
LICENCE, TRAINING AND SERVICES AGREEMENT

THIS AGREEMENT (hereafter called “the Agreement”) is made BETWEEN:

(1) Triangle Consulting Social Enterprise Ltd, a company registered in England and Wales, Company Number 07039452, whose Registered Office is at Preston Park House, South Road, Brighton, East Sussex BN1 6SB, United Kingdom (“Triangle”); AND (2) the Client as specified in the Quote (“Client”).

1 DEFINITIONS, APPLICATION AND ACCEPTANCE OF THIS AGREEMENT

(1) In this Agreement the following expressions shall have the following meanings:

“Licensed Software System” means a software system provided by a Licensed Software Collaborator.

“Licensed Software Collaborator” means a provider of software that has an agreement with Triangle to include specified Outcomes Star or Tools’ functions or data within one or more specified software systems.

“Client Data” means all and any data inputted by the Client, Users or Triangle on the Client’s behalf, for the purpose of signing up to and using the Software or facilitating the Client’s use of the Software, or processed by Triangle in connection with this Agreement, and shall include all data that relates to the Client, Client Users or the Client Service Users and Personal Data.

“Client Service Users” means persons or organisations who use the relevant services provided by the Client and who are registered and/or recorded as such.

“Client Software” means any computer software program and applications either owned or operated by the Client.

“Client Users” or “Users” means the persons who are employed by or sub-contracted to the Client and who use the Licensed Intellectual Property in any way and/or in any format or on any media.

“Confirmation Email” means the email which is sent from Triangle to the Client, confirming by reference to the Quote the agreed details of the Licence as well as any Services and Training.

“Contract” means the Agreement and the Quote and the Confirmation Email and any other documents or terms properly incorporated in accordance with clause 1(3).

“Equipment” means such equipment as specified by Triangle in the Triangle Websites as being required for the proper use of the Software and as may be

reasonably and necessarily amended from time to time and communicated through the Software from Triangle to the Client.

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679) which came into force on 25 May 2018 (as amended from time to time) and replaced the UK Data Protection Act 1998.

“Intellectual Property Rights” means all vested, contingent and future intellectual property rights, including but not limited to: software, copyright, trademarks, design rights, trade names, patents, know-how, trade secrets, database rights or any similar right exercisable in any part of the world, including any application for the registration of any patents or registered designs or similar registrable rights in any part of the world.

“Licence” means the licence granted by Triangle to the Client in accordance with this Agreement and the Quote.

“Licence Commencement Date” is the date upon which the Licence is deemed to commence in accordance with clause 2(2).

“Licence Fee” means any fee due for the Licence after the Licence Initial Term and upon automatic annual renewal.

“Licence Initial Fee” means the initial fee for the Licence as specified in the Quote.

“Licence Initial Term” is the 12 month initial period of the Licence, unless stated otherwise in the Quote or Confirmation Email or subsequent email in accordance with clause 2(2).

“Licence Term” is the Licence Initial Term plus any further periods of the Licence as automatically renewed under clause 2(3).

“Licence Type” means the types of licence as defined in clause 4 and specified in respect of the Client in the Quote.

“Licensed Intellectual Property” means Intellectual Property Rights which Triangle owns or has been granted rights to and has licensed to the Client for use

under the terms of this Agreement comprising each of the published versions of the Outcomes Star listed on www.outcomesstar.org.uk, and/or any other Tools according to the Licence Type granted.

“Licensed Service Providers” are providers acting under licence from Triangle to provide training, services and/or licences that are bound by and acting in accordance with the GDPR.

“Materials” means any Licensed Intellectual Property which is capable of being printed and/or used, including any Star chart, user guide, quiz, organisation guide, implementation guide, and any further resources and Tools, reports, or anything available from the Software which is capable of being printed.

“Media” means any media on which Materials are printed or stored.

“Outcomes Star” means the family of tools to support and measure change for service users or communities as contained on the Triangle websites, which form part of the Licensed Intellectual Property.

“Personal Data” means data which relates to a living individual who can be identified either from that data alone, or from that data and other information which is in the possession of, or likely to come into the possession of, the recipient of the aforesaid data.

“Quote” means the written quotation sent by Triangle to the Client setting out details of the Licence Type, number of Client Users covered by the licence, Tools, Training and Services to be provided and the costs of such Licence, Training and Services.

“Services” means any services other than the Training to be provided by Triangle to the Client as more particularly described in the Quote and confirmed by the Confirmation Email and any subsequently agreed services.

“Software” and “Software services” means the online computer software program and applications, including the Materials, which can be accessed and used through the Triangle Websites.

“Star Online System” means the part of the Software that provides the ability to register Client Service Users, complete the Outcomes Star assessment on screen and analyse the data.

“Tool” means the data assurance tool or the risk reader and any other tool that may be developed in future to work for use in conjunction with the Outcomes Star.

“Training” means any training services to be provided by Triangle to the Client as more particularly described in the Quote and confirmed by the Confirmation Email and any subsequently agreed training services.

“Triangle Websites” means www.outcomesstar.org.uk and www.staronline.org.uk or any future websites delivering the Software and/or Materials.

