



SECOND CHANCE TOBACCO EDUCATION PROGRAM LICENSE AGREEMENT

LICENSOR: Action for Healthy Kids, 600 W Van Buren, Ste 720, Chicago, IL 60607 ("Licensor")

LICENSEE: District/Organization Name: _____
("Licensee") Address: _____
City/State/Zip: _____
Phone: _____ Email: _____

This license agreement ("Agreement") is hereby entered into on _____, 20____("Effective Date") by and between Licensor and Licensee for the use of Licensor's proprietary internet-based tobacco education program for middle and high school youth, entitled *Second Chance*, and all of its components (collectively, the "Application"). The Application also includes all Application data, software, technology, animation, photographs, graphics, text, platform, documentation and other related materials. The parties agree that access to and use of the Application by the Licensee and its Authorized Users (as defined below) is subject to the following terms and conditions:

- Term.** The duration of this Agreement (including the License and any User License(s) granted pursuant hereto) is for one year commencing on the Effective Date ("Initial Term"). This Agreement will be extended for successive one-year renewal terms (each a "Renewal Term") upon Licensor's issuance of an invoice for renewal and payment for such renewal by Licensee. The Initial Term and any Renewal Term(s) will collectively be referred to as the "Term".
- Online Legal Notice.** Use of the Application and users of the Application are subject to and governed by the Terms of Use and Privacy Policy posted on the Application website (collectively, "Legal Terms"), as may be amended from time to time by Licensor. All Authorized User (as defined below) must agree to be bound by the Legal Terms in order to access the Application. In the event of a conflict between the terms of the Legal Terms and this Agreement, this Agreement will control.
- Grant of Rights/License.** Subject to the terms hereof and upon payment in full of all fees required hereunder, Licensor grants to Licensee a limited, non-exclusive, non-transferable license ("License") to utilize the Application solely with Licensee's students, program participants, administrators, faculty, and staff (collectively, "Authorized Users"). Licensee will not assign or sub-license any of its rights hereunder in any manner whatsoever without Licensor's prior written consent. Licensee's rights are limited to Authorized Users accessing the Application via the internet hereunder.
- Fees.** As full and complete consideration for the services and materials provided hereunder and all rights granted herein, Licensee will pay to Licensor the following non-refundable Total License Fee upon execution of this Agreement. Licensee will not be granted access to the Application until payment in full is received by Licensor. Licensor may update the License Fee for any Renewal Term.

Number of Schools	License Fee Per School	Discount Amount	TOTAL LICENSE FEE
	\$1500		

5. **Training Requirements.** The Licensee is required to participate in a training course on the Second Chance Tobacco Education Program before they will be granted access to the Application. If the Licensee fails to participate in the required training course they will be entitled to a refund of the license fees paid, less a \$100 per school agreement cancellation fee.

6. **Ownership.** The Application and all its associated materials are the solely-owned or legally licensed property of Licensor. The Application is licensed, not sold, to Licensee pursuant to the terms hereof. The remuneration paid for access to, and use of the Application constitutes a license fee for its use. Licensor does not sell any title, ownership right, or interest in or to the Application. Licensee acknowledges and agrees that its rights are limited to a non-exclusive, non-transferable, limited license to use the Application according to the terms of this Agreement. Licensor reserves and retains all rights, title, and interest (including but not limited to copyrights, patents, trademarks, service marks, and other intellectual property rights) in, to, and associated with the Application.

7. **Warranties and Representations.** Licensee hereby warrants and represents that:

- a. Licensee has the legal right and is duly authorized to enter into this Agreement and no part of this Agreement conflicts with or is contrary to any other agreements or obligations binding or applicable to Licensee.
- b. Licensee will utilize the Application only as expressly permitted herein.
- c. Licensee will not do any act or thing or fail to do any act or thing or permit or allow any other party to do any act or thing or fail to do any act or thing, that could harm or diminish Licensor's rights in and to the Application, including, without limitation, the copyrights, trademarks, or intellectual property therein.
- d. Licensee will not make copies of, distribute, or permit any use of the Application, or any intellectual property related thereto and licensed hereby, other than as specifically authorized herein.
- e. Licensee acknowledges and agrees that there will be times when Licensee or its Authorized Users may not be able to access the Application and/or access to the Application may be limited or interrupted. Licensee agrees that any such intermittent lack of access is not a breach of this Agreement.
- f. Licensee will not, nor permit or allow any other party to, reverse engineer or otherwise analyze, reconstruct, disassemble, or reproduce any portion of the Application in any way.
- g. Licensee will assume the entire risk as to the quality, results, and performance of the Application as well as the entire risk and cost of all service, repair, or correction to Licensee's hardware or software related to the use of the Application.

