

SALES AND LICENSE AGREEMENT FOR TEACHING IN TECHNICAL INSTITUTES SERIES

This Sales and License Agreement ("Agreement") is between _____ ("Customer") and the Georgia Southern University Research and Service Foundation ("GSURSF"). This Agreement shall apply to Customer's and each User's access to and/or use of the GSURSF electronic products that are part of the series entitled *Georgia Center for Educational Renewal: Teaching in Technical Institutes* ("Licensed Products").

Purchase of, access to, and/or any use of the Licensed Products will constitute acceptance of all terms and conditions contained herein.

1. **License.** GSURSF grants to the 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. **Customer.** The term "Holder" shall include all Users authorized to have access to the Licensed Products. The terms and conditions of this Agreement shall apply to each such User. If requested by GSURSF, Customer will identify to GSURSF, in writing, the names and addresses of each such User.
 - a. The number of Users and/or locations of use must not exceed the following maximum numbers:
Users: Unlimited Locations: 1
 - b. Users must be employees of Customer and shall not include third parties such as consultants, contractors, and subcontractors.
 - c. Customer may obtain additional licensing to increase the maximum number of authorized Users and Locations set forth above, but only by contacting GSURSF and obtaining a written modification to this Agreement. Customer may be required to pay for such additional licensing.
3. **Payment.** Customer agrees that the Purchase Price of the Licensed Products whose titles are listed following the first unnumbered paragraph of this Agreement shall be \$_____ (U.S.). GSURSF will send Customer an invoice that reflects this Purchase Price.
 - a. The Purchase Price listed above is exclusive of any taxes and charges for replication, telecommunication, software, hardware, and other equipment. GSURSF 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 GSURSF 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.
 - b. All payments are due to GSURSF within thirty (30) days after the invoice date. After thirty (30) days, GSURSF will assess interest on all amounts reflected in the invoice at a rate of 10 percent per month. GSURSF may also immediately revoke Customers and Users license to use the Licensed Products without further notice if GSURSF does not receive payment within sixty (60) days after the invoice date.
4. **Updates.** GSURSF may from time to time update or modify the content of its *Georgia Center for Educational Renewal: Teaching in Technical Institutes* series. Nothing in this Agreement entitles Customer to receive such updates, nor does it license Customer or Users to use any such updates to which they may obtain access. Purchase of, access to, and/or any use of updated versions of Licensed Products will require Customer to enter a separate written agreement with GSURSF.
5. **Copyright.** The Licensed Products contain proprietary Content of GSURSF that is protected by copyright and other laws respecting proprietary rights. GSURSF and its Licensors retains all rights in the Licensed Products, including (without limitation) 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 and under U.S. copyright laws. Customer is responsible for making Users aware of this provision.

6. Use of Licensed Products.

- a. 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 GSURSF, any routine or systematic distribution of any portion of the Licensed Products is strictly prohibited. The rights granted herein are an expansion of the rights granted under the U.S. 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 GSURSF. Any use not authorized by this Agreement is prohibited and is not a fair use under U.S. copyright law.
- b. Unless otherwise authorized in writing by GSURSF, 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 GSURSF or any of its 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 Agreement; decompile, disassemble, or otherwise reverse-engineer the Licensed Products or any component thereof; alter, translate, modify, or adapt the Licensed Products to create derivative works; or make use of "framing" or other means of redirecting content.
- 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 GSURSF. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to prohibit Customer from loading Licensed Products onto a central server, so long as Customer has purchased a separate license for each physical mailing address location that will have access to that central server.
- 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 GSURSF or its Licensors irreparable injury that cannot be adequately compensated for by means of monetary damages. Customer and each User agree that GSURSF may enforce any breach of this 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. Authorized end Users may access the Licensed Products for their individual or personal use as permitted by this Agreement and applicable copyright laws. Authorized Users may not: make copies or transmit the contents of a CD-ROM containing a Licensed Product in its entirety or in substantial part; attempt to alter a CD-ROM containing a Licensed Product; load a CD-ROM onto a network of any kind; place any material on any website (including intranets); publish, distribute, or sell the contents of a CD-ROM containing a Licensed Product in any manner that would violate copyright or the proprietary interest of GSURSF or any third party licensor; reproduce, create derivative works from, perform, display, publish, transmit, distribute, sell (or participate in any sale), or otherwise access, use, or exploit any material retrieved from or contained in a Licensed Product in any manner whatsoever that may infringe any copyright or proprietary interest of GSURSF or any third party licensor.

- f. Customer may not and may not permit others to distribute any component of the Licensed Products for the purpose of replaying presentations, courseware, interactive media material, interactive entertainment products, or other content other than that included as part of the Licensed Products at the time of purchase.
7. Disclaimer of Professional Advice. The information provided through the Licensed Products is not a substitute for other professional instruction, guidance, and advice. Customer and/or each User should always consult his or her own professional advisors for professional instruction, guidance, and advice.
8. Limitation of Liability.
 - a. While GSURSF attempts to include accurate and complete content in the Licensed Products, occasional errors or omissions may occur in the Licensed Products. GSURSF will make reasonable efforts to correct these errors or omissions. Nevertheless, GSURSF cannot make any representation regarding the accuracy or completeness of the content provided. Except as specifically provided in this Agreement, the Licensed Products are provided to the Customer and Users "as is." GSURSF, its Licensors, and suppliers of content and software for the Licensed Products make no other warranty or representation, either express or implied. GSURSF, 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. GSURSF and its Licensors 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 use of any Licensed Product, (c) any use of any equipment or software in connection with any Licensed Product, or (d) 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 GSURSF, Georgia Southern University, the Board of Regents of the University System of Georgia, GSURSF's Licensors, or their respective officers, directors, employees, 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 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 GSURSF more than one (1) year after such claim or cause of action arises.
 - d. If the foregoing limitations are held to be unenforceable, GSURSF's liability for damages under this agreement to Customer, any User, or any other person shall in any event not exceed the amount of the Purchase Price paid by Customer for any Licensed Product pursuant to any applicable order form.
 - e. Customer agrees to indemnify, defend, and hold GSURSF, Georgia Southern University, the Board of Regents of the University System of Georgia, and their respective 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. Termination of Rights.
 - a. Except as otherwise provided, the rights granted under this Agreement with respect to any Licensed Product may be terminated for any of the following reasons:

(i) immediately by GSURSF if GSURSF does not receive payment of the Purchase Price plus applicable taxes within 60 days after the invoice date;

(ii) immediately by GSURSF if GSURSF reasonably believes that the Customer or any User has engaged in activity that violates applicable law or any provision of this Agreement; or

(iii) by GSURSF if Customer 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 and sent via certified mail (return receipt requested), U.S. Express Mail or private express service, 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 Georgia Southern University

Research and Service Foundation, c/o Georgia Southern University,
Attention: Executive Director.
Administrative Annex,
Statesboro, Georgia 30460

If to Customer, to the following address:

11. Miscellaneous Provisions.

- a. **Force Majeure.** GSURSF 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, GSURSF 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 three (3) 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 GSURSF 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 Georgia 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 GSURSF, 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 GSURSF, 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 GSURSF. 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. GSURSF and each Customer agree that for the sale and provision of, access to, and use of Licensed Products, as well as any other purposes under this Agreement, 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. This Agreement shall not be changed, modified or amended except by a writing signed by a duly authorized officer of GSURSF and the Customer. No Customer may assign this Agreement or any rights or obligations created under this Agreement without the prior written consent of GSURSF.
- 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.

ACCEPTED AND AGREED TO BY:

Institution

("CUSTOMER") (print)

GEORGIA SOUTHERN UNIVERSITY
RESEARCH AND SERVICE FOUNDATION

Authorized Representative (signature)

Linda M. Bleicken
President

Authorized Representative (print)

Title of Authorized Representative

Date

Date