

Quest Software, Inc. ACADEMIC PROGRAM AGREEMENT

This Agreement ("Agreement") is made as of the _____ day of _____, 20__ ("Effective Date"), between Quest Software Inc., ("Quest"), a Delaware corporation, with its principal office at, at 4 Polaris Way, Aliso Viejo, CA 92656, if an Order is placed through and approved by an affiliate of Quest, then that affiliate shall be considered Quest for purposes of this Agreement and _____ ("Institution") with its principal office at _____.

PURPOSE

The purpose of Quest's Academic Program ("Quest Academic Program") is to make available certain Products under this Agreement to the Institution.

As consideration for the licenses granted by Quest herein, the parties hereby agree as follows:

1. DEFINITIONS

"Institution" shall mean an educational institution that (a) has been duly accredited by a widely-recognized accreditation authority as an educational institution organized and operated for the sole purpose of teaching its matriculated students; and (b) has been accepted by Quest, in its sole discretion, for participation in the Quest Academic Program. Qualifications for approval are listed at <http://erwin.com/education> "Institution" shall include Faculty, Staff, Students and employees of the Institution.

"Faculty" shall mean any personnel duly engaged by the Institution to teach or instruct Students and/or to conduct research on behalf of the Institution.

"Staff" shall mean any personnel duly engaged by the Institution to teach or instruct Students and/or to conduct non-commercial research or other development related activities on behalf of Institution.

"Students" shall mean students duly enrolled for educational courses made available or administered by the Institution.

"Products" shall mean Licensed Programs, Courseware, documentation and other resources available through the Quest Academic Program.

"Licensed Program" shall mean Quest's software, including any subsequent versions, releases or enhancements, if any, and related code, documentation and materials provided to the Institution by Quest pursuant to this Agreement.

"Courseware" shall mean Quest's internally developed courseware and materials that Quest makes commercially available.

2. INSTITUTION RESPONSIBILITIES AND OBLIGATIONS

2.1 At all times, Institution will act in a professional and competent manner in connection with all of its activities as a participating member of the Quest Academic Program hereunder. Institution shall avoid deceptive, misleading or unethical practices and refrain from making any representations or warranties to its Students, which are inconsistent with the policies of the Quest Academic Program and Products established by Quest.

2.2 Institution agrees to ensure that any Faculty, Staff or Student to whom Institution provides access to Products has read, understands, and agrees to be bound by the terms of this Agreement. Institution agrees to maintain records of all copies made of Products as set forth below.

2.3 Institution shall periodically provide to Quest (i) a report on utilization of the Products, in a form that Quest may reasonably request and (ii) reasonable access to Institution's facilities, to verify compliance with the provisions hereof.

2.4 Institution: (i) shall encourage certification opportunities to its Students, Faculty and Staff; and (ii) shall participate as a positive reference for the Quest Academic Program, including marketing, promotional events, news releases, lists of Quest Academic Program participants and the use of Institution's name and logo. Institution also agrees to be reasonably available as a reference account for queries from other potential Quest Academic Program participants.

2.5 At Quest's request, Institution shall provide to Quest information relating to its courses and its use of the Products.

3. Quest RESPONSIBILITIES AND OBLIGATIONS

While Institution continues its participation in the Quest Academic Program, Quest shall provide program benefits as defined at <http://erwin.com/education>.

4. PRODUCT USAGE

4.1 This Agreement authorizes Institution during the term of this Agreement to use the Product(s), covered by order form(s) accepted by Quest (the "Order Form") on a non-exclusive, revocable, royalty-free basis, according to the terms of this Agreement and the applicable Order Form(s) for the Product(s). Use of the Product(s) is restricted to Institution's participation in the Quest Academic Program and may not be used for Institution's internal operations or for the processing of its own data. Maintenance for the Products will be provided to Institution for as long as Institution continues to participate in the Quest Academic Program.

4.2 Subject to all applicable export regulations, including but not limited to the Export Administration Regulations, 15 CFR 730-774, and the Office of Foreign Assets Control Regulations, 31 CFR 500 et al., Faculty, Staff or Student may not copy or further loan a copy of the Licensed Programs to any third party. Institution shall be responsible for ensuring that the use of the Products by Faculty, Staff or Students shall be in full compliance with the terms and conditions of this Agreement and the applicable Order Form(s) (regardless of any license agreement that may appear during an installation process).

4.3 Except for (i) archive purposes or (ii) distribution for educational purposes as contemplated hereby, the Institution will not make or permit others to make copies of or reproduce any part of the Products in any form without the prior written consent of Quest. In no event will the Institution decompile, disassemble or otherwise reverse engineer any Products or sell, lease, sublicense, rent, time share, offer a subscription service or service bureau, or assign, or in any way transfer the Products, or any interest thereto.

