



## TBH BRANDS LLC

### TBH TOOLKITS LICENSING AGREEMENT

License Agreement (“Agreement”) dated as of the date the user clicks acceptance between **TBH® Brands, LLC**, a New Jersey limited liability company, (“**TBH® Brands**”), and the user that clicks acceptance to this Agreement (the “Subscriber”) with respect to the products that user clicks below as desiring to obtain a license with respect thereto (each individually, the “Production License” and collectively, the “Product Licenses”). (TBH Brands and Subscriber shall be collectively referred to as the “Parties” and each individually as a “Party”.)

THIS IS A BINDING CONTRACT. BY ACCESSING, DOWNLOADING OR USING ANY OF THE PRODUCT LICENSES OR BY INDICATING “ACCEPT” YOU FULLY AGREE TO ALL OF ITS TERMS AND CONDITIONS. IF YOU DO NOT FULLY AGREE, YOU MUST NOT ACCESS, USE OR DOWNLOAD ANY OF THE PRODUCT LICENSES. **IF INSTALLED AT A COMPUTER OWNED BY OR LOCATED AT AN ADDRESS OF YOUR EMPLOYER, YOU ARE ASSUMED TO HAVE AGREED ON ITS BEHALF AND THE TERM “SUBSCRIBER” SHALL REFER TO YOUR EMPLOYER, AND IN SUCH EVENT YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR EMPLOYER.**

WHEREAS, subject to the terms and conditions set forth in this Agreement, TBH® Brands desires to provide, and Subscriber desires to receive a license to use the Product Licenses.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration receipt of which is acknowledged, it is agreed as follows:

#### 1. SCOPE OF LICENSE

- 1.1 Subject to the terms and conditions of this Agreement, for the term that Subscriber purchases a license under Schedule A with respect to any Product License, TBH® Brands hereby grants to Subscriber **a limited, non-exclusive, non-transferable, non-sublicensable license to access and use such Product License solely at one site or location**, including, without limitation, the right to print copies of certain of the materials included in the Product Licenses, provided that such printed copies are used solely by Subscriber. In addition to the extent provided in Schedule A with respect to a Product License licensed by Subscriber, Subscriber shall have the right to purchase such hard copies of the materials as are set forth in Schedule A as being available in hard copies with respect to such Product License. In the event that Subscriber desires to use the Product License at more than one location or site, then Subscriber agrees that it shall purchase a license for each such site and location.
- 1.2 Notwithstanding anything to the contrary contained in this Agreement, Subscriber has no right to provide the Product Licenses to any third party for use by such third party. In no event shall Subscriber use the Product Licenses in the operation of a service bureau or its equivalent, or use the Product Licenses to provide outsourcing services to a third party. Subscriber does not have the right to use the Product Licenses beyond the scope of the license granted herein and all rights not granted to Subscriber hereunder are expressly reserved to TBH Brands.
- 1.3 Subscriber shall ensure that its personnel who use the Product Licenses do not (i) use any spider or other system, device or program (whether automated or otherwise) to extract any data from the Product Licenses or (ii) attempt to gain unauthorized access to other users’ accounts or data.



- 1.4 Subscriber agrees to the terms and conditions of the Privacy Policy posted on the Site, as such terms and conditions are amended from time to time by TBH® Brands.

## 2. FEES AND PAYMENT

- 2.1 Subscriber shall pay TBH® Brands the fees set forth in Schedule A (the “License Fees”) in accordance with Schedule A. With respect to Product Licenses that have a term of more than one annual period or that can be renewed pursuant to Schedule A for more than one term, Subscriber shall pay TBH® Brands the additional payments for each subsequent annual period at least ten days prior to the expiration of the current annual period. Payments not paid when due shall accrue interest at the lower of (a) the maximum amount permitted by law, and (b) 1.0% per month, until all amounts due, plus all accrued interest, are paid in full. This late charge shall be in addition to, and not in lieu of, TBH® Brands’ other rights and remedies.
- 2.2 Subscriber agrees to pay all taxes arising out of this Agreement, the license granted under this Agreement, and the use of the Product Licenses, except for taxes based on TBH® Brands’ income, which taxes shall be paid by TBH® Brands. If any tax for which Subscriber is responsible hereunder is paid by TBH® Brands, Subscriber will promptly reimburse TBH® Brands upon Subscriber’s receipt of proof of payment.

