LICENSE AGREEMENT AND TERMS OF USE

This Agreement ("Agreement"), effective as of the date on which the LICENSEE accesses the WEBSITE and/or the PROGRAM ("Effective Date"), is by and between you the user ("LICENSEE," as this term is further defined hereinbelow) and the Board of Regents of the University of Oklahoma, a constitutional state entity of the State of Oklahoma, by and through the Office of Technology Development located at 201 David L. Boren Boulevard, Suite 120, Norman, Oklahoma, 73019 ("UNIVERSITY"). LICENSEE and UNIVERSITY may be referred to herein in the singular as a "Party" and collectively as the "Parties."

NOW THEREFORE, the Parties expressly agree as follows:

I. Definitions
     a. "PROGRAM" shall mean the Transition Assessment and Goal Generator ("TAGG") which is capable of being accessed by the LICENSEE from and through the WEBSITE and which is embodied and disclosed in UNIVERSITY Disclosure No. 15NOR004 entitled "Transition Assessment and Goal Generator (TAGG)."
     b. "LICENSEE" shall mean the person accessing, installing, downloading, copying, or otherwise using SOFTWARE if use hereunder is solely for personal use by the LICENSEE. If SOFTWARE is being accessed and/or used by the user on behalf of the user's legal entity and/or organization, such as, by way of example only, a corporation, limited liability company or partnership, then by proceeding with access and/or use of the PROGRAM, the user warrants, covenants, and represents that: (a) he or she has the legal authority to bind that legal entity and/or organization to the provisions, terms, and/or restrictions set forth in this Agreement; and (b) such legal entity and/or organization shall, for purposes of this Agreement, be the LICENSEE.
     c. "WEBSITE" shall mean without limitation, https://tagg.ou.edu/tagg/, as well as www/ou.edu and any and all UNIVERSITY website subdomains and/or any website(s) in which the PROGRAM is capable of being accessed and/or used.
II. LICENSE
     a. By accessing, installing, downloading, copying, and/or otherwise using the PROGRAM, LICENSEE understands, acknowledges, and expressly agrees to be bound by this Agreement, including, but not limited to, any and all provisions, terms, restrictions, and warranties set forth herein.
     b. UNIVERSITY hereby grants to LICENSEE a non-exclusive, non-transferable license to access and/or use the PROGRAM in accordance with and subject to the provisions, terms, restrictions and warranties set forth in this Agreement. LICENSEE warrants, covenants, and represents that he/she/it shall not (nor attempt to) distribute, reverse engineer, decompile, and/or disassemble the PROGRAM or create derivative works from and/or based upon PROGRAM.
     c. LICENSEE acknowledges, understands, and expressly agrees that UNIVERSITY has no obligation to provide to LICENSEE any maintenance, support, update services, and/or materials of and/or related to the PROGRAM.
III. ASSIGNMENT AND SECURITY

a. LICENSEE shall not assign this Agreement to any other party, and any attempt by LICENSEE to assign it shall be void *ab initio*. LICENSEE agrees to implement and maintain adequate and commercially reasonable security measures to ensure LICENSEE's compliance with the provisions, terms, restrictions, and warranties set forth in this Agreement.

IV. OWNERSHIP

   a. This Agreement does not grant the LICENSEE ownership rights of any kind in and/or to the PROGRAM.

   b. At all times, UNIVERSITY does and shall solely and exclusively retain the entire and full right, title, and interest in and to the PROGRAM.

V. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

   a. UNIVERSITY MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO THE PROGRAM, OUTPUTS OF THE PROGRAM, AND/OR THIS AGREEMENT.

   b. LICENSEE UNDERSTANDS, ACKNOWLEDGES, AND EXPRESSLY AGREES THAT UNIVERSITY MAKES NO REPRESENTATION OR WARRANTY TO THE OPERABILITY, QUALITY, ACCURACY, FITNESS FOR ANY USE, MERCHANTABILITY, SAFETY, AND/OR BREADTH OF THE PROGRAM. THE PROGRAM IS FOR EDUCATIONAL PURPOSES ONLY AND THE PROGRAM IS NOT INTENDED TO BE, NOR SHALL BE, CONSTRUED AS COMMERCIAL AND/OR DIAGNOSTIC TOOL. LICENSEE HEREBY ACCEPTS FULL AND COMPLETE RESPONSIBILITY FOR ANY AND ALL CONCLUSIONS, USES, AND ANALYSES RESULTING FROM LICENSEE'S ACCESS TO AND/OR USE OF THE PROGRAM.

   c. LICENSEE understands, acknowledges, and expressly agrees that UNIVERSITY makes no representation in this Agreement as to whether there is any intellectual property, including, but not limited to, patents and/or copyrights, now held, or which may be held, by a third party(-ies) or by UNIVERSITY related to the PROGRAM, nor does UNIVERSITY make any representation and/or warranty that the PROGRAM does not infringe any intellectual property rights, including, but not limited to patents and/or copyrights, now held or that will be held by a third party(-ies) or by UNIVERSITY.