4.4 The Products may only be used for non-commercial use by the Institution, specifically limited to Faculty, Staff and Students, solely to: (a) develop, support, and conduct educational classes, labs, or related programs offered by Institution which have been approved for participation in the Quest Academic Program and that have the purpose of instructing and/or training Students to use the

Products; (b) conduct non-commercial research projects utilizing the Products; and/or (c) design, develop, test, and demonstrate software applications or hardware that work in conjunction with the Products only for the purposes listed in this Agreement. The Institution shall not use the Products for general business purposes other than by Institution's employees engaged in support and user support of the Products and the management of compliance with the Quest Academic Program. If the Institution creates a software program resulting from the proper Use of the Products consistent with this Agreement, then the Institution may commercially use and/or sell such software program upon the purchase of, and adherence to the terms and conditions of, a retail license of the applicable Products used to create such software program.

4.5 Institution shall not permit access to Products to/by any faculty, staff, student or employee who ceases its association with Institution. Any use of the Products by any such third parties shall be permitted only by obtaining a valid retail or other commercial license for any such Products.

4.6 At Institution's option, Faculty, Staff or Students may modify or translate the Courseware, or make derivative works from the Courseware ("Work Product"). Institution may own such Work Product. Upon request, Institution will provide Quest with object and source copies of any such Work Product. Institution hereby grants to Quest a perpetual, royalty-free, irrevocable, world-wide, non-exclusive object code and source code license to use, modify, copy, combine and distribute any Work Product and to create and distribute derivative works from such Work Product on a royalty-free basis. Such Work Product does not include any newly created inventions, ideas or concepts, which are independent works of Institution or its Faculty, Staff or Students and which do not include any component of or reference to Products. The terms of this Agreement apply to each copy made.

4.7 Quest retains all right, title, and interest in and to the Products, including any intellectual property rights therein. This Agreement is not a sale and does not transfer to the Institution any ownership in the Products or any patent, copyright, trade secret, or other proprietary rights thereto.

4.8 Except as expressly stated in Section 4.6, and notwithstanding anything contained in this Agreement to the contrary, in the event that the Institution makes any changes or modifications to the Product(s) ("Modifications"), the Institution agrees that such Modifications shall be the property of

Quest, unless Quest shall have given its prior written consent to the contrary, and Institution hereby assigns absolutely all of Institution's right, title and interest in and to the Modifications to Quest. Institution represents that it has obtained and shall obtain the necessary assignments from Faculty, Staff, Students and employees to effect the foregoing assignment.

5. PROPRIETARY NOTICES AND CONFIDENTIALITY

5.1 The Products contain trade secrets and are the proprietary property of Quest and its third-party licensors. Institution will, and shall ensure that its Faculty, Staff, Students and its employees (together with the Institution, "Institution Parties") will keep Products strictly confidential and will not disclose or otherwise distribute Products to any third parties.

5.2 The Institution will not remove or destroy any proprietary markings of Quest from the Products. Installing Products (or any proprietary material of Quest not covered by this Agreement) on a web site that is accessible from outside the internal uses of the Institution is prohibited.

6. ADVERTISING AND TRADEMARKS

6.1 Institution must submit to Quest for its prior written approval any and all advertising and sales literature of Institution, which refers to Quest or includes any of the Quest product names (the "Quest Marks").

6.2 Institution shall comply with any guidelines relating to use of Quest Marks as may be furnished to Institution and revised by Quest from time to time. Quest shall not use Institution's name or logo in any advertising or other materials without the prior written consent of Institution.

7. NO WARRANTY

SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, QUEST PROVIDES THE PRODUCTS "AS IS" AND MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THIRD PARTY WARRANTIES, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR SUITABILITY, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND/OR THE WARRANTY OF TITLE OR NON-INFRINGEMENT. QUEST MAKES NO WARRANTIES HEREUNDER WITH RESPECT TO ANY HARDWARE EQUIPMENT WHICH QUEST MAY SUPPLY.

8. LIMITATION OF LIABILITY

IN NO EVENT WILL QUEST BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE. FURTHER, IN NO EVENT WILL QUEST BE LIABLE TO INSTITUTION OR ANY OTHER PARTY FOR ANY DIRECT DAMAGES WHICH MAY ARISE FROM THE USE, OPERATION OR MODIFICATION OF THE PRODUCTS, OR OTHERWISE UNDER THIS AGREEMENT. IN THE EVENT THAT THE ABOVE LIABILITY LIMITATION IS FOUND TO BE INVALID UNDER APPLICABLE LAW, THEN QUEST'S LIABILITY FOR SUCH CLAIM SHALL BE LIMITED TO THE AMOUNT OF US \$1,000.

