic.

7.5 These data could include data which *GDPR* deems "special categories of personal data".

7.6 The above data may also be collected and controlled by *Opendium* and stored on systems owned or operated by *Opendium* in the following circumstances:

- (a) for network security reasons and automated fault reporting. These are collected in accordance with Recital 49 of *GDPR*; and
- (b) in relation to a web site that the data subject has reported as having been miscategorised. The *Data Subject* will have submitted their personal data directly to *Opendium* and given consent for their processing.

## The *Customer's* responsibilities

7.7 The *Customer* must not transfer any personal data to an *Opendium* employee's direct email address or telephone number. Limited transfers of personal data by means of *Opendium's* support email address or telephone number is acceptable.

7.8 The *Customer* must determine the lawful basis for gathering these data and acquire any necessary consent from the data subjects. As a school has a legal obligation under the Prevent Duty and Keeping Children Safe in Education, they may choose to use Article 6, Paragraph 1(c) and Article 9, Paragraph 1(b) of *GDPR* as the lawful basis. The *Customer* should consider whether they need to seek professional legal advice as this does not constitute such.

7.9 The *Customer* must provide any information that *Opendium* requires, in a timely manner, in order for *Opendium* to assist with subject access and allow data subjects to carry out their rights under *GDPR*.



7.10 The *Customer* must provide any information that *Opendium* requires, in a timely manner, in order for *Opendium* to assist the *Customer* to meet their *GDPR* obligations.

## ***Opendium's responsibilities***

7.11 *Opendium* will not transfer personal data from the *Customer's Opendium System* to any system that is not owned or operated by either *Opendium* or the *Customer*.

7.12 *Opendium* may transfer personal data from the *Customer's Opendium System* to systems that are owned or operated by *Opendium* for the following reasons:

- (a) to provide off-site backups of the *Customer's Opendium System*;
- (b) to provide the *Customer* with technical support or for fault finding. These data may be stored in *Opendium* support tickets and will be deleted from *Opendium's* other systems as soon as they are no longer required, or within one month at the most, unless written authorisation is received to extend the retention period;
- (c) to assist the *Customer* with their safeguarding duties; and
- (d) as *Anonymised* or *Pseudonymised* data. Under *GDPR*, these will no longer be considered "personal data" and *Opendium* will not attempt to deanonymise them. *Opendium* may allow third parties to access these *Anonymised* or *Pseudonymised* data, who will be held to the same standards as *Opendium* themselves.

7.13 Personal data which are stored on systems that are owned or operated by *Opendium* will be retained for no longer than three years unless *Opendium* is instructed in writing by the *Customer* to extend this retention period. These data will be deleted within one month of the termination of this agreement unless it is extended or replaced.

7.14 No personal data will be sent from or accepted to an *Opendium* employee's direct email address or telephone number. Limited transfers of personal data may be made by means of *Opendium's* support email address or telephone number. Support tickets and emails are considered unstructured data in accordance with Recital 15 of *GDPR* and *Opendium* will apply a "best efforts" approach with regards to any personal data which they contain. *Opendium* employees receiving any such emails will delete the email and inform the sender that they must resend it to the support address. However, *Opendium's* email system may retain archived copies.

7.15 At any time, the *Customer* can request a copy of personal data which is stored on systems that are owned or operated by *Opendium*.

7.16 *Opendium* may process personal data in order to provide the *Customer* with technical support and for fault finding purposes.

7.17 *Opendium* may process personal data in order to assist the *Customer* with their safeguarding duties.

7.18 *Opendium* may process personal data for other reasons upon written authorisation from the *Customer*.

7.19 *Opendium* will ensure that any people they employ to process personal data are subject to a duty of confidence.



7.20 *Opendium* will ensure that any personal data that they are processing is processed securely.

7.21 *Opendium* may engage a sub-processor, with whom *Opendium* will have a written contract holding them to the same standards as *Opendium* themselves.

7.22 *Opendium* will assist the *Customer* in providing subject access and allowing *Data Subjects* to exercise their rights under *GDPR*.

7.23 *Opendium* will assist the *Customer* in meeting their *GDPR* obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments.

7.24 *Opendium* will submit to audits and inspections, provide the *Customer* with whatever information they need to ensure that *GDPR*'s Article 28 obligations are being met and tell the *Customer* immediately if they have reason to believe that an instruction infringes the *GDPR* or other data protection law.

7.25 This agreement does not relieve *Opendium* of its direct responsibilities and liabilities under *GDPR*.

## **8 Limits of Liability**

8.1 Except as expressly stated in clause 8.2:

(a) *Opendium* shall not in any circumstances have any liability for any losses or damages which may be suffered by the *Customer*, (or any person claiming under or through the *Customer*), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- i. special damage, even if *Opendium* was aware of the circumstances in which such special damage could arise;
- ii. loss of profits;
- iii. loss of sales or contracts;
- iv. loss of anticipated savings;
- v. loss of business opportunity;
- vi. loss of goodwill;
- vii. loss of, corruption to, or other damage to data; or
- viii. any indirect or consequential loss or damage

Provided that clause 8.1(a) above shall not prevent claims for loss of or damage to the *Customer*'s tangible property that fall within the terms of clause 8.1(b).

(b) The total liability of *Opendium*, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to the lower of:



- i. the fee payable by the *Customer* in relation to this agreement in which liability arises; and
- ii. £1,000,000

8.2 The exclusions in clauses 3.5 and 8.1 shall apply to the fullest extent permissible by law, but *Opendium* does not exclude liability for:

- (a) death or personal injury caused by the negligence of *Opendium*, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 1 of the Supply of Goods and Services Act 1982; or
- (d) any other liability which cannot be excluded by the applicable law.

## 9 Termination and Renewal

9.1 On the *Service End Date*, this agreement will be automatically renewed, updated to the latest revision of this text, which is made available on the *Opendium Website* and updated from time to time, unless notice of cancellation has been given in writing at least 90 days in advance, whereupon the agreement will automatically terminate.

9.2 The *Customer* may cancel this agreement at any time without refund by giving 90 days' notice in writing.

9.3 Without prejudice to any rights that have been granted under this agreement, either party may at any time terminate this agreement with immediate effect by giving written notice to the other party if:

- the other party fails to pay any amount due under this agreement on the due date
- the other party materially or repeatedly breaches of any term of this agreement
- the other party fails to make payment of its debts

9.4 Upon termination of this agreement, the *Customer's* right to receive the products and services, including rights granted under the software and database licence, shall cease automatically and *Opendium* shall be entitled to disable the use thereof.

9.5 All sums payable to *Opendium* shall become due immediately upon termination, including any unused periods which have not yet been paid in full.

## 10 Severance

10.1 In case any one or more of the provisions contained in this agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.





## 11 Jurisdiction

11.1 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.

## 12 Signatures

12.1 This agreement is made between *Opendium* and \_\_\_\_\_, shall commence with immediate effect and terminate on the *Service End Date*. The *Service Start Date* and *Service End Date* will be confirmed in writing after installation.

### To be completed by *Opendium*

Service duration     \_\_\_ Years

Customer number    \_\_\_\_\_

### On behalf of *Opendium*

Signature            \_\_\_\_\_

Name                 \_\_\_\_\_

Position            \_\_\_\_\_

Date                 \_\_\_ / \_\_\_ / \_\_\_

### On behalf of the *Customer*

Signature            \_\_\_\_\_

Name                 \_\_\_\_\_

Position            \_\_\_\_\_

Date                 \_\_\_ / \_\_\_ / \_\_\_