

License Agreement

This LICENSE AGREEMENT (the “Agreement”) is between SECOND NATURE LEARNING, LLC, a New York limited liability company, with a place of business at 10 Seaman Lane, New Windsor, NY 12553 (the “Company”), and _____, with a place of business at _____ (the “Customer”). This Agreement shall apply to Customer’s and each User’s access to and/or use of any Company’s Licensed Product (as defined below).

Access to and/or any use of the Licensed Products will constitute acceptance of all terms and conditions contained herein. This Agreement incorporates by reference all applicable Purchase Orders of the Company.

1. **License.** Company grants to Customer and each User a non-exclusive, non-transferable, limited right to access and use the Licensed Products in accordance with this Agreement. Customer is solely responsible for selecting, purchasing, installing and maintaining the hardware, equipment, and other software necessary to use the Licensed Products.

2. **Purchase Order.** For purposes of this Agreement, “Purchase Order” shall mean any agreement, invoice, purchase order, or subscription confirmation detailing the terms of Customer’s subscription to the Licensed Product. Renewal of any Subscription for any Licensed Product following any changes to this Agreement will constitute acceptance of those changes.

A. The Customer agrees to buy memberships for its students, whereas the details such as the number of student accounts and length of the subscription (the “Subscription Term”) shall be detailed in such Purchase Order or “PO.” Once a PO is received by the Company, the Company shall create the number of activation codes requested by the PO that will enable the creation of accounts for the students.

B. The Purchaser Order shall state the name of the teacher or supervisor responsible for the Teacher Account.

3. **Definitions and Responsibilities.**

A. The term “Customer” shall refer only to parties, including but not limited to, the school, school district, school system, education agency or institution or similar organization, who have agreed to purchase the Licensed Product and services.

B. The term “Users” shall refer collectively, to all Customers and all parties authorized by the Customer to use the Licensed Products and services, who are currently enrolled students.

C. Customer shall notify all Users of the terms of this Agreement and Terms of Use by means that will notify Users that use is subject to the terms of this Agreement and Terms of Use.

D. If applicable, the number of Users and/or locations must not exceed the maximum number of users and/locations specified on the Order Form.

E. The Customer shall be able to replace Users with other students, not to exceed the number of memberships ordered and paid for. Teacher Accounts are not counted in the paid memberships.

Activation codes or memberships cannot be sold, lent, gifted or otherwise transferred to other schools, school districts, school systems, educational agencies or institutions, or similar organizations.

F. The term “Licensed Product” shall mean the web-based application and related services of QwertyTown (located at www.qwertytown.com).

G. Customer and User’s access to and use of the Licensed Product are governed by the terms and conditions of this Agreement and the Terms of Use (located at <http://www.qwertytown.com/terms>).

4. **Payment.** At the beginning of the Subscription Term, Company will send an invoice to Customer to one designated billing address. If Customer upgrades a Subscription (e.g., increases the number of maximum authorized Users), Company will invoice Customer for additional Subscription Fees at the prices in effect at the time of the change, on a pro rated basis over the remainder of the current Subscription Term.

A. Within sixty (60) days after agreeing to a new Subscription, Customer must notify Company of any existing Company subscription that needs to be cancelled as a result of the new Subscription. If Customer gives timely notice, Company will apply any payments made by Customer on the unfulfilled portion of the existing Subscription to amounts owed for the new Subscription.

B. All Subscription Fees listed on the Order Form are exclusive of any taxes and charges for replication, telecommunication, software, hardware, and other equipment. Company is required by law to collect all state and local sales, use, and similar taxes that apply to a Customer’s purchase. Unless the Customer provides Company with a valid, complete, and signed tax exemption certificate applicable to the Licensed Product’s ship-to locations, Customer is responsible for paying sales and all other taxes associated with the order. If applicable, a separate charge for these taxes will be shown on the invoice. Customer agrees to promptly pay such invoice.

C. All payments are due to Company within thirty (30) days after the invoice date. After thirty (30) days, Company will assess interest on all amounts reflected in the invoice at a rate of 1% per month. Company may also immediately terminate access to the Licensed Products by Customer and Users without further notice if Company does not receive payment within sixty (60) days after the invoice date.

5. **Renewals.** Company reserves the right to revise its prices for renewal Subscriptions at any time and without notice. Customer’s payment of any renewal invoice will constitute acceptance of the renewal price and the renewed Subscription, which will continue to be otherwise governed by this Agreement (including any applicable Order Form). The conditions of payment described in Section 4 shall apply to all payments of renewal invoices.

