

## **Together<sup>®</sup> Academic Site License Agreement**

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This Academic Site License Agreement ("Agreement") is entered into the Day day of Month, Year ("Effective Date") between TogetherSoft Corporation, a Delaware corporation with its principal place of business at Raleigh NC ("TS"), and Name of Institution, ("Institution").

### **Section 1 DEFINITIONS**

For purposes of this Agreement, the following terms shall have the meanings indicated below:

1.1 The "Products." The "Products" covered under this Site License Agreement are the software programs listed in Schedule A, in object code form only, without buyer specific modifications, and the Documentation for the software. The Source Code is not part of the Products and is not transferred pursuant to this Agreement. TS has no obligation to provide support or upgrades. Upgrades are announced at [www.togethersoft.com](http://www.togethersoft.com).

1.2 "Documentation" means user guides, manuals, and materials developed for use with the Products.

1.3 "Intellectual Property Rights." The legal rights or interests evidenced by or embodied in (1) any idea, design, concept, technique, invention, discovery, or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; (2) any work of authorship, regardless of copyrightability, but including copyrights and any moral rights recognized by law; and (3) any other similar rights, all on a worldwide basis.

1.4 "Institution", "User", or "Users" refers to the entity named above, but does not include any other entity which is or at any time becomes a subsidiary, parent, related but separate campus, or related entity of Institution. In addition, "User" or "Users" shall also refer to any faculty member or student who receives a copy of the Products pursuant to this Agreement.

1.5 "Institution's Representative" or "Rep" shall be the Institution's faculty or department which shall distribute to and keep a list of all faculty and students which are using the Products under this License.

1.6 "Registered with the Rep" shall mean that the faculty member or student who wants a copy of the Products has reported to the Rep his or her full name, mailing, and e-mail addresses. Once an individual has Registered with the Rep, the Rep can then provide those faculty members or students with license keys to the Products and a copy of this Agreement. Lists of such registered users shall be available for inspection by TS upon reasonable notice, and a copy shall be given to TS at the end of each license period.

1.7 "Licensed Sites" means every computer, workstation, or server (hereinafter sometimes collectively referred to as "computer") owned by the Institution on its campus, on which a copy of any one of the Products is installed or stored and which prior to installation or storage, was Registered with the Rep. "Licensed Sites" also means a computer owned or regularly used by a faculty member or regularly enrolled student upon which that person has installed or stored a copy of the Products for the convenience of continuing academic or educational work done at the Institution at his or her home or residence or other place where the computer is located. A computer is not a Licensed Site if the Products are used to develop a commercial program application, regardless of its location.

### **Section 2 GRANT OF ACADEMIC SITE LICENSE**

2.1 License. TS hereby grants to Users a nontransferable, nonexclusive right and license to use the Products at the Licensed Sites. In return, Users agree to comply with all the requirements of this Agreement.

2.2 Permitted Uses. Institution may permit its faculty and students to use the Products for academic and educational purposes only. The Products may not be used for any profit-making purpose, such as, for example, the development of commercial program applications, including applications developed for Institution's own, internal use, such as administrative applications for the Institution. Institution shall have no liability for actions taken by faculty and student Users in violation of this Agreement to whom the Rep has provided a license key in accordance with this Agreement and in good faith.

2.3 No Right to Modify or Transfer. Users may not modify the Products in any way, such as by reverse engineering, decompiling, disassembling, translating or adapting.

2.4 Upgrades; No Duplicative License. If TS provides an upgrade of an earlier version of the Products licensed to Institution, each upgrade and earlier version together constitute one licensed copy of the Products.

2.5 Site License. This is a site license; that is to say, the copies of the Products may be installed on any Licensed Site; however, once installed, a copy cannot be moved to another site.

2.6 Integrity of Copies. Institution agrees that it is solely responsible for the integrity of any copy that it makes of the Products and that each copy will contain the proper TS copyright, trademark, patent, proprietary rights and confidentiality notices and restricted rights legends. Institution also agrees that it will distribute a copy of this Agreement with each copy of the Products that it distributes.

2.7 Term of License. The term of this license shall run until July 15 of the year next following the Effective Date, and will be automatically extended for one year periods, so long as the Institution is in full compliance with the terms of this License and the License has not been otherwise terminated or canceled.

2.8 Termination. This Agreement may be terminated in the following manners: (a) either party may terminate this Agreement at the end of a yearly term, with 30 days written notice; or (b) TS may terminate this Agreement at any time, by written notice to Institution, if Institution fails to comply with any of the terms or conditions of this Agreement. Within ten (10) days after any termination of this license hereunder, Institution shall destroy or return to TS the original and all copies of the Products and shall certify in writing to TS that it has done so.

### Section 3 OWNERSHIP, INTELLECTUAL PROPERTY RIGHTS AND NON-DISCLOSURE

3. Ownership, Intellectual Property Rights and Non-Disclosure. Title to and ownership of Intellectual Property Rights with respect to the Products and the Products themselves shall at all times remain solely and exclusively with TS, and Users shall not take any action inconsistent with such title and ownership.

3.1 Except as specifically provided herein, Institution shall not cause or permit disclosure, copying, display, loan, publication, transfer of possession (whether by sale, exchange, gift, operation of law, or otherwise) or other dissemination of the Products, in whole or in part, to any third party without the prior written consent of TS. Institution shall promptly report to TS any actual or suspected violation of this clause and shall take such further steps as may reasonably be requested by TS to prevent or remedy any such violation. Institution shall include without alteration any copyright, trade secret, proprietary and/or other legal notices contained on or in the Products.