## 3. DISCLAIMERS AND LIMITATION OF LIABILITY

- 3.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCT LICENSES AND THE MATERIALS AND INFORMATION CONTAINED IN THE PRODUCT LICENSES ARE PROVIDED “AS IS”. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, TBH BRANDS EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE PRODUCT LICENSES AND THE MATERIALS AND INFORMATION CONTAINED IN THE PRODUCT LICENSES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING FROM COURSE OF DEALING OR USE OF TRADE. NO WARRANTY IS MADE THAT THE PRODUCT LICENSES, THE MATERIALS AND INFORMATION CONTAINED IN THE PRODUCT LICENSES OR THE USE THEREOF WILL BE ERROR-FREE OR UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE PRODUCT LICENSES WILL BE CORRECTED OR THAT THE PRODUCT LICENSES’ FUNCTIONALITY WILL MEET SUBSCRIBER’S REQUIREMENTS. IN ADDITION, THE OPERATION OF THE PRODUCT LICENSES IS DEPENDENT UPON THE OPERATION OF THE INTERNET AND THE CONNECTIONS TO THE INTERNET. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT TBH® BRANDS HAS NO CONTROL OVER INTERRUPTIONS IN SERVICE, DELAYS OR FAILURES WITH RESPECT TO THE OPERATION OF THE INTERNET OR CONNECTIONS TO THE INTERNET.
- 3.2 THE PRODUCT LICENSES ARE NOT INTENDED OR TO BE USED FOR DIAGNOSIS, EVALUATION, SCREENING OR TREATMENT FOR ANY MEDICAL CONDITIONS, DISEASES OR DISORDERS. THE PRODUCT LICENSES SHOULD NOT BE USED OR REGARDED AS A SUBSTITUTUE FOR MEDICAL SCREENING, DIAGNOSTIC TESTS OR SERVICES. TBH® BRANDS IS NOT LICENSED BY ANY GOVERNEMNTAL AUTHORITY AND DOES NOT OFFER TO, OR ENGAGE IN, THE PRACTICE OF MEDICINE OR ANY OTHER STATE-LICENSED HEALTH CARE PROFESSION. TBH® BRANDS AND THE PRODUCT LICENSES DO NOT SCREEN, DIAGNOSE OR PROVIDE ANY TREATMENTS OR MEDICAL SERVICES FOR ANY DISEASE, PAIN, INJURY OR PHYSICAL OR MENTAL CONDITION. ANY STATEMENTS MADE IN ANY MATERIALS OR ON TBH BRANDS’ WEB SITE OR OTHER POSTS WITH RESPECT TO THE PRODUCT LICENSES HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION OR ANY OTHER GOVERNMENTAL AUTHORITY.