6. **Copyright.** The Licensed Products contain proprietary Content and/or Software of Company that is protected by copyright and other laws respecting proprietary rights. The Licensed Products also may contain similarly protected licensed proprietary material of third party licensors. Company and its licensors retain all rights in the Licensed Products, including (without limitation) all copyright and other proprietary rights worldwide in all media. Customer and Users may not use the Licensed Products except as expressly permitted under this Agreement, the Terms of Use, and under U.S. copyright laws. Customer is responsible for making Users aware of the Terms of Use. Company reserves the right to revise the Terms of Use at any time.

7. Use of the Licensed Products.

A. Authorized end users may access the Licensed Products for their individual or personal use as permitted by the Terms of Use. Customer may not use the Licensed Products for commercial purposes, including, but not limited to, the sale of the Licensed Products or bulk reproduction or distribution of the Licensed Products in any form. Unless otherwise authorized in writing by Company or appropriate licensor, any routine or systematic distribution of any portion of the Licensed Products is strictly prohibited. The rights granted here are an expansion of the rights granted under the Copyright Act and do not include any rights to reproduce in its entirety any portion of the Licensed Products or materials contained therein. No part of the Licensed Products may be duplicated in any medium or format beyond the express terms of this Agreement without prior written authorization from Company. Any use not authorized by the Agreement is prohibited and is not a fair use under the U.S. copyright law.

B. Unless otherwise authorized in writing by Company, Customer may not and may not permit others to: reproduce, create derivative works from, perform, publish, transmit, distribute, sell (or participate in any sale), or otherwise access, use, or exploit any material retrieved from or contained in the Licensed Products in any manner whatsoever that may infringe any copyright or proprietary interest of Company or any Licensors; store any content from the Licensed Products in any information storage and retrieval system; distribute the information contained in the Licensed Products to any Person who is not duly authorized to use or receive the Licensed Products; distribute, rent, sublicense, lease, transfer or assign the Licensed Products or this License Agreement; decompile, disassemble, or otherwise reverse-engineer the Licensed Products, or alter, translate, modify, or adapt the Licensed Products to create derivative works; make use of “framing” or other means of redirecting content; copy and redistribute (internally or externally) any tables of contents, highlights, indexes, or other finding aids included in the Licensed Products.

C. Customer is expressly prohibited from placing or installing any portion of the Licensed Products on any electronic media, including, but not limited to, local or wide area networks, timesharing services, multiple processing units, multiple site arrangements, service or software rental bureaus, list servers, online services, electronic bulletin boards or forums, Web sites, or any other server that is Internet-enabled, without written authorization by Company.

D. Customer and each User acknowledge that the Licensed Products (and the licensed materials contained therein) are highly proprietary in nature and that unauthorized copying, transfer or use may cause Company or its licensors irreparable injury that cannot be adequately compensated for by means of monetary damages. Customer and each User agree that Company may enforce any breach of this License Agreement by Customer or any User by means of equitable relief (including, but not limited to, injunctive relief) in addition to any other available rights and remedies. Unauthorized reproduction, transfer, and/or use may be a violation of criminal as well as civil law.

E. Notwithstanding the foregoing, the Licensed Products may be used for purposes of research, education or other non-commercial use as follows:

Display. Customer and Users shall have the right to electronically display the Licensed Products.

Print Copy. Customer and Users may print the Licensed Products as permitted under Section 7(B) of this Agreement.

Recover Copying Costs. Customer may charge a reasonable fee to cover costs of copying or printing portions of Licensed Products for Users.

Course Packs. Customer and Authorized Users may use a reasonable portion of the Licensed Products in the preparation of Course Packs.

Electronic Reserve. Customer and Users may use a reasonable portion of the Licensed Products for use in connection with specific courses of instruction offered by Customer.

Electronic Links. Customer may provide electronic links to the Licensed Products from Customer's web page(s), and is encouraged to do so in ways that will increase the usefulness of the Licensed Products to Users.

Caching. Customer and Users may make such local digital copies of the Licensed Products as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.

Scholarly Sharing. On an occasional basis, Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Products for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale, broad distribution, or on a routine or systematic basis. In addition, Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Products in the User's own scientific, scholarly and educational works.