“Unique Client Identifier” means the identifier which Users create to identify an individual Client Service User when they input data onto the Star Online

System. The Unique Client Identifier means that Triangle does not have the name or address of any Client Service User. The creation, maintenance and security of each Unique Client Identifier is the Client’s sole responsibility.

“Working day” means any Monday to Friday inclusive, from 9am to 5pm GMT, but excluding all public holidays in England and/or Wales.

- (2) The Contract contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. The Contract may only be varied either by: (a) a written document signed by duly authorised signatories of both parties; or (b) Triangle publishing amendments to this Agreement on its website and communicating these to the Client by email (an “Amendment Email”) following which the Client shall be entitled to terminate the Contract by giving at least 30 days written notice to Triangle within 10 days of the date of the Amendment Email and in the absence of any such termination notice the amendments shall become fully binding and effective 11 days after the date of the Amendment Email.
- (3) No terms or conditions endorsed on, delivered with, or contained in the Client’s purchase order, confirmation of order, specification or other document will form part of the Contract unless expressly agreed otherwise in writing signed by duly authorised signatories of both parties.
- (4) The sending of the Quote to the Client constitutes an Invitation to Treat by Triangle to the Client on the terms of the Quote and the Agreement, unless there is a manifest error in the Quote. The online acceptance by the Client of the Quote and Agreement shall constitute the Client’s Offer to Triangle and no binding contract shall come into force until Triangle Accepts the Offer by sending the Confirmation Email to the Client, save to the extent of any manifest error in the Quote.

2 RIGHT AND GRANT OF LICENCE, COMMENCEMENT, TERM AND RENEWAL

- (1) Triangle grants to the Client from the Licence Commencement Date a non-exclusive licence to access and use the Licensed Intellectual Property in accordance with this Agreement and the licence use and details as described in the Quote for all published version(s) of the Outcomes Star and any Tools for the agreed number of Users, to access and use the Materials and Software in accordance with the Licence Type as defined in Clause 4 and specified in the Quote and on the express terms of this Agreement and not further or otherwise. If the Client does not pay on time the Licence Initial Fee in respect of the Licence Initial Term or the Licence Fee in respect of

any subsequent term, Triangle may withhold from the Client any authorisation codes that are needed to access and use the Licensed Intellectual Property and may at any time immediately terminate the Licence.

- (2) Unless otherwise agreed, the Licence Initial Term is deemed to commence on the first day of training services delivered to the Client and Client Users in the use of the Outcomes Star and/or any Tools. Triangle shall subsequently email the Client to confirm the Licence Commencement Date and Licence Initial Term.
- (3) Unless otherwise agreed, the Licence is automatically renewed for 12 months at the end of the Licence Initial Term or any subsequently renewed Licence period, unless the Client notifies Triangle otherwise in writing at least 30 days before the end of the Licence Initial Term (or as otherwise described in the Quote or Confirmation Email), or at least 30 days before the end of any subsequently renewed Licence period.
- (4) The Client is granted the Licence rights as detailed in Clause 3.

3 LICENCE

- (1) Notwithstanding any limitations imposed by the Licence Type the Client shall have the right for the duration of the Licence, in accordance with the Contract and the granted Licence Type, to:
 - (a) use all or any part of the Licensed Intellectual Property and the Software for up to the agreed number of Users for use with the Client Service Users. Should the Client wish to exceed this agreed number of Users as detailed in the Quote, then before doing so the Client should contact Triangle by e-mail confirming the new number of Users required and Triangle will advise as to the amendment of the Licence and any additional Licence fees or terms which will apply. Should the Client wish to use a different version(s) of the Outcomes Star to the one that they received training in, then they should contact Triangle by email to discuss the need for training in that version of the Outcomes Star;
 - (b) Use the Licensed Intellectual Property within assessment and case management paperwork and, if licensed as defined in clause 4(1)(c) or 4(1)(d), within software applications used by the Client for recording information about Client Service Users as specified in the Quote and confirmed in the Confirmation Email PROVIDED ALWAYS that it is a Licensed Software System and that such use does not breach any third party rights or licence or use agreement in relation to such software system and that all copyright notices and any other proprietary notices specified in Clause 14 are reproduced;
 - (c) Print out copies of the Licensed Intellectual Property and Materials and combine them

with the Client's own assessment and review paperwork as is reasonably necessary for use with Client Service Users, other use, back-up, archival and other reasonable purposes, provided that all copyright notices and/or other proprietary notices as detailed at clause 14 are reproduced on any such copies. Such copies and the media on which they are stored shall be the property of Triangle and the Licence shall apply to all such copies as it applies to the Materials; and

- (d) Use the Licensed Intellectual Property for its own internal organisational purposes in such a way that the Licensed Intellectual Property, services and products would be used when operating a business of the type that would normally use such services and products, unless the Client has Triangle's express agreement in writing otherwise.
- (2) If the Client uses a Licensed Software System in accordance with clauses 4(1)(c) or 4(1)(d), in order to enable Triangle to verify the number of Users using the Licensed Intellectual Property the Client hereby authorises Triangle to request and receive from the Licensed Software Collaborator regular reports with data about the number of unique Users using the Licensed Intellectual Property, the Outcomes Star or Tool versions used and the number of Outcomes Stars and assessments created during the reporting period. For the avoidance of doubt, Triangle will never request Personal Data relating to any Users or Client Service Users.