- 3.3 If any of the Product Licenses or any component of the Product Licenses becomes, or in TBH Brands® opinion are likely to become, the subject of any third party claim or action claiming that such Product Licenses infringe on any patent, copyright, or other intellectual property right of a third party, then TBH® Brands, at its expense and at its sole option, may either: (a) procure for Subscriber the right to continue using such Product Licenses, (b) modify such Product Licenses to render it non-infringing (providing such modification does not materially adversely affect the Product License, or (c) replace such Product Licenses with comparable products. All of the foregoing options will be at no additional cost to Subscriber. If none of the foregoing are commercially practicable, then TBH® Brands shall have the option to terminate the license to such Product Licenses and this Agreement, and Subscriber shall be entitled to a pro-rata refund of the portion paid to TBH® Brands for such Product Licenses after the date of termination of this Agreement.
- 3.4 IN NO EVENT SHALL TBH® BRANDS OR ITS THIRD PARTY PROVIDERS AND ITS AND THEIR AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS AND EMPLOYEES BE LIABLE TO SUBSCRIBER OR ITS EMPLOYEES FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITING, DAMAGES FOR LOSS OF BUSINESS PROFITS OR LOSS OF GOODWILL OR REPUTATION, ARISING OUT OF THIS AGREEMENT, THE PRODUCT LICENSES OR ANY MATERIALS OR INFORMATION CONTAINED IN THE PRODUCT LICENSES, OR THE USE OF OR INABILITY TO USE THE PRODUCT LICENSES OR ANY MATERIALS OR INFORMATION CONTAINED IN THE PRODUCT LICENSES, EVEN IF TBH® BRANDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT SHALL TBH® BRANDS HAVE ANY LIABILITY WITH RESPECT TO ANY THIRD PARTY CLAIMS, EVEN IF THE CLAIMS ARISE OUT OF OR RELATE TO ANY OF THE PRODUCT LICENSES OR ANY OF THE MATERIALS OR INFORMATION CONTAINED THEREIN. THE AGGREGATE LIABILITY OF TBH BRANDS UNDER THIS AGREEMENT AND WITH RESPECT TO THE PRODUCT LICENSES AND THE MATERIALS AND INFORMATION CONTAINED IN THE PRODUCT LICENSES (IRRESPECTIVE OF THE BASIS OF SUCH CLAIM AND INCLUDING, WITHOUT LIMITATION, TORT CLAIMS) SHALL BE LIMITED TO THE FEES PAID FOR THE PRODUCT LICENSES DURING THE SIX MONTH PERIOD PRIOR TO SUCH CLAIM BEING MADE.
- 3.5 SUBSCRIBER AGREES TO INDEMNIFY AND HOLD HARMLESS TBH® BRANDS, ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS AND EMPLOYEES FROM ALL THIRD PARTY CLAIMS AND ALL DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND COURT COSTS) ARISING OUT OF OR RELATING TO THE USE BY SUBSCRIBER OF THE PRODUCTION LICENSES OR THE INFORMATION OR MATERIALS CONTAINED IN THE PRODUCT LICENSES.
- 3.6 SUBSCRIBER UNDERSTANDS AND AGREES THAT THE LIMITATIONS AND EXCLUSIONS SET FORTH HEREIN REPRESENT THE PARTIES' AGREEMENT AS TO THE ALLOCATION OF RISK BETWEEN THE PARTIES IN CONNECTION WITH TBH® BRANDS' OBLIGATIONS UNDER THIS AGREEMENT. THE FEES PAYABLE TO TBH® BRANDS HEREUNDER REFLECT, AND ARE SET IN RELIANCE UPON, THE ALLOCATION OF RISK SET FORTH HEREIN AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES AND LIMITATIONS OF LIABILITY SET FORTH HEREIN.

## 4. OWNERSHIP; CONFIDENTIALITY

- 4.1 Subscriber acknowledges that all right, title, and interest in and to the Product Licenses and the materials and information contained in the Product Licenses are owned by and at all times shall remain with TBH® Brands. Subscriber acknowledges that no right, title, or interest in or to the Product Licenses or the materials and information contained in the Product Licenses are granted under this Agreement, and no such assertion shall be made by Subscriber. Subscriber acknowledges that the Product Licenses and all



materials and information contained in the Product Licenses, including, without limitation, all copies thereof, and all updates and other information regarding the Product Licenses that Subscriber may receive are confidential and proprietary to TBH® Brands, contain trade secrets of TBH® Brands, and are and shall remain the sole property of TBH® Brands. Nothing in this Agreement shall alter these rights and no title to or ownership of the Product Licenses, the materials and information contained in the Product Licenses or any intellectual property rights are transferred to Subscriber. No rights are granted other than the limited license rights expressly set forth herein. Subscriber is granted only a limited right of use of the Product Licenses as set forth herein, which right of use is not coupled with an interest and is revocable in accordance with the terms of this Agreement.

- 4.2 Subscriber agrees that the Product Licenses and the materials and information contained in the Product Licenses are the confidential information of TBH® Brands. Subscriber shall use all reasonable measures to protect the confidentiality of the Product Licenses and the materials and information contained in the Product Licenses, including, without limitation, only allowing access to the electronic versions of the Product Licenses through use of individual user passwords and identification numbers. All uses of the Product Licenses through Subscriber's account shall be deemed as used by Subscriber, irrespective of whether such user is authorized by Subscriber.

## 5. TERM AND TERMINATION; SUSPENSION

- 5.1 The term of the license granted hereunder with respect to any Product License that is licensed by Subscriber pursuant to Schedule A shall be for the term set forth in Schedule A with respect to such Product License.
- 5.2 In the event of any material breach of this Agreement by one Party, the non-breaching Party may terminate this Agreement by giving ten (10) days' written notice thereof; provided, however, that any such termination shall not be effective if the Party in breach has cured the breach of which it has been notified prior to the expiration of such ten (10) days. The right to terminate this Agreement, except where otherwise expressly stated in this Agreement, shall not be the exclusive remedy hereunder and shall be in addition to and not in lieu of, other relief provided herein, at law and in equity. However, this provision shall not supersede the limitations of liability contained in this Agreement. In addition, in the event that the Subscriber fails to pay any amounts when due with respect to a Product License, TBH® Brands has the right to suspend until payment is made in full by Subscriber (including, without limitation, any interest owed pursuant to this Agreement) the Subscriber's access to such Product License without providing written notice to Subscriber.
- 5.3 Upon the termination of this Agreement for any reason, Subscriber shall immediately discontinue use of, delete from its systems and destroy or return to TBH® Brands all copies of the Product Licenses and the materials and information contained therein, except if Subscriber purchased hard copies of any materials contained in the Product Licenses, Subscriber has the right to maintain such materials, provided that this Agreement is not terminated by TBH® Brands for breach by Subscriber.