8. **Limitation of Liability.**

A. While Company and its Licensors attempt to include accurate and complete Content in the Licensed Products and error-free Software, occasional errors or omissions may occur in the Licensed Products. Company will make reasonable efforts to correct these errors or omissions or cause the appropriate Licensor to correct these errors or omissions. NEVERTHELESS, NEITHER COMPANY NOR SUCH OTHER PARTIES CAN MAKE ANY REPRESENTATION REGARDING THE ACCURACY OR COMPLETENESS OF THE CONTENT PROVIDED OR THE ERROR-FREE NATURE OF THE SOFTWARE PROVIDED. EXCEPT AS SPECIFICALLY PROVIDED IN THIS LICENSE AGREEMENT, THE LICENSED PRODUCTS ARE PROVIDED TO THE CUSTOMER AND USERS "AS IS." COMPANY, ITS LICENSORS, AND SUPPLIERS OF CONTENT AND SOFTWARE FOR THE LICENSED PRODUCTS MAKE NO OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED. COMPANY, ITS LICENSORS, AND SUPPLIERS OF CONTENT AND SOFTWARE FOR THE LICENSED PRODUCTS DO NOT WARRANT THE ACCURACY, COMPLETENESS, PERFORMANCE, CURRENCY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED PRODUCTS OR THE INFORMATION THEY CONTAIN OR THE METHOD OF DELIVERING THAT INFORMATION TO USERS.

COMPANY, ITS LICENSORS, AND SUPPLIERS OF CONTENT AND SOFTWARE FOR THE LICENSED PRODUCTS DISCLAIM ALL RESPONSIBILITY FOR ANY LOSS OR CLAIM OF ANY KIND RESULTING FROM, ARISING OUT OF, OR ANY WAY RELATED TO (A) ERRORS IN OR OMISSIONS FROM ANY LICENSED PRODUCT AND ITS CONTENT, INCLUDING TECHNICAL INACCURACIES AND TYPOGRAPHICAL ERRORS, (B) ANY THIRD PARTY WEB SITES OR CONTENT THEREIN DIRECTLY OR INDIRECTLY ACCESSED THROUGH HOT LINKS IN ANY LICENSED PRODUCT, (C) THE UNAVAILABILITY OF ANY LICENSED PRODUCT, (D) ANY USE OF ANY LICENSED PRODUCT, (E) ANY USE OF ANY EQUIPMENT OR SOFTWARE IN CONNECTION WITH ANY LICENSED PRODUCT, OR (F) ANY RELIANCE ON THE INFORMATION CONTAINED IN THE LICENSED PRODUCTS OR IN ANY CUSTOMER SUPPORT INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. In no event shall Company or its officers, directors, employees, shareholders, agents or representatives be liable to any User, any Customer, or any other Person for any special, indirect, incidental, exemplary or consequential damages or loss of goodwill in any way arising from or relating to this License Agreement or resulting from the use of or inability to use any Licensed Product or the performance or non-performance of any obligations under this Agreement, including the failure of essential purpose, even if such User, Customer, or other Person has been notified of the possibility of likelihood of such damages occurring. Some states do not allow the limitation or exclusion of implied warranties or liability for incidental or consequential damages, so the above limitations or exclusions may not apply to all Customers or their respective Users.

C. IN NO EVENT MAY CUSTOMER OR ANY USER BRING ANY CLAIM OR CAUSE OF ACTION AGAINST COMPANY MORE THAN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION ARISES.

D. IF THE FOREGOING LIMITATIONS ARE HELD TO BE UNENFORCEABLE, COMPANY'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT TO CUSTOMER, ANY USER, OR ANY OTHER PERSON SHALL IN ANY EVENT NOT EXCEED THE AMOUNT OF SUBSCRIPTION FEES PAID BY CUSTOMER FOR ANY LICENSED PRODUCT PURSUANT TO ANY APPLICABLE ORDER FORM.

E. To the extent allowed by applicable state law, Customer agrees to indemnify, defend, and hold Company and its licensors and suppliers harmless from and against any and all third party claims and losses arising out of or in any way related to any use of the Licensed Products, or of any content, data or documentation received through the Licensed Products by Customer or any of its Users, regardless of the form of action.