4 LICENCE TYPES

- (1) Subject to the provisions of clause 7(1), Triangle grants one or several of the Licence Types to the Client as detailed in the Quote with the respective rights as follows:
 - (a) **Basic Licence, or Licence 2, comprises:-**
 - (i) Access to full-length documentation for all published versions of the Outcomes Star including Star Charts, User Guides, Organisation Guides, Quizzes and additional resources such as flashcards and permission to use these with service users AND
 - (ii) The ability to record the score of Client Service Users for each outcome area (ie the titles of the points on the Star) each time an Outcomes Star or Tool is completed, enter data into a spreadsheet and/or integrate the Licensed Intellectual Property into in-house software, using the Licensor's framework for approval AND
 - (iii) The ability to produce reports aggregating these scores within and between services and cross analyse this data with other information such as Client Service User characteristics or services provided to Client Service Users AND
 - (iv) The ability to include the Outcomes Star or

Tool graphic, ladders, quizzes and detailed scale descriptions within assessment and case management paperwork used by the Client for recording information about Client Service Users.

(b) Star Online System Licence, or Licence 1, comprises:-

- (i)** All functions as detailed in Clauses 4(1)(a); AND
- (ii)** The ability to complete an Outcomes Star assessment with a Client Service User on screen with access to all ladders or scales from the user guide or quiz in the Star Online System.
- (iii)** The ability to analyse the data and run reports within the Star Online system.

(c) Licence For Use in a Licensed Software System, or Licence 3, comprises:-

- (i)** Access to full-length documentation for all published Outcomes Stars including Star Charts, User Guides, Organisation Guides, Quizzes and additional resources such as flashcards and permission to use these with service users AND
- (ii)** The ability to include the Outcomes Star or Tool graphic, ladders, quizzes and detailed scale descriptions within assessment and case management paperwork used by the Client for recording information about Client Service Users AND
- (iii)** In a Licensed Software System:-
 - I. The ability to use the names of the Outcomes Star or Tool outcome areas (ie the titles of the points on the Star) AND
 - II. The ability to record the score of Client Service Users for each outcome area each time an Outcomes Star or Tool is completed AND
 - III. The ability to display these scores in the Outcomes Star or Tool graphic AND
 - IV. The ability to produce reports aggregating these scores within and between services and cross analyse this data with other information such as Client Service User characteristics or services provided to Client Service Users AND
 - V. The ability to complete an Outcomes Star assessment with a Client Service User on screen with access to all ladders or scales from the user guide or quiz.

5 PAYMENT OF FEES AND CHARGES, INVOICES

- (1)** The Licence Initial Fee must be paid on or before the Licence Commencement Date. In respect of fees and charges for Services and Training, Triangle will invoice on satisfactory completion of the Services and/or Training, unless otherwise agreed. Payment must be made in full within 30 days of invoice date by BACS transfer (details on the invoice) or cheque made out to Triangle Consulting Social Enterprise Ltd
- (2)** The Licence Fee for any period after the Licence Initial Term must be paid in full by the Client within 30 days of invoice date by BACS transfer (details on the invoice) or cheque made out to Triangle Consulting Social Enterprise Ltd. Subject to clauses 13(3) and 15(2), the Licence Fee is non-refundable.
- (3)** If any invoice is not paid on the due date, then Triangle shall have the right to:-
 - (a)** cease or suspend any use of the Licensed Intellectual Property including Software; and
 - (b)** suspend delivery of any Training or Services until such payment has been received; and
 - (c)** charge interest on overdue invoices at a rate of 10% per annum above the Base Rate of the Bank of England from time to time in force, from the date when payment becomes due from day to day until the date of cleared full payment; and
 - (d)** charge reasonable expenses and costs in recovering the amount due of any overdue invoices.
- (4)** Triangle may from time to time amend its charges and shall publish any such amended charges on the Triangle Websites. Triangle shall also email the Client to advise of any such amendment (a "Charges Email") before any amended payment might be due from the Client. If any increase in charges is more than the corresponding increase in the Retail Prices Index for the same period and any increased costs of third party goods or services used by Triangle for the licence and services it provides under this Agreement (as detailed in the Charges Email), then (and only then) the Client shall be entitled to terminate this Agreement by giving at least 30 days written notice to Triangle within 10 days of the date of the Charges Email.
- (5)** Invoices are subject to the applicable VAT. If the Client is outside the UK Triangle will advise if VAT needs to be added.

