

Terms of Use

Outreach Smartphone Monitoring LLC

Last Updated: March 10th, 2020

To assist you in accessing and/or using the content, features, products, websites, technology platform, and services (the “**Services**”) offered by Outreach Smartphone Monitoring LLC (dba Alcohol Smartphone Monitoring) and its subsidiaries and affiliates (collectively, “**OSM**,” “**we**,” “**us**” or “**our**”), and to ensure a clear understanding of the relationship from your use of our Services, we have created these Terms of Use (the “**Terms of Use**” or “**Terms**”) and a [Privacy Policy](#)^[HK1] (“**Privacy Policy**”). The Terms govern the access and/or use by you, an individual, of all the Services, and the [Privacy Policy](#)^[HK2] explains how we treat information that you provide to us through the Services. These Terms of Use and Privacy Policy are a legal agreement between you and OSM. The Terms and [Privacy Policy](#)^[HK3] apply to any person who logs onto, accesses or uses any portion of the Services (collectively, “**you**”).

1. Acceptance of Terms of Use.

PLEASE READ THESE TERMS CAREFULLY BEFORE LOGGING ONTO, ACCESSING OR USING THE SERVICES. BY CLICKING THE “I ACCEPT” BUTTON BELOW AND LOGGING ONTO, ACCESSING OR USING THE SERVICES, YOU ACKNOWLEDGE AND AGREE TO BE LEGALLY BOUND BY THESE TERMS OF USE AND [PRIVACY POLICY](#)^[HK4]. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OR THE PRIVACY POLICY, PLEASE DO NOT LOG ONTO, ACCESS OR USE ANY PORTION OF THE SERVICES.

THESE TERMS INCLUDE A BINDING ARBITRATION CLAUSE IN SECTION 25 AND A CLASS ACTION WAIVER IN SECTION 24. THIS PROVISION AFFECTS YOUR RIGHTS TO RESOLVE DISPUTES WITH US AND YOU SHOULD REVIEW IT CAREFULLY.

2. Changes to Terms of Use.

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post the updated Terms at this location, and apply to all access to and use of the Services thereafter, as well as all information we hold about you at that time and thereafter. We also may alert you by email of such changes. Your continued use of the Services following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to periodically check this page so you are aware of any changes, as they are binding on you.

3. Authorized Users.

Subject to these Terms of Use, you are an authorized user of the Services only if you are an employee or contractor of a federal, state or local law enforcement or governmental agency, court,

correctional institution, treatment center, private probation company, or other entity or organization (each, an “**Agency**”) responsible for monitoring certain individuals (“**Monitored Individuals**”), and you have received valid log-in information from the account administrator for such Agency (“**Account Credentials**”). The Services include, but are not limited to, accessing and using cloud-based software and related technology for GPS tracking, curfew monitoring, check-in status, blood alcohol content monitoring, court appointment and event reminders, video viewing and identity verification, and generating reports related to Monitored Individuals. The Services are based on a subscription model, and your use of the Services is contingent on your Agency’s timely payment of the applicable subscription fees (the “**Fees**”) to OSM or our authorized reseller (“**Authorized Reseller**”).

4. User Account.

Once you enter your Account Credentials on the log-in page of the Agency Login portion of our website, you will be permitted to create a personal user account (the “**Account**”) and create your personalized password. You must be at least 18 years of age, or the age of legal majority in your jurisdiction (if different than 18), to obtain an Account. Account registration requires us to have access to certain of your personal information, such as your first and last name, and email address, and if you select to receive SMS text messaging, your mobile number (collectively, “**Account Information**”). You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to do so may result in your inability to access and use the Services or our termination of these Terms with you. You are responsible for all activity that occurs under your Account, and you agree to maintain the security and secrecy of your Account Credentials at all times. Unless otherwise permitted by us in writing, you may only possess one Account.

You must immediately notify us if you suspect that someone is using your Account Credentials or using the Services under your Account. We reserve the right to cancel or suspend your account or disable your access to the Services if we believe your account has been or is being misused or if you fail to comply with any of the Terms.

5. Text Messaging.

By providing your mobile number and setting your Account to receive informational text (SMS) messages, you agree that the Services may send you SMS messages as part of the normal business operation of your use of the Services. You may opt-out of receiving SMS messages from us at any time by switching your account to not receive messages from the mobile device receiving the messages. You acknowledge that opting out of receiving SMS messages may impact your use of the Services.

6. License Grant.

Subject to your compliance with these Terms and your Agency’s timely payment of the Fees, we grant you a limited, terminable, non-sublicensable, non-transferable, non-exclusive, revocable license to access, execute, display, perform and use the Services and the content, information and related materials that may be made available through the Services, in each case solely for your personal, non-commercial use. These Terms will also govern any upgrades, updates, modifications and/or improvements to the Services that are provided by us.

7. License Restrictions and Usage Rules.

7.1. As a condition of your use of the Services, you agree to use the Services in compliance with these Terms and may not use the Services for any purpose that is unlawful or is prohibited by these Terms. You will not:

- (i) remove any copyright, trademark or other proprietary notices from any portion of the Services;
- (ii) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services except as expressly permitted by these Terms;
- (iii) decompile, reverse engineer, disassemble the Services, including, without limitation, the underlying software and technology to operate, execute, implement, enable, maintain and/or support the Services (the “**Platform**”);
- (iv) attempt to derive the source code of the Services or the Platform or any updates or any part thereof except as may be permitted by applicable law or by the licensing terms governing use of any open sourced or third party components included with the Services;
- (v) use the Services in any manner that could damage, disable, overburden, or impair any OSM server, or the network(s) connected to any OSM server, or interfere with any other party's use and enjoyment of the Services;
- (vi) link to, mirror or frame any portion of the Services;
- (vii) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Services or unduly burdening or hindering the operation and/or functionality of any aspect of the Services;
- (viii) attempt to gain unauthorized access to or impair any aspect of the Services, computer systems or networks connected to any our server or to the Platform, including through hacking, password mining or any other means;
- (ix) introduce any malware (including, but not limited to, viruses, trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful) into the Services, the Platform, or any OSM server or the network(s) connected to any OSM server;
- (x) circumvent or modify any security technology or software that is part of the Services or the Platform; or
- (xi) cause, in your use of the Services, a nuisance, annoyance, inconvenience, or property damage to any other individual or entity.

7.2. You agree to comply with all applicable laws when using the Services, and you may only use the Services for lawful purposes. In certain instances, you may be asked to provide proof of identity to access or use the Services, and you agree that you may be denied access to or use of the Services if you refuse to provide proof of identity.

7.3. You will not attempt, or encourage or assist any other person, to circumvent any of the usage rules and license restrictions set forth in this Section 7 (collectively, the “Usage Rules”). We reserve the right, without prior notice, to suspend or terminate your account or disable your access to and use of the Services if you fail to comply with any of the Usage Rules or any other Terms.

8. Provision of Data.

8.1. **User Data.** Through the Services, you may submit, upload, publish, or otherwise make available to us textual, audio, and/or visual content and information, including, but not limited to, court or event dates and reminder notices, your Account Information, other protected personal information or protected health information as defined by applicable laws pertaining to Monitored Individuals (“Personal Information”), commentary and feedback related to the Services, and initiation of support requests (collectively, “User Data”). User Data also includes information and data passively or actively collected by the Services to facilitate provision of the Services to you. User Data, however, does not include aggregated and/or de-identified User Data. You will be responsible for inputting, uploading and otherwise providing all User Data to the Services. You will provide such User Data in a format consistent with the requirements set forth by us or our documentation. Errors in loading User Data into the Services due to defective media, lack of internet, cellular or wireless services, erroneous data or failure to meet such requirements may cause User Data to be rejected by the Services and we will have no responsibility for any related impact on your ability to access or use the [Services](#)^{TN5}^{HK6}.

