

NICHOLS BEHAVIOR CHECKLIST SITE LICENSE AGREEMENT

This Agreement ("Agreement") is effective this date: _____ ("Effective Date") by and between Firelight Books, 11650 CR 4215, Tyler, TX 75706 (hereinafter referred to as "Licensor"), and

(School Name)

(Program)

(Address)

(State)

(Zipcode)

(Phone Number)

(Second Phone Number) (FAX Number)

(First Contact Person/Title)

(Email Address)

(Second Contact Person/Title)

(Email Address)

(hereinafter "Licensee").

Whereas Licensor has developed, owns and is marketing certain educational materials pertaining thereto (collectively, the Nichols Behavior Checklist "NBC") for educational services.

Whereas, Licensee wishes to use the NBC in connection with its educational services.

Now, therefore, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions:

- 1.1 "School Site" shall mean a school district, school or facility, which is owned and/or operated by Licensee and is clearly identifiable by name and which is under the direction of a principal, headmaster, or manager.
- 1.2 "Employee" means any person who has teaching or administrative duties at the School Site, is paid for those services, and spends more than fifty percent (50%) of the working day at the school site.
- 1.3 "Associate" shall mean any person associated with the School Site who is not an Employee. Associates include students, parent volunteers, and School Site officials.
- 1.4 "NBC" shall mean the specific educational resource in its most current version, as identified in Exhibit A, attached hereto and incorporated herein by this reference.
2. Licensor does hereby grant to Licensee, under the terms and conditions of this Agreement, a nonexclusive, non-transferable, non-assignable, non-sublicensable, royalty-bearing worldwide license to use, reproduce, distribute, and display the NBC in connection with Licensee's rendering of educational teaching services to students. Licensee expressly acknowledges that the license under this Agreement does NOT include the right of sale.
3. Licensee agrees to use, reproduce, distribute and display the NBC only at a School Site. It is further agreed that Licensee is permitted to install the NBC on any computer located at a School Site.
4. Licensee expressly agrees that it will not: reverse engineer, decompile, or disassemble the

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- NBC; place the NBC on a network, Web site, or electronic bulletin board that is not primarily designated for the School Site; distribute the NBC to any person who is not employed at the School Site; or use the NBC for any commercial activity, including private tutoring, which is not related to the Employer's official duties at the School Site.
5. It is acknowledged that Licensor owns the NBC. Licensee acknowledges that the copyright and title to the NBC and all trademarks or service marks relating thereto remain with Licensor. Licensee shall have no right, title or interest in the NBC except as expressly set forth in this Agreement.
 6. Licensor does hereby grant to Licensee a non-exclusive, worldwide license to use, reproduce and display Licensor's NBC trademark ("Trademark") in connection with use of the NBC. All reference to and display of Licensor's Trademark must conform to the guidelines provided by Licensor. Licensee may not remove, obscure or modify any copyright, trademark or other protective notices contained in the NBC. At no time will the NBC or any portion thereof be used as "Stock Art" without the prior written permission of Licensor.
 7. Licensee agrees not to assign, sublicense, transfer, pledge, lease, rent, or share any rights under this Agreement. Licensee further agrees that it will not reverse assemble, reverse compile, reverse engineer or adapt, re-package or otherwise translate the NBC. Licensee may not create any derivative works based on the NBC.
 8. The term of this Agreement ("Term") shall commence upon the Effective Date hereof and shall continue thereafter, unless terminated by either party as hereinafter provided. Any renewal of the Agreement, including the terms and conditions thereof, shall be subject to the prior written approval of both parties. Licensee agrees that upon termination or expiration of this Agreement for any reason, Licensee shall cease all use of the NBC and Trademark. Renewal is available. Call for more information: 800-975-0054.
 9. Licensor may revoke Licensee's license hereunder in the event that Licensee: violates one or more of the provisions of this Agreement; requests a refund of the license fee; the license fee payment is deemed invalid; and/or the Licensee declares bankruptcy.
 10. Licensee agrees to pay to Licensor an initial nonrefundable license fee of
 - Two dollars (\$2.00) per student for one year plus shipping/handling costs. Unlimited use per student during the subscription year.
 - Five dollars (\$5.00) per student for five years plus shipping/handling costs. . Unlimited use per student during the subscription year.Payment shall be in U.S. currency and shall be made on or before the Effective Date of this Agreement.
 11. Licensee agrees to provide the information listed in Exhibit B on or before the Effective Date of this Agreement.
 12. Licensor warrants that it has the right to license the rights granted under this Agreement to use the NBC, that it has obtained any and all necessary permissions from third parties to license the NBC, and that use of the NBC, in accordance with the terms of this Agreement, shall not infringe the copyright of any third party.
 13. Licensor shall not be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the NBC.
 14. Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the information in the NBC, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.
 15. Except for the express warranties stated herein, the NBC is provided on an "as is" basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written) relating to the NBC or any part thereof, including, without limitation, any and all