9. **Subscription Term and Termination.**

A. Except as otherwise provided, the subscription to each Licensed Product is non-cancelable and shall continue during the applicable Subscription Term; provided however, that this Agreement or a subscription may be terminated for any of the following reasons: (a) By either Company or the Customer, effective at the end of the Subscription Term, if the terminating party delivers to the other party written notice of its intent to terminate the applicable Order Form no less than 30 days before the last day of the Subscription Term; (b) immediately by Company if Company does not receive payment of any Subscription Fees within 60 days after the invoice date; (c) by either Company or the Customer, upon written notice to the other party, if the other party materially breaches any provision of this Agreement and the other party fails to remedy that breach within 30 days after such party gives written notice to the defaulting party of such breach; (d) immediately by Company if Company reasonably believes that the Customer or any User has engaged in activity that violates applicable law or any provision of this Agreement; or (e) by either party if the other party has any proceedings instituted by or against it seeking relief, reorganization or arrangement under any laws relating to insolvency, or any assignment for the benefit of creditors, or the appointment of a receiver, liquidator or trustee of any of its property or assets, or the liquidation, dissolution or winding up of its business.

B. All obligations under this Agreement when terminated shall survive termination with respect to any events occurred, or any money that was accrued and owing, prior to the effective date of any termination under this Agreement.

10. **Notices.** Notice under this Agreement shall be made in writing; sent via certified mail, return receipt requested, U.S. Express Mail or private express or mailgram service, or by facsimile, or by email

(with receipt specifically confirmed via telephone); effective upon receipt at the address stated below; and addressed as follows, unless the sending party is notified in writing of a change of address, in which event notice shall be sent to the new address:

If to Company, to the address stated above or paul@qwertytown.com.

If to Customer, to the address included on the applicable Order Form.

11. **Miscellaneous Provisions.**

A. Force Majeure. Company shall not be liable for failure to perform any part of this Agreement where such failure is due to fire, flood, power outages, strikes, labor troubles or other industrial disturbances, inevitable accidents, war (declared or undeclared), acts of terror, commercially unreasonable hostile acts by a Third Party with respect to the Licensed Products (including a denial of service attack), embargoes, blockages, legal restrictions, governmental regulations or orders, riots, insurrections, or any cause beyond the control of such party. However, Company shall use diligent efforts to resume performance. This Agreement shall not be regarded as terminated or frustrated as a result of such failure of performance that does not exceed six (6) months, and the parties shall proceed under this Agreement when the causes of such non-performance have ceased or have been eliminated.

B. No Waiver. Should Company or any Customer fail to exercise or enforce any provision of this Agreement or to waive any rights in respect thereto, such waiver or failure shall not be construed as constituting a continuing waiver or waiver of any other right.

C. Choice of Law. This Agreement shall for all purposes be governed and construed in accordance with the law of the State of New York without regard to its choice-of-law rules.

D. Entire Agreement. Unless otherwise specified in any applicable Order Form, this Agreement, as it may be amended from time to time, constitutes the entire agreement between each Customer and Company, and supersedes all prior or contemporaneous writings, discussions, agreements, and understandings of any kind, with respect to the subject matter of this Agreement.

E. Severability. If any provision of this Agreement shall be held to be unenforceable, the parties shall renegotiate those provisions in good faith to be valid, enforceable substitute provisions, which provisions shall reflect as closely as possible the intent of the original provisions of this Agreement. If the parties fail to negotiate a substitute provision, this Agreement will continue in full force and effect without that provision and will be interpreted to reflect the original intent of the parties.

F. Third Party Beneficiaries. All beneficial rights (other than the right to collect fees) granted to or reserved in this Agreement by Company, including limitations of liability, warranty disclaimers, confidentiality, ownership, limitation of damages, and indemnification for third party claims, shall accrue to and are for the benefit of Licensors to the same extent as Company. Except as expressly stated therein, nothing contained in this Agreement is intended to create third party beneficiaries thereof or thereunder.

G. Each Party Acting Independently. Company and each Customer agree that, for purposes of any applicable Order Form, each is acting independently of the other, that they are not joint venturers, and that neither is an agent, partner or joint venturer of the other.

H. Amendment and Assignment. Neither this Agreement nor any Order Form shall be changed, modified or amended except by a writing signed by a duly authorized officer of Company and the

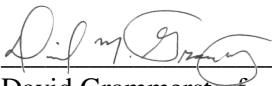
Customer. No Customer may assign this Agreement or any rights or obligations created under this Agreement without the prior written consent of Company.

I. Headings and Cross-References. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. All references to Sections or headings shall be deemed references to such parts of this Agreement, unless the context shall otherwise require.

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this Agreement as of the date first set forth above.

COMPANY:

SECOND NATURE LEARNING LLC

By: 
Name: David Grammerstorf
Title: Co-Founder

AGREED TO AND ACCEPTED:

CUSTOMER:

By: _____
Name:
Title:
Date: