

APR-22-03 01:48R CIT

(802) 656 - 0872

P.02

## SOFTWARE LICENSE AGREEMENT FOR WEBCT CAMPUS EDITION™ (INSTITUTION)

(Single Institution, Annual or Subscription)

RECEIVED

APR 22 2003

SIGNED COPY

Licensee Name:

University of Vermont

Licensee Address:

Computing and Information Technology  
238 Waterman Bldg, 85 So Prospect St.  
Burlington, VT. 05405-0160

THIS SOFTWARE LICENSE AGREEMENT FOR WEBCT CAMPUS EDITION™ (the "Agreement") is between WebCT, Inc., a Delaware corporation with its principal place of business at Six Kimball Lane, Lynnfield, Massachusetts 01940 ("WebCT"), and the licensee named above ("Licensee"). The terms and conditions of this Agreement shall apply to (i) the WebCT Campus Edition software program(s) set forth in any fully-executed Order Schedule (the "Order Schedule") to this Agreement, including any programs or WebCT's licensors that are delivered by WebCT with or as part of the WebCT Campus Edition software, and any and all copies, in whole or in part, backups, related documentation, system administrator guides and user manuals, printed listings of code, and any patches, bug fixes, workarounds, upgrades, enhancements, and updates which may be subsequently furnished by WebCT to Licensee hereunder (collectively, the "Software") and (ii) any Support Services (as defined in Section 8.1) relating to the Software provided by WebCT to Licensee. In consideration of the mutual promises contained herein, the parties agree as follows:

## 1. GRANT OF LICENSE

1.1 **License Grant.** Upon execution by the parties of this Agreement and an Initial Order Schedule to this Agreement and subject to payment by Licensee of the applicable license fee set forth in such Order Schedule and the terms and conditions of this Agreement, WebCT hereby grants to Licensee, during the License Term (as defined below) or any renewal thereof under Section 2.2, a nonexclusive, nontransferable license ("License") to use and copy the Software set forth therein in object code format only for Licensee's academic and administrative purposes, including any Licensee-controlled and Licensee-delivered adult education or community outreach programs. This is a license agreement and not an agreement for sale. All rights not specifically granted shall be reserved to WebCT.

1.2 **Use.** Each Licensee authorizes the installation and use of the Software on a single production server at the location designated in writing by Licensee to WebCT at the time the applicable Order Schedule is executed (the "Designated Location") and a single non-production server for internal testing purposes only. Additionally, each Licensee authorizes use of the Software only by Licensee's students, faculty, administrators, other employees, and/or contractors whose responsibilities require such access ("Users"). Use of the Software is not permitted (a) for productive use on other than the single production server identified to WebCT, unless otherwise agreed upon in writing by WebCT or (b) at a location other than the Designated Location.

1.3 **Delivery.** WebCT shall deliver electronically to Licensee one copy of the Software and related documentation, if any, or provide access to the Software via the Internet promptly after the date on which the applicable Order Schedule is signed by the parties and all necessary IP address and operating system information has been provided by Licensee to WebCT.

1.4 **License Keys.** Licensee acknowledges that the Software shall be activated by a license key consisting of identification codes which shall be provided to Licensee electronically promptly after receipt by WebCT of Licensee's IP address and operating system information.

1.5 **Compliance.** Upon WebCT's written request (which shall occur no more than once every six (6) months), Licensee shall provide

WebCT with a written statement, certified by an authorized representative of Licensee, listing the number of servers on which the Software is installed, and stating that the use of the Software has been reviewed and that each copy of the Software is being used solely pursuant to the provisions of this Agreement. WebCT, at its expense, will have the right to conduct and/or direct an independent accounting firm to conduct, during normal business hours, an audit of the appropriate records of Licensee to verify the number of copies of the Software in use and the computer systems on which such copies are installed.

1.6 **Copies.** Licensee may make additional copies of the Software only to the extent reasonably necessary (i) for Licensee's internal purposes as set forth in Sections 1.1 and 1.2 and (ii) for archival and back-up purposes.

## 2. TERM; TERMINATION

2.1 **Term of Agreement.** This Agreement shall be effective as of the date on which it is signed by both parties (the "Effective Date") and shall remain in effect unless and until terminated in accordance with the provisions set forth in Sections 2.3 or 2.4 below. The expiration of any License Term hereunder shall not constitute termination of this Agreement.

2.2 **Term of License.** The initial term of the License shall commence upon the execution by the parties of the applicable Order Schedule and shall remain in effect for the number of years (or such other period of time) as set forth in such Order Schedule, unless earlier terminated in accordance with the provisions of Section 2.4 below (the "License Term"). Upon expiration of the initial License Term, the License may be renewed thereafter for successive terms, if then generally available, subject to payment by Licensee of the then-current applicable License fees and provided that an additional Order Schedule for such renewal is executed by the parties prior to the end of the expiring License Term. Upon execution of an additional Order Schedule, WebCT shall provide Licensee with a new license key for the renewed License Term. Unless otherwise agreed in writing by the parties, the term of each License renewal shall begin immediately as of the expiration of the prior License Term.