6 SUPPLY OF WEBSITES, MATERIALS AND SOFTWARE SERVICES

- (1) Details to activate access to the Software will be provided by email to the User nominated by the Client and whilst Triangle will use all reasonable endeavours to supply the Software, including but not limited to access to the Triangle Websites, Triangle will not be responsible for any failure to provide Software services or any unavailability. Software is provided on an "as-is" basis without warranty and the Client specifically agrees that Triangle cannot be responsible for any faults, failures, errors, or issues relating to the operation of the Software, nor the availability of updates and upgrades. In particular, Triangle cannot guarantee that access to the Software or any other services will be uninterrupted, secure or error-free. Triangle is not responsible for any events, such as crashes, which may result in data loss.
 - (2) Triangle makes no warranty against electronic virus, worms or any other fault or defect or problems which may occur or as a result thereof, including any data, materials, documents or any e-mail Triangle may send.
 - (3) Triangle reserves the right to suspend the Software services and/or any use or access to the Triangle Websites, without liability, where necessary, particularly with regard to maintenance and/or development of the Software or for any reason beyond Triangle's control.
 - (4) The Client is responsible for ensuring that the Software is accessed using equipment of at least the minimum Equipment specification.
 - (5) The Client is always solely responsible for any data or anything which the Client or Users input onto the Software. This includes creating a Unique Client Identifier, maintaining and securing it and ensuring that the Client maintains a record of each Unique Client Identifier. The Client must ensure that such data or anything input is not abusive, defamatory, obscene, or illegal or infringes any third party intellectual property rights.
 - (6) The Client is always recommended to maintain a copy of any data input onto the Software and to retain a copy of any Materials. Triangle will not be responsible for any failure in back-up or maintenance of records, including any Unique Client Identifier.
 - (7) Any report or documentation which forms part of the Software will be in whatever format and contain whatever information Triangle, at their absolute discretion, deems appropriate.
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7 TRAINING

- (1) Every Client User who wishes to use the Licensed Intellectual Property with Client Service Users must purchase training from a trainer employed or licensed by Triangle.
- (2) Details of the required training, if any, will be provided in the Quote and any directly related correspondence between Triangle and the Client and the Client agrees to accept and pay for the Training subject to the following terms.
- (3) Triangle shall perform the Training with all reasonable skill and care in accordance with good industry practice.
- (4) **Basis of charges:**
Triangle will quote the Client a fixed fee for the delivery of the Training. In addition to this Triangle will charge for expenses directly incurred in the delivery of the Training (travel at standard rates, subsistence, and hotel if one or more overnight stays are required). The fixed fee is for groups of up to 16 participants unless otherwise agreed.
- (5) **Client obligations:**
The Client will:
 - (a) provide Triangle with all necessary information, facilities, support and services reasonably required by Triangle for the performance of the Training;
 - (b) if the Training is held at premises owned or rented by the Client, provide the Training venue, equipment reasonably requested by Triangle, refreshments and lunch and ensure that participants know the timing and location of the Training. Unless otherwise agreed, Triangle will provide the Training materials;
 - (c) take all reasonable steps to ensure the health and safety of Triangle's representatives while they are at the Client's premises;
 - (d) ensure that its representatives co-operate fully with Triangle in relation to the provision of the Training;
 - (e) be fully responsible for all applications, data, interfaces, hardware and equipment within its control which are required for the Training unless agreed otherwise.
- (6) **Cancellation and postponement charge:**
To cancel any Training event, Triangle will make no charge if the Client gives Triangle at least 22 days prior written notice. If the Client cancels or postpones between one and three weeks before the event (6-15 working days) Triangle will charge half the agreed fee in consideration of prepared course materials, venue and trainer bookings, plus any expenses reasonably and necessarily incurred in advance (e.g. train fare). If

five working days' notice or less is given Triangle will charge three quarters of the full fee plus any expenses reasonably and necessarily incurred in advance.

- (7) Cancellation of any Training will not terminate any Services that have been agreed or Licence that has been granted.
- (8) If Triangle's trainer is prevented from delivering the Training by illness or unforeseen circumstances Triangle will use its best efforts to find a replacement trainer. If Triangle is unable to find a suitable trainer Triangle will reschedule the Training for a mutually convenient date.
- (9) **Licensed trainers:**
If the Client will require on-going training for staff in the use of the Outcomes Star then the Client may wish to consider having one of the Client's trainers licensed to train staff internally, in which event the Client should contact Triangle to discuss their needs.
- (10) **Confidentiality:**
Unless the Client requests otherwise in writing, Triangle may tell other people and organisations that Triangle is training the Client and/or draw on Triangle's experience with the Client to share learning and / or to market Triangle's services. The Client may give Triangle notice at any time to cease sharing such information.

8 SERVICES

- (1) Details of any Services required by the Client will be set out in the Quote and confirmed by the Confirmation Email and the Client agrees to accept and pay for the Services subject to the following terms.
- (2) The Services are provided at the Client's request and the Client accepts that it is responsible for providing accurate specifications for the Services and for verifying that the details set out in the Quote for the Services or in any subsequent services agreement properly incorporated in accordance with clause 1(3) are suitable for its own needs.
- (3) Triangle shall perform the Services with all reasonable skill and care in accordance with good industry practice.
- (4) **Basis of charges:**
Triangle will quote the Client a fee for the delivery of the Services. In addition to this Triangle will charge for expenses directly incurred in the delivery of the Services (travel at standard rates, subsistence, and hotel if one or more overnight stays is required).

(5) Client obligations:

The Client will:

- (a) provide Triangle with all necessary information, facilities, support and services reasonably required by Triangle for the performance of the Services;
- (b) take all reasonable steps to ensure the health and safety of Triangle's representatives while they are at the Client's premises;
- (c) if agreed, provide the venue and equipment reasonably required by Triangle to deliver the Services;
- (d) ensure that its representatives co-operate fully with Triangle in relation to the provision of the Services;
- (e) be fully responsible for all applications, data, interfaces, hardware and equipment within its control which are required for delivery of the Services unless agreed otherwise.

(6) Cancellation of Services:

To cancel any Services, the Client shall provide four weeks' written notice in advance of the agreed date of Service delivery. Triangle reserves the right to ask the Client to reimburse Triangle for any work Triangle may have completed by time of cancellation, plus any expenses incurred in advance. If the cancellation occurs with less than four weeks' notice, Triangle reserves the right to charge up to the full amount agreed in the Quote to reflect all the work Triangle may have done by that time in order to prepare and deliver the Services to the Client but shall make allowance in respect of any aspect of the Services that has not been completed at that time.

- (7) Cancellation of Services will not terminate any Training that has been agreed or Licence that has been granted.

9 DATA PROTECTION

- (1) Triangle complies with the requirements of the GDPR and shall provide on its website the appropriate privacy notices with full details of how it handles and protects all Client Data
- (2) Whilst the parties have acknowledged in clause 17(5) (1)(a) that no Personal Data should be transferred to Triangle from the Client or User by the use of the Software under the Licence, if for any reason any Personal Data is transferred from the Client or User or Authorised Third Parties (as defined below) to Triangle ("Transferred Personal Data") it is agreed that:
 - (a) the Client or User or Authorised Third Parties shall be the data controller (as defined in the GDPR) in relation to any Transferred Personal Data;
 - (b) Triangle shall be the data processor (as defined in the GDPR) in relation to any Transferred Personal Data;

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- (c) Triangle shall only process any Transferred Personal Data as is necessary for the purposes of the Licence;
 - (d) Triangle shall comply with the data protection principles of the GDPR in relation to any Transferred Personal Data.
- (3) If the Client is authorised by Triangle to share the Licence and access to the Software with other organisations (“Authorised Third Parties”) then the Client warrants that it shall ensure that all Authorised Third Parties comply with the GDPR in respect of any Personal Data they may input into the Software.
- (4) The Client shall fully indemnify Triangle against any actions, claims, demands, proceedings, damages, costs and expenses arising from any breach of the GDPR by any Authorised Third Parties or by any Users or any other person using the Client’s Software access rights in respect of any Personal Data they have input into the Software.
- (5) Triangle shall seek the Client’s consent if Triangle and/or their Licensed Service Providers wishes to contact representatives of the Client for marketing purposes about the Outcomes Star and related Tools and services.
- (6) Subject to clause 17(5), the Client owns and shall at all times own all rights, title and interest in and to all of the Client Data and the Triangle shall have no right to use or access Client Data except as necessary to perform its obligations under this Agreement.
- (7) In the event of any loss or damage to Client Data, Triangle shall at its own cost restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Triangle.
- (8) All terms used in this Clause 9 shall have the meaning ascribed to them in the GDPR unless otherwise stated or self-evident from the context.
- (9) Triangle agrees and acknowledges that in respect of any processing of Client Data it will be acting as data processor and the Client will be acting as data controller.
- (10) Subject to clause 17(5), Triangle agrees to only use the Client Data for the legitimate purposes of performing its obligations under this Agreement and for no other purposes unless instructed to do so by the Client.
- (11) When Triangle sub-contracts or outsources the performance of its obligations under this Agreement or the processing of any of the Client Data to any third party, it warrants that this third party is bound by the same obligations as Triangle under this Agreement with regards to the GDPR. It will provide the details of such third party to the Client upon request.
- (12) Triangle shall ensure that appropriate technical and organisational measures are in place at all times to ensure the security of the Client Data and that appropriate technical and organisational measures will be taken against unauthorised or unlawful processing of the Client Data and against accidental loss or destruction of, or damage to, the Client Data.
- (13) Triangle shall also take reasonable steps to ensure the reliability of any of its personnel and Contractors who have access to the Client Data and that appropriate confidentiality agreements are in place.
- (14) Triangle shall satisfy itself that any internal IT systems that Triangle may use (for example for managing its client database or for accounting) that transmit information to any country or place outside the European Union, meet the data protection requirements of the GDPR.
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- ## 10 COMPLIANCE, DBS CHECK
- (1) Triangle endeavours to be aware of and comply with every relevant legal requirement (including EU and UK standards) relating to the services supplied. Triangle is registered with the Information Commissioner’s Office (ICO) and complies with the GDPR.
- (2) If legally required due to the circumstances of delivery of training services, Triangle will check with the Disclosure and Barring Service (“DBS”) all staff employed or (if any) volunteers engaged to provide or supervise the provision of such services.
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- ## 11 CLIENT’S OBLIGATIONS AND UNDERTAKINGS
- (1) The Client is solely responsible for:
- (a) ensuring that the Licensed Intellectual Property is accessed and used only by the Client and their Users;
 - (b) the Client’s and Client’s Users’ access and use of the Licensed Intellectual Property and Software;
 - (c) ensuring that any use of the Licensed Intellectual Property is lawful, in a professional manner and complies with the terms of this Agreement;
 - (d) all passwords and data which may be used in connection with the Licensed Intellectual Property;
 - (e) any data, software or anything which the Client and/or Users use with, on or in connection with any website or the Licensed Intellectual Property, to include ensuring that such data or anything input is not abusive, defamatory, obscene, illegal or infringes any third party Intellectual Property Rights; and
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- (f) ensuring that the Client and Client's Users do not access or attempt to access any Licensed Intellectual Property for which they know or have a reasonable suspicion that they do not have a valid and current licence.
- (2) Except to the extent permitted by this Agreement or to the extent permitted by law, the Client undertakes not to:-
- (a) copy, disassemble, decompile, reverse engineer, vary, adapt, modify or translate the Licensed Intellectual Property, without the prior written consent of Triangle;
 - (b) delete, vary or obscure any copyright or other proprietary notices;
 - (c) rent, lease, sub-licence, assign, transfer or distribute, translate, disassemble, decompile or reverse engineer the Licensed Intellectual Property or any rights whatsoever to use it;
 - (d) use the Intellectual Property for any use or activity which breaches any law or regulation or invades or infringes the rights of others and any other activity that Triangle, in their absolute and reasonable opinion, deems to be harmful, including using the Software for sending unsolicited commercial e-mailing or for any illegal access to other computers or networks, distributing internet viruses or similar destructive activities or any illegal activity;
 - (e) use or attempt to use any Licensed Intellectual Property, particularly, but not limited to that which forms part of software provided by a third party, for which they know or have a reasonable suspicion that they do not have a valid and current licence; and
 - (f) make copies of the Software or any part thereof, including any information or data available on the Software, in whole or part, except for applicable back-up or copy purposes as permitted in this Agreement.
- (3) The Client undertakes during the continuance of the Licence:-
- (a) to keep access to the Licensed Intellectual Property, including passwords and all copies of the Materials, under the Client's effective control and to maintain adequate security measures to protect the Licensed Intellectual Property from access or use by any unauthorised person;
 - (b) to ensure that, prior to the use of the Licensed Intellectual Property by its Users or agents, all such parties are notified of the terms of this Agreement;
 - (c) to maintain an accurate and up-to-date record of all use and copies of the Licensed Intellectual Property Materials and produce such record to Triangle on request from time to time;
 - (d) to ensure that any data or anything input onto the Software or stored by the Client in connection with the Licensed Intellectual Property complies

with the GDPR, or, if the Client is located outside of the European Union and has less stringent data protection legislation applicable in their country than the GDPR, to ensure that they deal with all such data to at least equivalent standards and requirements of the GDPR;

- (e) to ensure adequate control over all Users/users;
- (f) to comply with all reasonable instructions provided by Triangle to the Client; and
- (g) to allow Triangle a non-exclusive, worldwide and royalty-free licence to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use any data or anything input onto the Software by the Client as necessary for the purposes of rendering and operating the Software services to the Client and for the collation and analysis of data which does not identify either the Client or the Client Service Users, subject always to the provisions of clause 9 in respect of any Personal Data that may have been input by the Licensee.

12 INTELLECTUAL PROPERTY RIGHTS

- (1) Aside from the licence provided within this Agreement of the Licensed Intellectual Property, all Intellectual Property Rights of whatever nature or connected in any way to the Software the Triangle Websites, the Outcomes Star and the Tool shall remain the property of Triangle and any third parties from whom Triangle has such right to use the Intellectual Property Rights and the Client agrees to immediately notify Triangle, and in any event no later than 4 working days from the date it becomes aware, of any infringement or any unauthorised use of the Intellectual Property Rights by any person.
- (2) The Client specifically agrees to comply with both Triangle's Intellectual Property Rights and those of any third party in relation to the Client Software and its use of the Licensed Intellectual Property.
- (3) The Client is not authorised to alter any of the Software or Materials in any way and the Client must hold a licence for all workers and managers using the Outcomes Star, renewable annually.

13 TRIANGLE INTELLECTUAL PROPERTY INDEMNITY AND CLIENT INDEMNITY

- (1) Triangle agrees to indemnify the Client against all actions, claims, proceedings, damages, costs and expenses arising from any actual or alleged infringement of Intellectual Property Rights arising from the Client's use of the Licensed Intellectual Property, provided such use is in accordance with the

terms of this Agreement and that the Client promptly notifies Triangle in writing of any such allegation no later than 4 days from the date it becomes aware of any allegation.

- (2) At Triangle's request and expense, the Client shall permit Triangle to conduct all negotiations and litigation. The Client shall give all reasonable assistance and Triangle shall pay the Client's costs and expenses so incurred.
- (3) Triangle may, at its expense, modify or replace the Licensed Intellectual Property to avoid any alleged or actual infringement provided that any modification or replacement does not materially affect the performance of the Software. If Triangle is unable to modify or replace the Licensed Intellectual Property, then the Client shall not access the Licensed Intellectual Property and will return the Materials which are the subject of the Intellectual Property Rights claim, and Triangle shall refund to the Client the corresponding portion of the Licence Initial Fee or Licence Fee, as normally depreciated, whereupon this Agreement shall immediately terminate.
- (4) This indemnity shall not apply to infringements arising directly from the combination of the Licensed Intellectual Property with other items not supplied by Triangle.
- (5) The Client agrees that should they breach any part of this Agreement, then the Client undertakes to keep indemnified and hold harmless Triangle against all actions, claims, demands, settlements, liability costs and expenses arising out of or in connection with any such breach.