8. **Technical Support and Operability.** Licensor will provide Licensee with timely technical support for the proper and intended use of the Application subject to Licensee's payment in full of all amounts due Licensor and so long as Licensee is not in breach of this Agreement. The following issues are not covered by Licensor technical support under any circumstances and Licensor will not be responsible for any action or inaction by Licensee in reliance on any statements made on the following technical support matters or any other subject matter outside the stated scope of the technical support provided by Licensor hereunder:

- a. Network issues including but not limited to internet connectivity or speed, internet service providers, online service providers, spyware, viruses, malware, faulty communications, etc.
- b. Hardware issues including but not limited to switches, hubs, modems, routers, firewalls, computers, etc.
- c. Infrastructure issues including but not limited to power, electrical, cable, internet connection, etc.
- d. Issues related to Licensee's use of third party software that are not caused by or related to the Application, as determined by Licensor in Licensor's sole discretion.

9. **Principal Contact.** Licensee will designate an Application manager, on Exhibit A attached hereto, to serve as the principal point of contact/liaison between Licensor and Licensee regarding the Application

and all account activity through the Term. Completion of Exhibit A is a condition precedent for the granting of any rights hereunder. Licensor will provide this individual with all necessary usernames and account access to make use of the Application hereunder, and will communicate directly with said individual regarding the Application and the terms of this Agreement.

10. **Data Usage.** Licensor will not disclose any personally identifiable information collected through the Application to any party for any reason. Licensee will have limited rights and access to view and collect anonymized aggregated data in connection with Licensee's Authorized Users.

11. **Disclaimer.**

- a. Licensor makes no representation or warranty express or implied concerning the compatibility or operability of the Application with any particular operating system or software. Licensor is not responsible. The Application is provided "as is," without warranty of any kind. Licensor hereby disclaims all warranties with respect to the Application, express, implied, or statutory, including but not limited to the implied warranties of merchantability, of satisfactory quality, of fitness for a particular purpose, of accuracy, of quiet enjoyment, and of non-infringement of third party rights.
- b. Licensor does not warrant, guarantee, or make any representations that the Application is free of errors or that it will meet Licensee's needs or requirements, that the Application will be available at any particular time or location, that any defects or errors will be corrected, or that the Application will be free of viruses or other harmful components.
- c. Licensor makes no warranty or guarantee as to the effectiveness of the Application for its intended purposes.
- d. The disclaimers set forth in this Agreement supersede any and all oral or written statements, promises, information, advice, suggestions, demonstrations, or recommendations given by Licensor, its representatives, agents, or employees. No statements that are not set forth expressly and specifically in this Agreement will create a warranty or in any way increase the scope of this Agreement and Licensee may not rely on any such information, advice, suggestions, or recommendations.

12. **Limitation of Liability.** Licensor, its subsidiaries, affiliates, and assigns, and each of their directors, officers, agents, contractors, partners, and employees, will not be liable to Licensee, Authorized Users, or any third party for any indirect, special, consequential, or incidental damages including but not limited to damages for loss injury, or death arising out of or related to: the use or inability to use the Application, however caused; unauthorized or accidental access to or alteration of data; statement or conduct of any third party; or any matter relating to the use of the Application; and even if Licensor has been advised of the possibility of such damages. Licensor's entire liability under this Agreement will be limited to the amount actually received by Licensor from Licensee.