- (i) As between you and us, any User Data provided by you remains your property, subject to the rights and permissions granted in this Section 8.
- (ii) You hereby grant all such rights and permissions in or relating to User Data: (a) to OSM, our resellers, our subcontractors, our successors and assigns including, but not limited to, entities that may purchase all or part of our business, and our personnel and contractors as necessary or useful to provide and perform the Services or to prevent or address service or technical problems under these Terms; (b) to OSM, our subcontractors, and our personnel and contractors to disclose and share all User Data and all information and data collected by the Services to third parties as required by law or contract, including, but not limited to, law enforcement agencies, courts, prosecuting and defense attorneys; and (c) to OSM as are necessary or useful to enforce these Terms and exercise our rights and perform our obligations under these Terms. YOU HEREBY SPECIFICALLY CONSENT TO THE COLLECTION, STORAGE, TRANSMISSION, DISSEMINATION, USE, DISCLOSURE, SHARING AND SALE OF YOUR USER DATA IN CONNECTION WITH THE SERVICES.

- (iii) We will not retain, use, disclose, or otherwise process Personal Information for any purpose other than for the purpose set forth in these Terms, or otherwise permitted by applicable laws. Subject to our ability to disclose and share your Personal Information and other User Data in accordance with these Terms, we will not sell any Personal Information that we collect, access, or otherwise process pursuant to these Terms. We will treat your Personal Information in accordance with our [Privacy Policy](#)^[HK7].

8.2. Monitored User Data. You acknowledge that as part of the Services, you may have access to Personal Information of Monitored Users who upload or provide such Personal Information to the Services, such as their blood alcohol content levels or other results from their blood alcohol monitoring and their geolocations based on GPS tracking (collectively, “**Monitored User Data**”). You shall treat such Monitored User Data as our confidential information, shall use it only for the purpose of this TOU, and shall not disclose it to a third party or any person who is not legally required to know such Monitored User Data.

8.3. Service Data. In addition, during your use of the Services, we may collect query logs and data relating to your usage of the Services and/or relating to the operation, support and performance of the Services (“**Service Data**”). You hereby unconditionally and irrevocably assign to OMS all right, title and interest in and to the Service Data, including all intellectual property rights relating thereto. This Section does not give us the right to identify you as the source of any Service Data without your written permission.

8.4. Anonymous and De-Identified Data. Notwithstanding anything to the contrary, we will have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning User Data and data derived therefrom; provided that such data (i) relates to a group or category of individuals from which individual identities (including individually identifiable health information) have been removed, and that is not linked or reasonably linkable to any individual; or (ii) cannot reasonably identify, relate to, describe, be associated with, or be linked to a particular individual, and that we have implemented technical safeguards and business process to prohibit re-identification of User Data) (collectively, “**Anonymous Data**”). You hereby grant OSM a royalty-free, fully-paid up, transferable license to create Anonymous Data. You agree that, once created, Anonymous Data are not User Data. You also hereby grant OSM a perpetual, worldwide, irrevocable, royalty-free, fully-paid up, transferable license, with the right to grant sublicenses, and we will be free (during and after the term of these Terms of Use), to (a) use such Anonymous Data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other OSM offerings; (b) use, disclose and distribute Anonymous Data in connection with its business, including, without limitation, for training, research, development, marketing and promotional efforts and provision of services to others; (c) prepare and distribute reports and analyses of Anonymous Data; and (d) aggregate or otherwise bundle and sell the Anonymous Data to third parties.

8.5. Waiver. You agree to waive all claims against OSM, its employees, Authorized Resellers, agents and assigns, that could arise from the collection, use, dissemination, storage,

sharing, sale or disposal of the User Data, Service Data or Anonymous Data in accordance with these Terms.

8.6. Feedback. If you elect to provide us with any suggestions, comments, improvements, enhancement requests, recommendations, corrections, ideas or other feedback relating to the Services or any other OSM products or services (collectively, “**Feedback**”), you acknowledge and agree that we may freely use and incorporate into our products and services any such Feedback without any obligation, payment, or restriction based on intellectual property rights or otherwise.

8.7. Prohibited Data. You acknowledge that the Services are not designed with security processes and access management for processing any data that falls outside the scope of the data fields offered through the Services or that is otherwise not permitted by us (collectively, “**Prohibited Data**”). You will not, and will not permit any other person to, provide any Prohibited Data to, or process any Prohibited Data through, the Services to any of our employees, contractors or representatives. You are solely responsible for reviewing all User Data and ensuring that no User Data constitutes or contains any Prohibited Data.

9. Third Party Services and Content.

The Services may be made available or accessed in connection with third party services and content (including advertising) that we do not control (“**Third Party Services and Content**”), and our Services and website may contain links to third party websites that we do not control (collectively, “**Third Party Links**”). You acknowledge that different terms of use and privacy policies may apply to your use of such Third Party Services and Content and Third Party Links. We do not endorse such Third Party Services and Content or Third Party Links. We are providing these Third Party Services and Content and Third Party Links to you only as a convenience. We do not warrant the accuracy, completeness, or usefulness of any Third Party Services and Content or Third Party Links or any information contained therein. Any reliance you place on such information is strictly at your own risk. In no event shall we be responsible or liable for any contents of any such Third Party Services and Content or such Third Party Links or any products or services of such third party providers.

10. Proprietary Rights.

10.1. Services and OSM Content. We, or our licensors, own the Services, including the Platform, and all of its entire contents, features and functionalities (including, but not limited to, all information, software, text, displays, images, pictures, video and audio, and the design, selection and arrangement thereof, and all trademarks, trade dress, and intellectual property owned by OSM or our licensors) (collectively, the “**OSM Content**”). The OSM Content is protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws. We reserve all intellectual property rights in the Services and OSM Content, and no right, title, or interest in or to the Services or the OSM Content is transferred to you, except for the rights expressly granted in these Terms. We reserve all rights not expressly granted to you. You are not permitted to use the OSM Content outside of the normal functions of the Services without the prior written consent of OSM.

10.2. Improvements. You may not make any improvements or modifications to the Services or create any derivative works based upon the Services (collectively, “**Improvements**”) without our express written consent. Any such Improvements shall be solely owned by us and included under the definition of the Services. You hereby irrevocably transfers and assigns to us, and agree to irrevocably transfer and assign to us all right, title and interest in and to the Improvements, including all intellectual property rights therein.

10.3. Trademarks. The trademarks, logos, and service marks, including but not limited to “Outreach Smartphone,” “Alcohol Smartphone Monitoring,” “OSM,” and other names, logos, and icons identifying products and services (collectively, “**Trademarks**”) displayed on or through the Services, are registered and unregistered Trademarks of OSM or its licensors. The Trademarks and all other materials contained in the Services may not be distributed, modified, or reproduced in whole or in part without our prior written permission in each instance. All goodwill arising from the use of the Trademarks shall inure to OSM.

11. Term and Termination of Services.

11.1. Term and Termination. Your access and use of the Services will continue through the applicable subscription period to which your Agency agreed with OSM or an Authorized Reseller, and will terminate upon the expiration of such subscription period. In addition to the termination and suspension rights we have under these Terms, your access and use to the Services may be earlier terminated or suspended in accordance with the terms of the agreement between your Agency and OSM or an Authorized Reseller (“**Agency Agreement**”).

11.2. Termination. If you materially breach any of these Terms, we may immediately terminate these Terms and your use of the Services.

11.3. Effect of Termination. Upon the termination or expiration of the Services, except as expressly otherwise provided in these Terms, (i) all rights and licenses granted by us to you will immediately terminate, and you will immediately cease use of and access to the Services; and (ii) you may no longer have access to your User Data. Except where an exclusive remedy is specified, the exercise of any remedy by under these Terms, including termination, will be without prejudice to any other remedies we may have under these Terms, by law or otherwise.