14 THE PROPRIETARY/COPYRIGHT NOTICE

Each time Triangle's Intellectual Property Rights are used in any way by the Client, the Client will acknowledge Triangle's rights by prominently inserting the following:

"© Triangle Consulting Social Enterprise Ltd. Used under licence. See www.outcomesstar.org.uk"

15 WARRANTY

- (1) Subject to payment of the Licence Initial Fee in respect of the Licence Initial Term and the Licence Fee in respect of any subsequent term, (i) the Licensed Intellectual Property shall be supported by an account manager for each Client who will answer relevant queries by phone and email in a timely manner at Triangle's sole discretion; and (ii) Triangle shall provide a time limited support system for the Software for the duration of the Licence, as detailed below:

- (a) The Client must nominate one person, the Star online Lead, to be responsible for the management of the Software system on behalf of the Client.
 - (b) All Users must contact the Star online Lead in the first instance to resolve issues or problems which they cannot resolve themselves using the support materials.
 - (c) If the Star online Lead cannot resolve the problem then they must send an email explaining the problem to lead.support@staronline.org.uk.
 - (d) Triangle aims to provide a response, by e-mail or telephone as Triangle in their sole discretion deems appropriate, within two working days. If the problem is not capable of immediate resolution then Triangle will provide a timeframe for the response within a further two working days.
 - (e) Each Star online Lead has access to up to one hour of this support for each month in which a Licence has been purchased. If the Star online Lead requires further support then this can be purchased as needed.
- (2) If there is a problem with the Software use and a Licence Fee has been paid, then the Client should notify Triangle in writing within 1 Working day of becoming aware of the fault. Triangle will, at their sole discretion, then rectify the problem or provide the Client with a refund of the corresponding portion of the Licence Initial Fee or Licence Fee, as normally depreciated, whereupon this Agreement shall immediately terminate.
 - (3) If the Client is not satisfied with the quality of the Services or Training or the Client has any other concern about the contact the Client has had with Triangle in relation to the Services or Training, the Client should contact info@triangleconsulting.co.uk within 7 days of completion of the Services or Training. Provided the appropriate fees have been paid in full by the Client, Triangle will, at their sole discretion, then rectify the problem or provide the Client with a refund of the corresponding portion of the Services or Training fee, as normally depreciated.

- (4) In so far as allowed by law, Triangle makes no other warranty or claims (express or implied) in respect of the Licensed Intellectual Property and/or the Software and Triangle specifically disclaims any implied warranties of satisfactory quality or fitness for a particular purpose of the Licensed Intellectual Property and/or the Software. Triangle specifically does not warrant that the Licensed Intellectual Property and/or the Software will meet the Client's requirements, that the Software operation will be uninterrupted or error-free or is compatible with the Client's other software.

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- (5) The remedies in Clauses 15(2) and 15(3) above are the Client's sole and exclusive remedies for claims in respect of the Licensed Intellectual Property and/or the Software and/or Services and/or Training.
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16 EXCLUSION AND LIMITATION OF LIABILITY

- (1) Triangle is not responsible for problems caused by any improper or unauthorised use of the Licensed Intellectual Property whatsoever.
- (2) Triangle will not be liable to the Client, without limitation, for any direct or indirect, special, incidental or consequential damages or loss, including but not limited to, any damages for loss of income, profits, revenue, anticipated savings, fines, penalties, any damage or loss or corruption of data, any damage or loss caused by a virus, use or failure to use incurred by the Client or any third parties, whether based in contract, tort or any other way whatsoever, even if Triangle has been advised of the possibility of such damages and whether such damages were reasonably foreseeable or actually foreseen.
- (3) In the event that Triangle would be held liable for any losses, then such total damages for any loss whatsoever (but excluding loss from personal injury or death), shall be limited, in relation to any one incident or series of related incidents, to: (i) 100% of the Licence Initial Fee and Licence Fee paid in respect of claims relating to the Licensed Intellectual Property and/or the Software; (ii) 100% of the Training fee paid in respect of claims relating to the Training; and (iii) 100% of the Services fee paid in respect of claims relating to the Services.
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17 CONFIDENTIALITY

- (1) Other than as provided for in this Agreement, either party receiving information ("the Recipient") from the other marked "confidential", or which may reasonably be supposed to be confidential, including, without limitation, information contained, used in or input as part of any services or Software and other information supplied by the Client or Triangle, shall not without the other's prior written consent use such information except for the purposes of this Agreement, or disclose such information to any person other than to their own employees or agents who have a need to know.
- (2) Clause 17(1) shall not apply to information that is lawfully known to the Recipient at the time of disclosure or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause), or which is ordered to be disclosed to a regulatory body or a court of competent jurisdiction.
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- (3) The Recipient shall ensure that any person referred to in Clause 17(1) is bound by similar confidentiality terms to those in this Clause 17.
- (4) The confidentiality terms in this Clause 17 shall remain in full force and effect during the term of this Agreement and upon the termination of the Licence or this Agreement.