9. TAXES AND DUTIES

To the extent that any fees are set forth, such fees are exclusive of any tariffs, duties or taxes imposed or levied by any government or governmental agency including, without limitation, federal, state and local sales, use, value added and personal property taxes, Institution agrees to pay any such tariffs, duties or taxes (other than franchise and income taxes for which Quest is responsible) upon presentation of invoices by Quest. Any claimed exemption from such tariffs, duties or taxes must be supported by proper documentary evidence delivered to Quest.

10. TERM AND TERMINATION

10.1 This term of this Agreement shall extend for one (1) year from the Effective Date of this Agreement and may be renewed annually thereafter, subject to termination as set forth herein.

10.2 This Agreement shall automatically terminate upon delivery of notice of termination to Institution if Institution (a) makes an unauthorized assignment of this Agreement or (b) makes any unauthorized use of the Quest Marks.

10.3 Either party may terminate this Agreement if the other fails to comply with any material provision of this Agreement and does not correct such failure within thirty (30) days after receipt of written notice of breach. In addition, either party may terminate this Agreement upon providing ninety (90) days prior written notice of such termination to the other party.

10.4 After termination or expiration, Institution will (a) not identify itself as an Institution under the Quest Academic Program or otherwise associated with Quest; (b) discontinue its use of Products, and other materials and advertising that includes any Quest Mark; (c) discontinue its offering of its services under the Quest Academic Program; and (d) return to Quest all copies, in whatever media, of Products or other materials arising under the Quest Academic Program in the possession of Institution or any Faculty, Staff or Student. Upon Quest's notification of termination and except for termination by Quest due to Institution's breach or default, Institution shall be permitted to continue using Products or other materials for thirty (30) days or until the end of the then-current semester, whichever is longer.

11. MISCELLANEOUS

11.1 This Agreement (including any attachments) is the complete and exclusive statement of the parties' agreement and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto. This Agreement may not be waived, altered, or modified except by a written agreement signed by Quest and accepted by an authorized representative of Quest. It is expressly agreed that any purchase order or other document provided by the Institution relating to any receipt of Products is an administrative document only and any preprinted provisions on such documents will not apply to this Agreement and are of no effect.

11.2 All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered or when deposited via postal mail, registered or certified, postage prepaid, return receipt requested, to the addresses set forth below:

To Quest:
Quest Software, Inc.
4 Polaris Way
Aliso Viejo, CA 92656 Attn: General Counsel

To Institution:

Notice of change of address shall be given by written notice in the manner provided above.

11.3 No subcontract, assignment of rights, or delegation of duties shall be made by the Institution under this Agreement without the prior written approval of Quest.

11.4 This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof.

11.5 Institution understands and acknowledges that all Products are controlled by U.S. export laws, including but not limited to the Export Administration Regulations, 15 CFR 730-774, and the Office of Foreign Assets Control Regulations 31 CFR 500, et al. Institution shall comply with all relevant import and export regulations, including but not limited to those adopted by the Office of Export Administration and the Office of Foreign Assets. The Institution certifies that, in accordance with the U.S. export laws, it will not permit the download and use of the Licensed Programs by any individuals without obtaining any required authorization from the U.S. Government, including but not limited to individuals who are nationals or citizens of the following countries: Cuba, North Korea, Sudan, Syria and Iran. In addition, the Licensed Programs will not be used in any prohibited end-use, including but not limited to: nuclear end-uses; missile-related end-uses; or chemical-biological weapons-related end-uses without appropriate authorization from the U.S. Government. The Institution will honor the above assurances even after the expiration date of the licensing agreement. The Institution agrees to provide Quest a written, signed certification, on an annual basis on the anniversary of the execution of this contract, stating that:

"Institution's use of the Licensed Program has been in compliance with the U.S. export laws, including the Export Administration Regulations and the Office of Foreign Asset Controls regulations. No exports or reexports of the Licensed Program have occurred without appropriate authorization of the U.S. Government. This assurance will be honored even after the expiration date of the licensing agreement."

11.6 Quest and Institution each agree that the other party is, and shall remain, an independent contractor. Nothing in this Agreement shall be construed to create or imply that either party is an agent of the other party. Institution will be solely responsible for payment of all compensation owed to

Faculty and Staff, as well as for payment of all salary and wages, benefits, employment related taxes and worker's compensation insurance.

11.7 This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law principles.

The parties hereby acknowledge that they have read and understand this Agreement and agree to all the terms and conditions stated herein and attached hereto.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives.

Quest Software, Inc.	Institution
By:	By:
Name:	Name:
Title:	Title: