

MULTI USER SUBSCRIPTION SERVICES AGREEMENT – TERMS AND 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 Multi 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**).

The Agreement covers the use of Thrive-Online for the Organisations and all the children in those Organisations within the School Years up to the Children Total. The Account Manager, on behalf of the Subscriber, authorises Organisations who designate a person to manage their records (**Organisation Managers**). Organisation Managers will in turn authorise people to create case records on Thrive-Online (**Case Managers**).

1. DEFINITIONS

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

“**Organisation Administrator**”, “**Initial Term**”, “**Organisations**” and “**School Years**” “**Subscription Fee**”, have the meanings given on the front sheet.

“**AUP**” Thrive’s acceptable user policy.

“**Authorised Users**” the persons permitted by you or the Organisations in your Cluster to use Thrive-Online.

“**child**” means a child within the Organisation who is assessed using Thrive-Online.

“**Children Total**” the number of children in each of the School Years in your Organisations at any time.

“**Cluster**” your group of Organisations.

“**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.

“**Fee**” the Subscription Fee and any other fees properly chargeable to you or the Organisations by Thrive.

“**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 Licensee and/or any of its employees, agents or sub-contractors orally and/or in written, hard copy and/or electronic form and/or by learned observation or otherwise.

“**Members**” persons who are members of Thrive.

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

“**Training**” the training services provided by Thrive as part of this Agreement described in clause 7.

“**Training Documentation**” any training materials provided by Thrive in connection with the training.

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

2. AUTHORISED USER SUBSCRIPTIONS

2.1 Subject to the Subscriber paying the Subscription Fee in accordance with this Agreement, we grant a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation for the Initial Term. After the expiry of the Initial Term this Agreement will continue from Year to Year unless terminated either in accordance with this licence or by telephone with at least 90 days’ notice expiring on or on any anniversary of the end of the Initial Term.

2.2 In relation to the Authorised Users, the Subscriber undertakes that:

- (a) the maximum number of Authorised Users shall not exceed the number permitted by this Agreement;
- (b) any one subscription shall not be used by more than one individual Authorised User unless otherwise agreed;
- (c) it shall maintain a written up to date list of all Authorised Users and provide that list to Thrive within 5 working days of a written request from Thrive;
- (d) ensure that any Authorised User who leaves your setting or Organisation is notified to Thrive within 5 days of becoming aware of the fact; and
- (e) shall permit Thrive to audit its use of the Services to establish that it is being used in accordance with this Agreement.

3. FEES

3.1 Subscription Fees are calculated on an annual basis but payable in advance in full or by monthly direct debit. If you do not pay in advance in full or by monthly direct debit, then there is a 2.5% surcharge. Thrive will supply an invoice for the total annual amount, or monthly as agreed. All other fees, unless otherwise provided, are payable 30 days after the issue of the invoice.

3.2 The Subscription Fee, as shown on the Front Sheet, is calculated on the basis of the Children Total as at the Start Date as shown on the Front Sheet. If you wish to introduce further organisations into your Cluster or the Children Total increases you must inform Thrive and a further Subscription Fee will be payable. Agreed discount rates will be applied as the number of Organisations in your Cluster increases the Children Total. There is no refund or reduction if the Children Total reduces during any Subscription Period. The full amount for the Year remains payable and there is no refund if this Agreement is terminated during a Year.

- 3.3 On each renewal the Agreement Fee will be re-calculated on the basis of the then Children Total.
- 3.4 Thrive reserves the right to increase the Subscription Fees on not less than 28 days' notice.
- 3.5 You are responsible for all Fees incurred by members of your Cluster.
- 3.6 Upon termination in accordance with clause 2.1 then no further Fees shall become due after such termination.
- 4. THRIVE-ONLINE ACTIVATION**
- 4.1 You will be issued with login details which will allow you access to the Thrive-Online and allows you to set up separate Organisations and their respective Authorised Users.
- 4.2 You are responsible for ensuring that the Thrive-Online User names and passwords are kept confidential and are not shared with anyone else. You will inform all Organisations that their user names and passwords must be kept confidential and must not be shared with anyone else.
- 5. ORGANISATION ADMINISTRATOR**
- 5.1 Your Organisation Administrator is the person responsible for setting up Organisations and carrying out other administrative tasks.
- 5.2 The Organisation Administrator is to be our first point of contact and will liaise with us in all matters relating to Thrive-Online. You shall notify us immediately if there is any change of the Organisation Administrator.
- 6. SUBSCRIBER'S UNDERTAKINGS**
- 6.1 Except as expressly set out in this Agreement or as permitted by any local law, you undertake on behalf of yourself and shall take reasonable efforts to ensure members of your Cluster (including any new organisations admitted to the Cluster from time to time):
- not to rent, lease, sub-license or loan access to Thrive-Online;
 - permit to be Authorised Users, only those who (i) require access to Thrive-Online for the performance of their duties and (ii) are appropriately trained and/or supervised;
 - not to copy, adapt, vary or modify any part of the Documentation or Training Documentation;
 - not to reverse engineer or create derivative works based on, the whole or any part of Thrive-Online;
 - to supervise and control use of the Thrive-Online and ensure that Thrive-Online is used in accordance with the terms of this Agreement; and
 - enforce adherence to the AUP by your Authorised Users.
- 7. TRAINING**
- 7.1 No training is included as part of this Agreement. Training on the use of Thrive-Online is included on all Licenced Practitioner courses. If you require training on the operation of Thrive-Online for other members of an Organisation, then this will be provided at Thrive's then standard training rates.
- 7.2 Training Documentation is provided within Thrive-Online as well as on Thrive's courses and must be treated as confidential information.
- 8. DATA PROTECTION**
- 8.1 We shall provide the Services via our cloud-based platform for the duration of the Agreement. We shall provide a secure platform for you to access the Services and provide the Approach in your Organisations. The personal data processed by us shall consist of information relating to children in your Organisations, Members and Account Managers 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 Members whilst engaging with the Approach, such as behaviour, emotional development and relationships with others. Information will also be held relating to the contact details, employment and training of Members. Such information may include sensitive personal data about the medical needs or learning difficulties of the children.
- 8.2 Both of us will comply with the applicable requirements of the Data Protection Legislation.
- 8.3 We both acknowledge that the Subscriber is the Controller and that Thrive is the Processor (as defined by the Data Protection Legislation).
- 8.4 The Subscriber warrants that it has all necessary consents in place or has complied with another processing condition. It has 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.
- 8.5 Thrive shall:
- act only on written instructions from the Subscriber;
 - have in place appropriate technical and organisational security measures (which may be subject to approval by the Subscriber) 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;
 - ensure all staff who have access to the Personal Data are obliged to keep it confidential;
 - assist the Subscriber 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;
 - assist the Subscriber if requested with respect to security, breach notifications, impact assessments and any investigations by a supervisory authority;
 - notify the Subscriber without undue delay in the event of a data security breach and assist the Customer with any investigations;
 - maintain and keep up to date the data processing register referred to above;
 - retain the information in accordance with clause 8.10 below and then destroy it; and
 - submit to audits and inspections and provide the Subscriber with whatever information it needs to ensure that they are both complying with their obligations under the Data Protection Legislation and inform the Subscriber immediately if they are asked if do something infringing the Data Protection Legislation or other law of the EU or a member state.
- 8.6 Thrive shall not appoint a third-party processor without the prior written consent of the Subscriber. 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.