   d. LICENSEE acknowledges, covenants, and expressly agrees that he/she/it has not been induced in any way by UNIVERSITY or its Regents, directors, officers, employees, students, agents, or representatives to enter into this Agreement, and further warrants and represents that: (1) LICENSEE has conducted sufficient due diligence with respect to all items and issues pertaining to this Agreement and all other matters pertaining to this Agreement; (2) LICENSEE has adequate knowledge and expertise, or, where such knowledge is inadequate, has retained the guidance and/or advice of knowledgeable and expert consultants to adequately conduct the due diligence with respect to this AGREEMENT and the subject matter contained herein; and (3) LICENSEE expressly agrees to accept any and all risks inherent in this Agreement.

   e. IN NO EVENT SHALL UNIVERSITY, ITS REGENTS, DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS, AGENTS, AND/OR REPRESENTATIVES BE LIABLE IN ANY WAY FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, AND/OR PUNITIVE DAMAGES OF ANY KINDS,

INCLUDING ECONOMIC DAMAGES, FOR INJURY TO PERSON OR PROPERTY AND LOST PROFITS, RESULTING FROM LICENSEE'S ACCESS AND/OR USE OF THE PROGRAM AND/OR FROM ANY DAMAGES ARISING OUT OF AND/OR RELATED TO THIS AGREEMENT.

  f. LICENSEE acknowledges, understands, and expressly agrees that the UNIVERSITY's limitations and exclusions of liability and the disclaimers of warranty set forth in this Agreement form an essential basis of the bargain by and between the Parties.

VI. TERMINATION AND EFFECTS OF TERMINATION

  a. UNIVERSITY may terminate this Agreement for any reason at its sole and exclusive discretion upon providing LICENSEE ten (10) days prior written notice. Such notice may be transmitted electronically, including, but not limited to, via email, to LICENSEE.

  b. If LICENSEE at any time fails to abide by the terms, provisions, and/or restrictions set forth in this Agreement, UNIVERSITY shall, in addition to any other rights and/or remedies to which UNIVERSITY may be entitled, either in law or equity, have the right to immediately terminate this Agreement without prior notice to LICENSEE.

  c. Upon termination of this Agreement, LICENSEE shall, and hereby warrants and represents that LICENSEE shall, immediately cease accessing and/or using the PROGRAM in any and all manner(s) and shall, at the UNIVERSITY's request, provide a written certification attesting to LICENSEE's cessation of access and/or use of the PROGRAM.

VII. INDEMNIFICATION

  a. LICENSEE shall indemnify, defend and hold harmless UNIVERSITY, its Regents, officers, directors, employees, students, agents, and/or representatives from any liability and against any claims, demands, suits, or causes of action whatsoever arising out of and/or related to the exercise of any of the rights granted by this Agreement.

  b. UNIVERSITY shall not be liable for any indirect, incidental, special, consequential, or punitive damages arising out of or in connection with this Agreement, the PROGRAM (including, but not limited to, use and/or access thereof), analyses and/or outputs of the PROGRAM and/or which are generated by the PROGRAM, and/or the WEBSITE (including, but not limited to, use and/or access thereof), regardless of whether the University knows or should know the possibility of such damages.

  c. In the event any legal action is commenced against UNIVERSITY, UNIVERSITY shall promptly notify LICENSEE of the action, request LICENSEE defend UNIVERSITY as per its duty under this Section, and shall cooperate with LICENSEE's defense of the claim as reasonably required by LICENSEE so long as LICENSEE shall reimburse UNIVERSITY for all of the costs and expenses reasonably incurred by UNIVERSITY to provide any such cooperation and assistance in accordance with LICENSEE's request.

  d. LICENSEE shall bear all costs and expenses incurred by LICENSEE in connection with the defense or satisfaction of any claim, and, shall pay any amounts required by any judgment or order of any court to be paid by UNIVERSITY, so long as UNIVERSITY shall fulfill its obligation as outlined in this section of this Agreement.

VIII. MISCELLANEOUS

a. This Agreement shall be construed in accordance with the laws of the State of Oklahoma, without giving force and effect to its choice of law provision or to which party drafted particular provisions of this Agreement. Any legal action in connection with this Agreement shall be filed in a court of competent jurisdiction in the State of Oklahoma, to which jurisdiction and venue the Parties expressly agree.

b. LICENSEE may not use and shall not use or otherwise export and/or re-export the PROGRAM except as authorized by United States laws and the laws of the jurisdiction in which the PROGRAM was obtained. In particular, but without limitation, the PROGRAM may not be and shall not be exported and/or re-exported: (a) into (or to a national or resident of) any country subject to U.S. embargoes or trade sanctions that would prohibit such an export or re-export; or (b) to anyone on the U.S. Treasury Department list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the PROGRAM, LICENSEE represents and warrants that LICENSEE is not located in, under the control of, or a national or resident of any such country or on any such list.

c. LICENSEE hereby warrants and represents that he/she/it shall comply with all applicable laws, rules, and/or regulations that apply to this Agreement and the PROGRAM.

d. If any provision of this Agreement is found to be illegal, invalid, and/or unenforceable by a court of competent jurisdiction, the legality, validity, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

e. This Agreement represents the complete and exclusive statement of agreement between and understandings of the Parties with respect to the subject matter herein and supersedes all prior agreements, proposals, representations and other communications, verbal or written, between the Parties with respect to the PROGRAM.

f. LICENSEE shall be responsible for and pay all applicable taxes, if any, that may be levied by any taxing authority which are or may be payable pursuant to this Agreement and/or LICENSEE's access to and/or use of the PROGRAM.