## 6. GENERAL

- 6.1 Notices. Unless otherwise specified all notices shall be in writing and delivered personally, mailed by certified mail, return receipt requested, or by an internationally recognized overnight courier, to the addresses of TBH® Brands set forth above and to Subscriber at the address provided by Subscriber at the time of Subscriber's payment for the License Products.



- 6.2 No Assignment by Subscriber. Subscriber may not assign or transfer this Agreement, any license granted hereunder, nor sublicense any license herein granted. Any assignment or transfer in violation of this Section is null and void.
- 6.3 Governing Law. This Agreement and all claims arising out of or relating to this Agreement, the Product Licenses, including, without limitation, tort claims shall be governed by the laws of the State of New Jersey, without regard to conflict of law principles, except that all claims with respect to copyrights and patents shall be governed by United States federal laws. The Parties further agree that the state and federal courts of the State of New Jersey shall be exclusive forum for all suits, actions or proceedings arising from or relating to this Agreement, to which exclusive jurisdiction both Parties hereto hereby agree to submit and waive any and all rights to claim inconvenient forum or immunity.
- 6.4 Modification, Amendment, Supplement and Waiver; Severability. No modification, course of conduct, amendment, supplement to or waiver of this Agreement or any provisions hereof shall be binding upon the Parties unless made in writing and accepted by TBH® Brands in writing and by Subscriber by clicking acceptance. At no time shall any failure or delay by either Party in enforcing any provisions, exercising any option, or requiring performance of any provisions, be construed to be a waiver of same. If any of the provisions of this Agreement are held invalid, illegal or unenforceable, the remaining provisions shall be enforceable.
- 6.5 Survival. The parties' respective rights and obligations under Sections 2, 3, 4, 5.3 and 6 shall survive the expiration and termination of this Agreement.
- 6.6 Entire Agreement; Headings. The Schedules to this Agreement are incorporated herein by reference and shall constitute part of this Agreement. This Agreement, the Privacy Policy and any other terms and conditions posted on the Site constitute the entire agreement between the Parties and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the Parties respecting the subject matter hereof. In the event of any inconsistency between this Agreement and the terms and conditions posted on the Site, this Agreement shall govern and control. Headings in this Agreement are only for convenience and should not be given interpretive effect.



## SCHEDULE A

### TBH® BRANDS, LLC

#### TBH® TOOLKITS PRODUCT LICENSES AND FEES

PRODUCT	TERM (YEARS)	FEE YEAR 1 FOR EACH SITE OR LOCATION	FEE YEARS 2+ For Continual Use FOR EACH SITE OR LOCATION
TBH® FAIR Toolkit	1-YEAR	\$399.00	\$199.00
TBH® BRAIN WORKOUT Toolkit	1-YEAR	\$399.00	\$199.00
TBH® BRAIN WORKOUT Toolkit "In Just 15!"	1-YEAR	\$399.00	\$199.00
TBH® BRAIN WORKOUT 2.0 Toolkit Personal Best	1-YEAR	\$599.00	\$299.00
TBH® MEMORY Toolkit	1-YEAR	\$399.00	\$199.00
TBH® MEMORY Toolkit "In Just 15!"	1-YEAR	\$399.00	\$199.00
TBH® Memory Toolkits Student Workbooks, package of 10	--	\$159.00	--
TBH® BRAIN WORKOUT 2.0 Personal Best Challenge Logs, package of 10	--	\$159.00	--

*Reflects license subscription fees as of 4/1/17.*

*Fees posted apply to online access to all licensed materials. Printed Materials may be purchased directly from TBH Brands LLC for an additional fee, as indicated on the TBH Toolkits website.*

*Discounted and promotional pricing may vary. TBH Brands LLC reserves the right to adjust licensing and subscription fees based on promotional programming and future costs of service.*