

SINGLE USER ONLINE SUBSCRIPTION SERVICES AGREEMENT – TERMS & CONDITIONS

Fronting the Challenge Projects Limited (Thrive) has developed and is continuing to develop a system to assist organisations and individuals to recognise and provide strategies and interventions that enable children and young people to develop their emotional maturity and resilience and to engage healthily in the learning process (Approach).

This Single User Subscription Services Agreement (the Agreement) is a legal agreement between you (Subscriber or you) and Thrive (us, we or Thrive) permitting you access to the Thrive-Online (the Services), which includes associated software components and electronic and physical documentation (Documentation). This Agreement is for Thrive-Online as specified on the front sheet i.e. Home, Licenced Practitioner or Licenced Trainer use.

1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this Agreement:

“Initial Term”, “Subscription Fee”, “Start Date” have the meanings given on the front sheet.

“AUP” Thrive’s acceptable user policy.

“Authorised Users” if the front sheet specifies that this Subscription is for a Trainer, the persons permitted by you to use Thrive-Online as part of training.

“Information” any or all:

- (a) technical, financial and/or other information in whatever form (including without limitation, written, oral, visual or electronic form) which is proprietary to Thrive which may include without limitation, intellectual property rights, trade secrets, analyses, compilations, studies, software specifications and functions, source and object codes, designs, drawings, logic diagrams, flow charts, devices, designs, methods, techniques, processes, discoveries and improvements, business and marketing plans and methods; or
- (b) operating information, which is (a) either non-public, confidential or proprietary in nature, and (b) disclosed and/or made available to the you and/or any of your employees, agents or sub-contractors orally and/or in written, hard copy and/or electronic form and/or by learned observation or otherwise.

“Data Protection Legislation” the General Data Protection Regulation ((EU) 2016/679) (GDPR) whilst still applicable in the UK and any UK national implementing laws, regulations and secondary legislation

“Data Subject” has the meaning given in the Data Protection Legislation

“Member” persons who are members of Thrive.

“Personal Data” has the meaning given in the Data Protection Legislation

“Year” each 12-month period from the Start Date to its anniversary and each 12-month period after that.

2. GRANT AND SCOPE OF SUBSCRIPTION

2.1 In consideration of the Subscription Fee and you agreeing to abide by the terms of this Agreement, Thrive grants you a non-exclusive, non-transferable right for the Initial Term, and any renewal, to use the Services and the Documentation for:

- (a) *Home*: the children of one family. Home users may share their user name and password with their co-parent;
- (b) *Licensed Practitioner*: the children for whom you are responsible; and
- (c) *Licensed Trainer*: use by your Authorised Users for training purposes.

2.2 After the expiry of the Initial Term, unless otherwise stated on the front sheet, this Subscription will continue from Year to Year unless terminated either in accordance with this Agreement or by either of us giving 90 days’ notice expiring at the end of the Initial Term or on any anniversary of that date.

3. FEES

3.1 Subscription Fees are calculated on an annual basis and payable as set out on the front sheet. If you do not pay for the Year in advance or provide a standing order, then there is a 2.5% surcharge. All other Fees, unless otherwise provided, are payable 30 days after the issue of the invoice.

3.2 The full amount for the Year remains payable and there is no refund if this Subscription is terminated during a Year.

3.3 Thrive reserves the right to increase the Subscription Fees annually on not less than 28 days’ notice. Such increases will only take effect at the start of a Year.

4. THRIVE-ONLINE LOGIN

4.1 You will be issued with login details which will allow you access to the Online Resource.

4.2 You are responsible for ensuring that your user name and password are kept confidential and are not (except as permitted for Home Subscriptions) shared with anyone else.

5. SUBSCRIBER’S UNDERTAKINGS

5.1 Except as expressly set out in this Agreement or as permitted by any local law, you undertake:

- (a) not to rent, lease, sub-license or loan access to Thrive-Online;
- (b) not to copy, adapt or modify any part of the Documentation or Documentation;
- (c) not to reverse engineer or create derivative works based on, the whole or any part of Thrive-Online;
- (d) to supervise and control use of the Online Resource and ensure that Thrive-Online is used in accordance with the terms of this Agreement;
- (e) comply with the AUP;
- (f) to treat the Information disclosed as confidential and not disclose the Information to any third party or use it in any way other than in connection with this Agreement; and
- (g) use all reasonable efforts means to preserve the secrecy and confidentiality of the Information.

6. TRAINER’S SUBSCRIPTION

This clause 6 only applies if the front sheet states that you have a ‘Licenced Trainer’ Subscription.

6.1 If your Subscription is ‘Licenced Trainer’, your Thrive-Online Activation Number will also allow you to set up separate Authorised Users who must be limited to those who require access to Thrive-Online for the purpose of being trained by you in the Approach.

6.2 You are responsible for ensuring that your Authorised Users names and passwords are kept confidential and are not shared with anyone else. You also undertake to ensure that your Authorised Users comply with the terms of clause 5 above.

6.3 You understand that your trainee user’s logins will expire after 90 days. If they have stored information that they wish to retain then they will either need to acquire their own Subscription or to transfer to another Subscription holder (such as the school that employs them).

7. SUPPORT

Technical support will be provided by email and telephone during the times shown in Thrive-Online. Technical support relates solely to the operation of Thrive-Online and not to the Approach itself. Thrive reserves the right to raise a charge in respect of all calls that are not of a technical nature, with a minimum charge of 15 minutes. Other than in emergency, you will not permit other people to call for technical support.

8. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that all intellectual property rights in Thrive-Online and the Documentation, including any trade mark belonging to Thrive, that rights in Thrive-Online are licensed (not sold) to you, and that you have no rights in, or to, Thrive-Online, the Documentation or the Documentation other than the right to use them in accordance with the terms of this Agreement.

9. WARRANTY

9.1 Thrive warrants that:

- (h) for a period of 90 days from the date you first use Thrive-Online (Warranty Period), Thrive-Online will, when properly used, perform

substantially in accordance with the description contained in Thrive's current marketing documentation;

- (i) It will use all reasonable endeavours to ensure that Thrive-Online is available for use between the hours of 8am to 8pm Monday to Friday; and
- (j) that it will carry out its duties under this Agreement with reasonable care and skill.

10. SUBSCRIBER'S REMEDIES

10.1 Thrive's entire liability and your exclusive remedy for any breach of clause 9 or otherwise of this Agreement shall be repair or replacement of Thrive-Online.

10.2 This Agreement sets out the full extent of Thrive's obligations and liabilities in respect of the supply of Thrive-Online and the Documentation to you. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Thrive except as specifically stated in this Agreement. Any condition, warranty, representation or other term concerning the supply of the Online Resource or the Documentation which might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

10.3 In no event shall Thrive or its suppliers be liable for any damages whatsoever including, without limitation, loss of income; loss of business profits or contracts; business interruption; loss of the use of money or anticipated savings; loss of information; loss of opportunity, goodwill or reputation; loss of, damage to or corruption of data; or any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.

10.4 Nothing in this Agreement shall limit or exclude the liability of Thrive for death or personal injury resulting from its negligence or as a result of fraud or fraudulent misrepresentation.

11. TERMINATION

11.1 Thrive may terminate this Agreement immediately by written notice to you if you (or your Authorised Users):

- (a) commit a material or persistent breach of this Agreement which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so; or
- (b) become insolvent, bankrupt or unable to pay your debts when they fall due; or
- (c) cease to be a Member.

11.2 Upon termination for any reason all rights granted to you under this Agreement shall cease.

11.3 After termination, if we receive a request for the transfer of an individual's details from another organisation that has a Thrive-Online licence then, unless you tell us otherwise, we shall permit such transfer on your behalf. Any other request will be referred to you.

12. GENERAL DATA PROTECTION REGULATION

12.1 We shall provide the Online Resources via our secure cloud-based platform for the duration of the Agreement. The personal data processed by us will consist of information relating to the children that you work with using Thrive-Online and, less frequently, information relating to the families of children and individuals from support services who may be involved with the children. The personal information may consist of information relating to the education and home life of the children, how they have interacted with you whilst engaging with the Approach. This information could include details of behaviour, emotional development and relationships with others. Information will also be held relating to your contact details, employment and training. Such information may include sensitive personal data about the medical needs or learning difficulties of the children.

12.2 Both of us will comply with the applicable requirements of the Data Protection Legislation.

12.3 We both acknowledge that you are the Controller and that Thrive is the Processor (as defined by the Data Protection Legislation).

12.4 You warrant that you have all necessary consents in place or have complied with another processing condition when collecting and processing the personal data. You also warrant that you have the appropriate notices

and privacy policies to enable the lawful transfer of Personal Data to Thrive for the duration and for the purposes of this agreement. Such consents to include automated decision making and, where appropriate, consent to process sensitive personal data.

12.5 Thrive shall:

- (a) act only on your written instructions;
- (b) have in place appropriate technical and organisational security measures (which may be subject to your approval) against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data. Such measures shall be appropriate to the harm that might result from the unauthorised or unlawful processing;
- (c) ensure all staff who have access to the Personal Data are obliged to keep it confidential;
- (d) assist you to respond to an individual's request to enforce their rights of subject access, rectification, erasure and any other rights conferred by the Data Protection Legislation;
- (e) assist you, if requested, with respect to security, breach notifications, impact assessments and any investigations by a supervisory authority;
- (f) notify you without undue delay in the event of a data security breach and assist you with any investigations;
- (g) maintain and keep up to date the data processing register referred to above;
- (h) delete or return all Personal Data to you as requested at the end of the retention period detailed below; and
- (i) submit to audits and inspections and provide you whatever information it needs to ensure that they are both complying with your obligations under the Data Protection Legislation and inform you immediately if you are asked if do something infringing the Data Protection Legislation or other law of the EU or a member state.

12.6 Thrive shall not appoint a third-party processor without your prior written consent. Thrive shall ensure that any third-party processor will enter into an agreement with the same or substantially similar terms in relation to the Data Protection Legislation.

12.7 Thrive shall assist you if you receive a request under the Education (Pupil Information) (England) Regulations 2005. Thrive will endeavour to produce data within 5 days of receipt of a written request from you.

12.8 You shall ensure that you have the necessary consents in place to allow Thrive to produce anonymous data for training, marketing and statistical purposes.

12.9 If this agreement will involve or require a transfer of any Personal Data from one country to a country outside the country of origin, if required by applicable law, Thrive will enter into a data transfer agreement that is consistent with the requirements of applicable law.

12.10 Thrive will retain the Personal Data for a period of twelve years from the last record being created unless otherwise instructed by the Subscriber or as required by law.

12.11 The obligations in relation to the Data Protection Legislation set out in this clause shall not be affected by the expiry or termination of this agreement.

13. TRANSFER OF RIGHTS AND OBLIGATIONS

You may not transfer, assign, charge or otherwise dispose of this Agreement, or any of your rights or obligations arising under it, without our prior written consent.

14. NOTICES

All notices given by you to us must be given to Fronting the Challenge Projects Limited either at our postal address or at subscriptions@Thriveapproach.com. We may give notice to you at either the e-mail or postal address you provided to us when purchasing Thrive-Online. Either party may change their addresses in this manner.