8.7 Thrive shall assist the Subscriber if the Subscriber receives 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 the Subscriber.

8.8 The Subscriber shall ensure that it has the necessary consents in place to allow Thrive to produce anonymous data for training, marketing and statistical purposes.

8.9 Thrive will assist with any transfer of the details of a child from one Organisation to another.

8.10 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 and the Subscriber will enter into a data transfer agreement that is consistent with the requirements of applicable law.

8.11 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.

8.12 The use of Thrive Online includes the automatic analysis of the results of assessments in relation to elements of development. While all decisions are taken by you, it is recommended by the Information Commissioner that the use of profiling even in this limited way, should be communicated to the parents of children and the young adults in a school.

8.13 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.

9. CONFIDENTIALITY AND FREEDOM OF INFORMATION

9.1 Except where clause 9.2 below applies, the Subscriber will treat the Information disclosed and will require all employees, agents or sub-contractors to also treat it as confidential and not disclose the Information to any third party or use it in any way other than in connection with this Agreement. You agree to use all reasonable efforts to preserve the secrecy and confidentiality of the Information. For the avoidance of doubt "reasonable efforts" shall mean efforts which are equivalent to those which you use to protect your own data of a similar nature, but not less than reasonable care.

9.2 Thrive acknowledges that the Subscriber is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and shall assist and co-operate with the Subscriber (at the Subscriber's expense) to enable the Subscriber to comply with its requirements under the FOIA.

9.3 Where Thrive holds Information on behalf of the Subscriber which is the subject of a request under FOIA, Thrive shall be permitted to discuss and agree with the Subscriber the application of appropriate exemptions under FOIA. In the event that Thrive is required to assist the Subscriber to comply with a request, Thrive shall have 5 working days to comply and shall be permitted to levy a reasonable charge.

10. SUPPORT

10.1 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, directly to the Organisation making a call, in respect of all calls that are not of a technical nature, with a minimum charge of 15 minutes. Other than in emergency, persons other than your Organisation Administrator or Organisation Managers should not call for technical support.

11. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that all intellectual property rights in Thrive-Online and the Training Documentation, including

any trade mark belong to Thrive, that rights in Thrive-Online are provided as a service to you, and that you have no rights in, or to, Thrive-Online, the Documentation or the Training Documentation other than the right to use them in accordance with the terms of this Agreement.

12. WARRANTY

12.1 Thrive warrants that:

- (a) 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;
- (b) 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;
- (c) it will carry out its duties under this Agreement with reasonable care and skill; and
- (d) it shall provide you with reasonable advance notice in writing of any major scheduled updates to Thrive-Online or updates that may interrupt the availability of Thrive-Online and shall provide reasonable endeavours to carry out such updates during the hours of midnight to 6am.

13. LICENSEE'S REMEDIES

13.1 Thrive's entire liability and your exclusive remedy (or that of any Organisation in the Cluster at any time) for any breach of clause 12 or this Agreement shall be repair or replacement of Thrive-Online.

13.2 This Agreement sets out the full extent of Thrive's obligations and liabilities in respect of the supply of Thrive-Online and the Training Documentation to you or Organisations in your Cluster. 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 Thrive-Online or the Training 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.

13.3 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.

13.4 Nothing in this Agreement shall limit or exclude the liability of Thrive for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation.

14. TERMINATION

14.1 Thrive may terminate this Agreement immediately by written notice to you if you, your Organisations 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) the other party undergoes any change in legal or beneficial ownership or control, other than conversion to Academy status or changes in the

composition of (in the case of a school) the Board of Trustees or (in the case of a Local Authority) its elected members.

- 14.2 Upon termination for any reason all rights granted to you under this Agreement shall cease.
- 14.3 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.

15. 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, such consent not to be unreasonably withheld or delayed.

16. 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.