13. **Termination.**

- a. This Agreement and any and all rights to access or use the Application and renewal rights will terminate upon: (1) expiration of the Term; (2) mutual written agreement of the parties; or (3) notice of termination to a breaching party following a material, uncured breach hereof. No refunds, whether prorated or otherwise, will be due Licensee hereunder unless specifically agreed upon by the parties in writing.
- b. Upon termination, all rights granted to Licensee and Authorized Users will automatically, immediately, and irrevocably revert to Licensor and Licensee and Authorized Users will immediately discontinue any and all access to and use of the Application.
- c. Within thirty (30) days of termination, Licensee will irrevocably and entirely delete and ensure the deletion of, at Licensee's sole cost and expense, all Application components and materials, and any and all copies thereof, within the possession or control of Licensee or Authorized Users, in whatever form then existing.

14. **Suspension.** If Licensee is in breach of any term of this Agreement, Licensor may elect to suspend Licensee's access to the Application until such breach is cured or the Agreement is terminated according to

its terms.

15. **Force Majeure.** If either party's failure to perform any obligation hereunder, other than payment of the License Fee, is caused by the unavailability of services or materials, labor disputes, governmental restrictions, or any other circumstances beyond such party's control, the failure to perform will not terminate this Agreement unless such failure continues for a period of more than six (6) months, following which either party, at its option, may terminate this Agreement by written notice to the other party.

16. **Independent Contractor.** The parties are at all times independent contractors hereunder, and neither party will be nor represent itself to be, an agent, employee, partner, or joint venturer of the other, nor will either party have any power to bind the other party.

17. **Severability.** If any provision of this Agreement is found to be void, invalid, or unenforceable, such provision will be reformed so as to be enforceable or severed and this Agreement with such provision reformed or severed will remain in full force and effect to the extent permitted by law.

18. **Waiver.** No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent is in writing signed by the party claimed to have waived or consented. A waiver by either party of any term or condition will not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof, nor a permanent modification of such provision or of this Agreement.

19. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all prior agreements, understandings, promises, and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to said subject matter. No modification, amendment, waiver, termination, or discharge of any provision hereof will be binding upon the parties unless confirmed in writing and executed by both parties. Neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either party, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties hereto and will be construed and interpreted according to the fair meaning of the words used so as to accomplish the purposes and intentions of the parties. This Agreement will be interpreted and construed in accordance with the laws of the State of Colorado (without reference to conflicts of law principles) and of the United States. The parties hereby consent to the exclusive jurisdiction in the courts in Denver, Colorado. This Agreement may be executed in counterparts and digital copies, each of which will be deemed an original and all of which taken together will constitute a single instrument.

20. **Counsel.** Each party acknowledges that it has had time and opportunity to review the foregoing and obtain counsel of its choice and advice as deemed necessary or desirable.

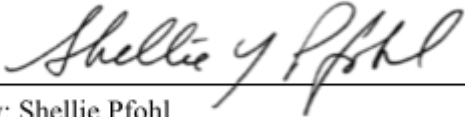
****Signature Page Follows****

SECOND CHANCE TOBACCO EDUCATION PROGRAM LICENSE AGREEMENT

Signature Page

In witness whereof, the parties hereto accept and agree to all the terms and conditions of this Agreement to be effective as of the date first stated above.

LICENSOR: Action For Healthy Kids



By: Shellie Pfohl

Title: Chief Growth Officer

LICENSEE:

By:

Title:

EXHIBIT A

Contact Information

Application Manager - Invoicing Contact

Name:

Email:

Phone

Number:

Signature:

Site One - Second Chance Administrator

School/Site Name:

Second Chance

Administrator Name:

Email:

Phone Number:

Site Two - Second Chance Administrator

School/Site Name:

Second Chance

Administrator Name:

Email:

Phone Number:

Site Three - Second Chance Administrator

School/Site Name:

Second Chance

Administrator Name:

Email:

Phone Number:

Site Four - Second Chance Administrator

EXHIBIT A

Contact Information

Site Five - Second Chance Administrator

School/Site Name:

Second Chance

Administrator Name:

Email:

Phone Number:

Site Six - Second Chance Administrator

School/Site Name:

Second Chance

Administrator Name:

Email:

Phone Number:

Site Seven - Second Chance Administrator

School/Site Name:

Second Chance

Administrator Name:

Email:

Phone Number:

Site Eight- Second Chance Administrator

School/Site Name:

Second Chance

Administrator Name:

Email:

Phone Number:

Site Nine- Second Chance Administrator