3.2 Institution shall promptly respond to all reasonable inquiries by TS concerning Institution's compliance with the provisions of this Agreement and shall reasonably cooperate with TS in any investigation by TS of violations of this Agreement.

### Section 4 WARRANTIES

4. Warranties. TS makes no warranties with regard to The Product.

**4.1 DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SOFTWARE AND ANY DOCUMENTATION ARE**

**PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TOGETHERSOFT CORPORATION SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE RELATED TO DEFECTS IN THE PRODUCT. USER BEARS ALL RISK RELATING TO QUALITY AND PERFORMANCE OF THE SOFTWARE.**

**IN NO EVENT SHALL TOGETHERSOFT CORPORATION BE LIABLE FOR ANY LOSS OF PROFIT OR ANY OTHER COMMERCIAL DAMAGE, INCLUDING BUT NOT LIMITED TO SPECIAL, INCIDENTAL CONSEQUENTIAL OR OTHER DAMAGES, EVEN IF TOGETHERSOFT HAS BEEN INFORMED OR HAS OTHERWISE LEARNED OF THE POSSIBILITY OF A CLAIM FOR THE SAME.**

**NO LICENSE FOR AIRCRAFT AND NUCLEAR APPLICATIONS. The Product is not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility. No license is granted by TogetherSoft for these uses. TogetherSoft disclaims any express or implied warranty of fitness for such uses.**

4.2 No Infringement. The Products will not infringe the rights of any third party. Notwithstanding the foregoing, TS shall not have any liability to Institution under this section if the infringement or claim is based upon (i) the use of the Products in combination with other equipment or software which is not furnished by TS, (ii) the Products after they have been modified or altered by Institution or other User, or (iii) the furnishing to Institution of any information, service or application assistance. Institution shall indemnify and hold TS harmless against any expense, judgment or loss for infringement of any patents, copyrights or trademarks as a result of TS's compliance with Institution's designs, specifications or instructions. No cost or expenses shall be incurred for the account of TS without the prior written consent of TS. **IN NO EVENT SHALL TS'S TOTAL LIABILITY TO USER UNDER THIS SECTION EXCEED THE AGGREGATE SUM PAID TO TS BY INSTITUTION FOR THE ALLEGEDLY INFRINGING PRODUCT. THE FOREGOING STATES THE ENTIRE LIABILITY OF TS WITH RESPECT TO INFRINGEMENT OF PATENTS OR COPYRIGHTS BY ANY OF THE PRODUCTS, SOFTWARE OR DOCUMENTATION OR ANY PART THEREOF OR THEIR OPERATION.**

### Section 5 LIABILITY LIMITATION

5. Limitation of Liability. The express obligations contained in this Agreement are in lieu of all liabilities or

obligations of TS for damages, including, but not limited to, general, special or consequential damages, including liability for third party claims, arising out of or in connection with the delivery, use or performance of the Products, or arising from the negligence of TS, its employees, officers, directors, or consultants. In addition, User further agrees that TS's liability to User for damages resulting from any cause whatsoever shall be limited to the charges paid by User for use of the Products relating to the cause of such damages.

## Section 6 MISCELLANEOUS

6.1 Publicity. The parties shall have the right to disclose that they have entered into this license agreement and that the Institution provides the Products to its faculty and students.

6.2 This Agreement contains the entire agreement between the parties with respect to the Products, and TS makes no representations to Institution except as expressly set forth herein. This Agreement shall not be modified, amended or waived, in whole or in part, except by written agreement of the parties hereto.

6.3 Injunctive Relief. Because unauthorized use or transfer of the Software or User Documentation, or any information contained therein, may diminish substantially the value of such materials and may irrevocably harm TS, if User breaches the provisions of this Agreement, TS shall (without limiting its other rights or remedies) be entitled to equitable relief (including but not limited to injunctive relief) to protect its interests.

6.4 All notices shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, to the other party at its address set forth in the

signature blocks, below. The date of personal delivery or the date of mailing, as the case may be, shall be deemed to be the date on which such notice is given.

6.5 All rights and remedies of either party shall be cumulative and may be exercised singularly or concurrently. The failure of either party, in any one or more instances, to enforce any of the terms of this Agreement shall not be construed as a waiver of future enforcement of that or any other term.

6.6 If any provision of this Agreement shall for any reason be held illegal or unenforceable, such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement. TS shall not be liable for failure to fulfill any of its obligations under this Agreement due to causes beyond its control.

6.7 Arbitration. Any dispute relating to the terms, interpretation or performance of this Agreement (other than claims for preliminary injunctive relief or other pre-judgment remedies) shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in Raleigh, North Carolina USA under the rules and procedures of the American Arbitration Association ("AAA"). The award may be enforced in any state court of competent jurisdiction in North Carolina.

6.8 Governing Law ; Jurisdiction. This Agreement shall be governed and interpreted in accordance with the substantive law of the State of North Carolina. The parties agree that this Agreement is entered into in the State of North Carolina and that the courts of the State of North Carolina shall have jurisdiction over the parties and subject matter of this Agreement.

### AGREED TO BY INSTITUTION:

\_\_\_\_\_  
(Signature)

Name of Person Signing:

Title of Person Signing:

Name of Academic Institution:

Department:

Address: \_\_\_\_\_

Country:

Phone:

Fax:

E-Mail:

**Please fax an executed copy of this document to:**

Amy Charbonneau  
900 Main Campus Drive, Ste. 500  
Raleigh, NC 27606  
USA

Amy.Charbonneau@togethersoft.com

919-833-5550 ext. 1114 (main)

919-833-5534 (fax)

**Please keep a copy of this form for your records.**