implied warranties of quality, performance, merchantability or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer programs. Licensor further expressly disclaims any warranty or representation to any third party.

16. Licensor shall have sole and exclusive ownership of all right, title and interest in and to the NBC and all modifications and enhancements thereof (including ownership of all trade secrets, patents, and copyrights pertaining thereto) subject only to the rights and privileges expressly granted to Licensee pursuant to this Agreement. This Agreement does not provide Licensee with title and/or ownership of the NBC, but only a right of limited use. Licensee agrees to keep content free and clear of all claims, liens, and encumbrances.
17. All notices, authorizations and requests in connection with this Agreement shall be deemed given on the day they are (i) transmitted via electronic mail with a copy deposited in the mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows:

Notices to Licensor:

Firelight Books Attn: Michael R. Nichols C. E. O.
11650 CR 4215, Tyler, TX 75706

Phone: 800-975-0054 fax: 903-882-7571

email: mike@firelightbooks.com

Notices to Licensee:

(School Name)

(Address)

(Phone Number)

(Contact Person) (Email Address)

18. Licensee acknowledges that, in the event of breach of any of the provisions contained in this Agreement, Licensor will not have an adequate remedy in money or damages. Licensor shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request. Licensor's right to obtain injunctive relief shall not limit its right to seek further remedies.
19. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to its choice of laws provision. The parties hereby agree that the exclusive jurisdiction for all actions or claims hereunder or relating hereto shall be the state and federal courts of Tyler, TX. The parties hereby irrevocably submit themselves to the jurisdiction of such courts for such purposes and waive any objections to such jurisdiction on the basis of forum non conveniens, or otherwise.
20. If either party brings any action to this Agreement against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney fees and expenses of litigation.
21. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.
22. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency relationship or as granting a franchise.
23. Licensee shall pay, and be responsible for any and all sales taxes, use taxes and any other taxes imposed by any jurisdiction as a result of (a) the entry into this Agreement; (b) the performance of any of the provisions of this Agreement; or (c) the transfer of any property, rights or any other grant hereunder.

24. Should any court of competent jurisdiction declare any terms of this Agreement void or unenforceable, such declaration shall have no effect on the remaining terms.
25. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and fully supercedes any and all prior understandings, representations, warranties and agreements between the parties pertaining to the subject matter hereof, and may be modified only by a written agreement signed by both of the parties hereto
26. The terms of Sections 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate as of the respective dates set forth below to become effective as of the Effective Date set forth on the first page above.

(School Name) (Date)

(Authorized Representative) (Title)

(Authorized Representative for Firelight Books) (Title)

(Date)

Exhibit A

The **Nichols Behavior Checklist (NBC)** is an RTI Level 1 behavior screening tool that yields an individualized report with recommendations. The NBC is Internet based and may be used district wide for data analysis.

Exhibit B

School district name
School district address
School district state
School district zipcode
School district phone number

District Administrator (Key Contact) Full Name
District Administrator Position
District Administrator Email
District Administrator phone number

Second District Administrator Full Name
Second District Administrator Position
Second District Administrator Email
Second District Administrator phone number

FOR ALL SCHOOLS

Attach an excel spreadsheet with the following **school** info in column format (comma delineated):

School name
School address
School state
School zipcode
School phone number
School Administrator (Key Contact) Full Name
School Administrator Position
School Administrator Email
School Administrator phone number
Second School Administrator Full Name
Second School Administrator Position
Second Administrator Email

FOR ALL TEACHERS

Attach an excel spreadsheet with the following **teacher** info in column format (comma delineated):

Employee ID number First Name Last Name Email Username Password Confirm Password

FOR ALL STUDENTS

Attach an excel spreadsheet with the following **student** info in column format (comma delineated):

Student ID number First Name Last Name Gender Birthday

All Exhibit B information sent via email to mike@firelightbooks.com.