12. Suspension of Service.

In addition to any of its other rights or remedies (including, without limitation, any termination rights) set forth in these Terms or in the Agency Agreement, we reserve the right to suspend provision of the Services: (a) if we deem such suspension necessary as a result of your breach of any material terms of the Terms or if you accessed or used the Services beyond the scope of the rights granted or for purpose not authorized under these Terms, (b) if we reasonably determine suspension is necessary to avoid material harm to us or our other customers or end users, including if the Services are experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of our control, (c) you are, have been, or are likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services, or (d) as required by law or at the request of governmental, law enforcement or judicial entities or

pursuant to a governmental or judicial order, subpoena, or demand. This Section does not limit any of our other rights or remedies, whether at law, in equity or under these Terms.

13. Surviving Terms.

The provisions in these Terms that by their nature are intended to survive termination or expiration of these Terms shall survive the termination or expiration of the Services and these Terms, including, without limitation: Sections 7 (*License Restrictions and Usage Rules*), 8 (*Provision of Data*), 9 (*Third Party Services and Content*), 10 (*Proprietary Rights*), 11.3 (*Effect of Termination*), 13 (*Surviving Terms*), 14 (*Disclaimer of Warranties*), 15 (*Indemnification*), 16 (*Limitation of Liability*), and Sections 19-31.

14. Disclaimer of Warranties.

THE SERVICES AND THE OSM CONTENT ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. TO THE EXTENT PERMITTED BY LAW, WE AND OUR DISTRIBUTORS, PARTNERS, LICENSORS, SUCCESSORS AND ASSIGNS, AND SERVICE PROVIDERS HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, WARRANTIES THAT THE SERVICES AND THE OSM CONTENT ARE FREE OF DEFECTS, MERCHANTABILITY, FIT FOR A PARTICULAR PURPOSE, ACCURATE AND NON-INFRINGEMENT. YOU BEAR THE ENTIRE RISK AS TO SELECTING THE SERVICES FOR YOUR PURPOSES. WE AND OUR RESELLERS AND LICENSORS DO NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SERVICES OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SERVICES OR THE OSM CONTENT WILL BE CORRECTED. WE DO NOT WARRANT OR REPRESENT THAT ANY INFORMATION OR MATERIAL ACCESSIBLE THROUGH THE SERVICES WILL BE FREE OF MALWARE, VIRUSES OR OTHER HARMFUL FEATURES. THIS LIMITATION WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

YOUR SOLE REMEDY AGAINST US FOR DISSATISFACTION WITH THE SERVICES OR ANY OSM CONTENT, OR ANY ERRORS OR INTERRUPTIONS IN THE USE OF THE SERVICES, IS TO STOP USING THE SERVICES OR ANY SUCH OSM CONTENT.

WE ASSUME NO LIABILITY FOR THE CORRECTNESS, TIMELINESS OR COMPLETENESS OF GPS LOCATION INFORMATION, INFORMATION CONCERNING COURT DATES OR OTHER EVENTS, INFORMATION CONCERNING RULES OF CIVIL PROCEDURE OR RULES OF CRIMINAL PROCEDURE OF ANY JURISDICTION, OR ANY INFORMATION PROVIDED BY THIRD PARTIES. YOU ARE RESPONSIBLE FOR KNOWLEDGE AND COMPLIANCE WITH ALL RULES OF PROCEDURE AND AMENDMENTS THERETO THAT ARE APPLICABLE IN YOUR PARTICULAR JURISDICTION.

WE DO NOT WARRANT THAT WE WILL REVIEW THE USER DATA FOR ACCURACY OR THAT WE WILL PRESERVE OR MAINTAIN THE USER DATA WITHOUT LOSS. WE

SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, FOR ISSUES RELATED TO THIRD-PARTY HOSTING PROVIDERS OR WIRELESS CARRIERS WITH WHOM YOU SEPARATELY CONTRACT, OR FOR ISSUES RELATED TO THE PRIVACY OR SECURITY OF WIRELESS DATA TRANSMISSIONS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES. IF YOU RESIDE IN ONE OF THESE JURISDICTIONS, THIS DISCLAIMER MAY NOT APPLY TO YOU. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

15. Indemnification.

You agree to defend, indemnify, reimburse and hold harmless OSM and our affiliates, licensors, resellers, partners, and service providers, and our and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against, and to pay, any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to: (i) your breach or violation of these Terms of Use; (ii) your use of the Services, including, but not limited to, any use of the OSM Content, information, services and products other than as expressly authorized in these Terms of Use; (iii) our use of the User Data as authorized under these Terms; or (iv) your violation of the rights of any third party, including Monitored Individuals.

16. Limitation of Liability.

EXCEPT AS REQUIRED BY LAW, WE AND OUR AFFILIATES, LICENSORS, RESELLERS, PARTNERS, DIRECTORS, MEMBERS, AND AGENTS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THESE TERMS OR THE USE OF OR INABILITY TO USE THE SERVICES OR THE OSM CONTENT, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, AND COMPUTER FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH SUCH CLAIM IS BASED. IN NO EVENT SHALL OSM'S TOTAL LIABILITY TO YOU UNDER THESE TERMS OR IN CONNECTION WITH THE SERVICES FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION EXCEED FIFTY U.S. DOLLARS (US \$50).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES. IF YOU RESIDE IN ONE OF THESE JURISDICTIONS, THIS EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.

17. Security.

We use commercially reasonable efforts to maintain the security of your registration information through the use of firewalls, software encryption and passwords. However, you acknowledge that, despite these precautions, it is possible for your Account Information to be breached or accessed by unauthorized third parties through means, including, but not limited to, communications between you and us using the Internet, other network communications facilities, or any other electronic means, and that we are not responsible for such unauthorized access, except that we will provide any legally required breach notifications.

18. Support.

During the time period that these Terms are in effect, if your Agency subscribed to or purchased the Services directly from us, we will provide you with technical support via email and toll-free telephone from 7:00 am to 7:00 pm U.S. Mountain Time, Monday through Sunday, excluding federal holidays. You may also find answers to frequently asked questions on our Website at www.osmnow.com. If your Agency subscribed to or purchased the Services from an Authorized Reseller, you will need to call our Authorized Reseller for customer support.

19. Export Controls.

You may not use or otherwise export or re-export the Services except as authorized by United States law and the laws of the jurisdiction in which the Services were obtained. In particular, but without limitation, you may not export or re-export the Services: (a) into any United States embargoed countries; or (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Department of Commerce Denied Person's List or Entity List. By using the Services, you represent and warrant that: (i) you will not use these products for any purpose prohibited by United States law, including without limitation, the development, design, manufacture or production of nuclear missiles or chemical or biological weapons; (ii) you are not located in a country that is subject to a United States government embargo or has been designated by the United States government as a "terrorist supporting" country; and (iii) you are not listed on any United States government list of prohibited or restricted parties.

20. U.S. Government End-Users.

The Services (including the Platform) and any related documentation are "Commercial Items," as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227-7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users: (a) only as Commercial Items; and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions in these Terms. Unpublished rights are reserved under the copyright laws of the United States.

21. Limitation on Time to File Claims.

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE, THE SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

22. Injunctive Relief.

We will have the right to seek injunctive relief to enforce these Terms or to stop or prevent an infringement of proprietary rights. You agree that any use of the Services in violation of these Terms will result in irreparable harm and that injunctive relief is appropriate to prevent such harm.

23. Choice of Law, Jurisdiction and Venue.

You and we agree that any disputes between us shall be resolved under the substantive law of the state of Colorado (exclusive of its choice of law provisions). The Convention for the International Sale of Goods shall not apply. Without limiting the arbitration requirements in Section 25 (*Dispute Resolution*), you and we agree to submit all disputes between us to the exclusive jurisdiction of the state and federal courts located in Denver, Colorado.

24. Waiver of Jury and Class Action.

WITHOUT LIMITING THE ARBITRATION REQUIREMENTS IN SECTION 25 (*DISPUTE RESOLUTION*), YOU AND WE HEREBY VOLUNTARILY AND IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING BROUGHT IN CONNECTION WITH THESE TERMS. YOU FURTHER EXPRESSLY WAIVE ANY RIGHT TO BRING OR PARTICIPATE IN A CLASS ACTION OR SEEK CLASS ACTION STATUS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THESE TERMS, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

25. Dispute Resolution.

25.1. Arbitration. You agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, "**Disputes**") will be settled by binding arbitration between you and us, except that each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. You acknowledge and agree that you and we are each waiving the right to a trial by jury or to participate as a plaintiff or class in any purported class action or representative proceeding. Further, unless both you and we otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms.

25.2. Arbitration Rules and Governing Law. The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available www.adr.org or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

25.3. Arbitration Process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at www.adr.org.) The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of Colorado and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

25.4. Arbitration Location and Procedure. Unless you and we otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and we submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

25.5. Arbitrator's Decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim.

25.6. Fees. Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules.

25.7. Changes. Notwithstanding the provisions of the modification-related provisions above, if we change this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by providing us written notice of such rejection by email from the email address associated with your Account to: account@osmnow.com, within thirty (30) days of the date such change became effective, as indicated in the "Last Updated" date above. In order to be effective, the notice must include your full name and clearly indicate your intent to reject changes to this "Dispute Resolution" section. By rejecting changes, you are agreeing that you will arbitrate any Dispute between you and us in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

26. Entire Agreement.

These Terms of Use constitute the entire agreement between you and us regarding the use of and access to the Services and supersedes any prior or contemporaneous understandings and agreements between you and us related to its subject matter. The section titles in these Terms are for convenience only and have no legal or contractual effect.

27. Non-Waiver; Severability.

Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. Each you and we agree that each provision of these Terms is intended to be construed to be enforceable to the fullest extent possible. If any provision or part of a provision of these Terms is held to be unlawful, void, or unenforceable, that provision or part of the provision shall be deemed severable from these Terms and not affect the validity and enforceability of any remaining provisions.

28. Assignment.

You may not assign, transfer or delegate your rights under these Terms to any third party without our prior written consent. We may assign or transfer these Terms and/or your rights under these Terms without condition and without your consent.

29. Product Questions, Comments, Claims and Contact Information.

We are available to address any questions, comments or claims relating to these Terms, the Services and/or your use of the Services, including but not limited to: (a) product liability claims; (b) any claim that the Services fail to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation. If you have any comments or questions and your Agency purchased the Services directly from an Authorized Reseller, please contact such Authorized Reseller. If you have any comments or questions and your Agency purchase the Services directly from us, please contact us by using the contact form on our website at <https://osmnow.com/#contact>. Or you can contact us by email at account@osmnow.com, by phone at 1-970-240-8878, or by mail at: Outreach Smartphone Monitoring, LLC., 35 Selig Ave. Montrose, CO 81401, and include the subject as "Attn: Legal – Agency User Terms of Use." Please be sure to include in any email or postal mail your full name, email address, postal address, and any message.

30. Force Majeure.

We are not liable for non-performance to the extent to which the non-performance is caused by events or conditions beyond our control, and we give prompt notice to you and make all reasonable efforts to perform. In no event will this provision affect your obligation to make payments under these Terms.

31. Notice.

We may give notice by means of a general notice on the Services or an electronic mail to your email address in your Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after posting or 12 hours after sending (if sent by email). You may give

notice to us or the Authorized Reseller, as applicable, in accordance with the terms of the Agency Agreement.

32. Relationship to Privacy Policy.

These Terms must be read in conjunction with our [Privacy Policy](#)^[HK8]. The provisions of our Privacy Policy are incorporated herein. To the extent these Terms conflict with the terms of our Privacy Policy, the terms of our Privacy Policy shall control.

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