(5) Unique Client Identifier

- (a) Both parties acknowledge that the use of the Unique Client Identifier in the Star Online System means Triangle does not have access to any Personal Data of any individual for whom the Client and/or User has input data onto the Star Online System.
- (b) On this basis the Client consents to allow Triangle to use any data input onto the Star Online System (other than Personal Data) to collate general information provided that it does not reveal the identity of the Client, Client User or Client Service User:
- (i) to provide anonymised summary data to any system Users, not just Client Users;
 - (ii) for research purposes; and
 - (iii) for such other purpose that Triangle in their sole discretion deems fit, provided that such collated data does not identify either the Client or any Client Service Users without the express written permission of the Client.
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18 INSURANCE

- (1) For the duration of this Agreement Triangle shall maintain in force, with a reputable insurance company of Triangle's choice, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with this Agreement and shall, on the Client's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
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19 TERMINATION

- (1) This Agreement is effective for the Licence Term and for the duration of provision of Training and/or Services, unless and until properly terminated by either party in accordance with the terms of this Agreement.
- (2) This Agreement shall automatically terminate if the Client (or Triangle reasonably believes that the Client) breaches or fails to comply with any term or part thereof of the Contract and the Client does not remedy such breach within fourteen (14) days of written notice from Triangle. In such circumstances: any rights granted by this Agreement will immediately cease on termination; and the Client will remove the Licensed Intellectual Property from all the Client's software systems and paperwork; and the Client will no longer access or use the Software and Materials and any back-up and any copy in any format shall immediately be deleted in accordance with Triangle's instructions or be returned to Triangle, as Triangle shall specify.
- (3) The Client may terminate the Licence by removing the Licensed Intellectual Property from all the Client's software systems and paperwork, and by stopping all access and/or use of the Software and Materials and sending written notice to Triangle confirming that it has taken such actions in order to terminate the Licence, in which event the Licence shall terminate 3 working days after Triangle receives the aforesaid notice but this shall not terminate either the Training or the Services which can only be cancelled in accordance with clauses 7 and 8. The Licence Fee is non-refundable save as referred to in Clause 5(2).
- (4) Immediately following any termination of this Agreement the Client must ensure that: the Licensed Intellectual Property is removed from all the Client's software systems and paperwork; it immediately deletes any back-ups and any copies in any format of the Licensed Intellectual Property in accordance with Triangle's instructions or return such back-ups and copies to Triangle, as Triangle shall specify; and that the Licensed Software Collaborator deactivates the Licensed Intellectual Property in the Licensed Software System, if used. Completed paperwork, data collected and digital records thereof stored during the Licence Term can be retained by the Client.
- (5) In the event of termination the Client remains liable for all Contract payments due up to the date of termination.
- (6) Following termination of the Agreement Triangle ordinarily retains in storage the data input into the Star Online System resulting from the Contract, for the purposes as detailed in Clause 17(5)(b). If the Client would like Triangle to delete such data the Client may request such deletion in writing within 2 months of termination.

- (7) Any clause in this Agreement which is clearly intended to continue after termination will remain in full force and effect after the termination of this Agreement.

20 CANCELLATION RIGHTS FOR INDIVIDUAL CONSUMERS

Whilst a client who is an individual acting outside of any business purposes is given certain cancellation and other rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("the Regulations"), in view of the nature of the products and services provided, unless Triangle has agreed otherwise in writing, the Client acknowledges and agrees that the acceptance by the Client of this Agreement and the use of the Materials or Software have the same effect as the unsealing of sealed computer software and as such, even if the Client is an individual acting outside of any business purposes they will not have any cancellation or refund rights under the Regulations.

21 FORCE MAJEURE

Neither party shall be liable to the other party for any delay or failure to perform any of its obligations under this Agreement if the delay or failure results from events or circumstances outside its reasonable control, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party in writing of the nature and extent of such events. If such circumstances continue for a continuous period of more than 28 days, either party may terminate this Agreement by written notice to the other party.

22 ASSIGNMENT AND SUB-CONTRACTING

- (1) Any rights given cannot be transferred, sold, rented or shared in any way by the Client.
- (2) Triangle reserves the right to assign and/or sub-contract their obligations under this Agreement.

23 WAIVER

Failure or neglect by either party to exercise any of its rights or remedies under this Agreement will not be construed as a waiver of that party's rights, nor in any way affect the validity of the whole or part of this Agreement, nor prejudice that party's right to take subsequent action.**2**

4 INVALIDITY

Each clause or any part at all of this Agreement is to be regarded as independent of the others. This means that should any clause or any part of this Agreement be found to be unenforceable or invalid, it will not affect the enforceability or validity of the rest of this Agreement.

25 NOTICES

Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the most recent email address, fax number or address notified to the other party, and if sent by email, shall be deemed to be received on the day it was sent provided that the sender has proof of sending, or if sent by fax, shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery, shall be deemed to be served two days following the date of posting.

26 ENTIRE AGREEMENT

The Contract contains the entire agreement between the parties relating to the subject matter of this Agreement and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. The Contract may be varied only by a written document signed by both parties.

27 GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England.

Contact Triangle for further information

Email: info@triangleconsulting.co.uk

Web: www.outcomesstar.org.uk

Twitter: @outcomesstar

Tel: 020 7272 8765



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