2.3 **Termination of Agreement upon Expiration of Licenses.** Either party may terminate this Agreement without cause by providing at least thirty (30) days' prior written notice to the other party, and any such termination shall become effective upon expiration of the last to expire License granted hereunder.

2.4 **Termination for Cause.** Upon any breach by Licensee of Sections 1.1, 1.2 or 4 of this Agreement, WebCT shall have the right to terminate this Agreement and the Licenses granted hereunder effective immediately upon written notice to Licensee. Upon any other material breach or default of this Agreement by either party, the other party shall provide the breaching party with written notice of the breach. If the breaching party fails to cure such breach within (30) days following receipt of such written notice, then the non-breaching party shall have the right to terminate this Agreement and the Licenses granted hereunder effective immediately upon written notice to the breaching party.



Apr-22-03 01:46R CIT

(802) 656 - 0872

P.03

**2.5 Effect of Expiration or Termination.** In the event of the expiration of a License or termination of this Agreement for any reason, Licensee shall promptly, as to the Software under such License or the Agreement, as applicable: (i) discontinue all use of the Software; (ii) erase or destroy any Software contained in the computer memory or data storage apparatus under the control of Licensee; (iii) return to WebCT or destroy all copies of the Software provided by WebCT and any and all copies made by Licensee; and (iv) certify in writing to WebCT, within thirty (30) days of the expiration of the License or termination of this Agreement, that Licensee has complied with the foregoing.

**2.6 Survival.** Sections 2.5, 2.6, 3, 4, 5, 6.2, 7, 8.2, 9.1, 9.2, 9.5, 9.6, 9.7 and 9.8 hereof shall survive the expiration of any License or the termination of this Agreement.

### 3.0 FEES AND PAYMENT TERMS

**3.1 License Fee.** In consideration of the License granted hereunder and Licensee's commitment to license the Software for the full term set forth in the applicable Order Schedule, the annual license fee(s) for each year of the License Term shall be as specified in the applicable Order Schedule. Unless otherwise specified therein, the annual license fee for the first year of the License Term shall be invoiced upon execution of such Order Schedule and any remaining annual fees due in connection with such License shall be invoiced on or about the start of each applicable year of the License Term, respectively. All invoices shall be due and payable within thirty (30) days following the invoice date. All fees referenced under this Agreement shall be shown, invoiced, and payable in U.S. Dollars.

**3.2 Taxes.** Except to the extent that Licensee provides WebCT with appropriate documentation verifying that the License of Software to Licensee hereunder is tax exempt, Licensee shall pay all sales, use, excise and similar taxes applicable to the Software and this Agreement and shall reimburse WebCT for any such taxes paid by WebCT, excluding taxes based on the net income of WebCT. If Licensee is subject to the tax laws of a country other than the United States and is required by law to make any deduction or to withhold from any sum payable to WebCT hereunder, then the sum payable by Licensee upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, WebCT receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount WebCT would have received and retained in the absence of such required deduction or withholding.

### 4. PROTECTION OF THE SOFTWARE

**4.1 Ownership.** Licensee acknowledges and agrees that WebCT and its licensors retain all title, copyrights, patents and other proprietary rights in and to the Software. Licensee agrees any updates, patches, bug fixes, workarounds, upgrades, and enhancements to the Software furnished in connection with any Support Services (as defined below) shall be the sole and exclusive property of WebCT, subject to use by Licensee in accordance with the terms and conditions of this Agreement and only during the applicable License term.

**4.2 Proprietary Markings.** Licensee shall not alter, remove or conceal any government restricted rights notice or any copyright, trademark, trade name or other proprietary marking or notice that may appear in or on the Software and shall reproduce all such markings and notices in or on all copies of the Software made by Licensee. Notwithstanding the foregoing, Licensee may remove the WebCT logo from the user interface screens of the Software and replace it with Licensee's own institution logo, PROVIDED THAT ANY REPLACEMENT ON A SINGLE USER INTERFACE SCREEN REQUIRES REPLACEMENT ON ALL USER INTERFACE SCREENS. To the maximum extent permitted by applicable law, Licensee shall indemnify, defend and hold WebCT harmless from and against any and all claims, demands or actions and costs, liabilities or losses arising out of any actual or alleged infringement of any third party trademark or copyright by Licensee's logo or other intellectual property in connection with such

User screens. Any other usage or removal of any WebCT proprietary notices or trademarks requires the express written consent of WebCT.

**4.3 Further Restrictions.** Licensee agrees to treat the Software as a confidential trade secret and valuable asset of WebCT and agrees that such Software shall not be used for any purpose other than as set forth herein. Licensee shall not (i) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Software, (ii) develop a competing product based on the Software, or (iii) attempt in any way to access the source code for the Software, except to the extent expressly permitted by applicable law and to the extent the parties shall not be permitted by that applicable law to exclude or limit such rights. Information relating to the Software necessary to enable the production of interoperable software shall be available from WebCT on request. In addition, Licensee may use the third party software programs that are licensed and delivered by WebCT with and as a part of the Software hereunder only in conjunction with the WebCT Campus Edition software program. Use of such third party software without the WebCT Campus Edition software program is not permitted. Further, Licensee may not use such third party software programs for independent application development purposes or for any other purpose outside the scope defined in Section 1.1 of this Agreement. Licensee agrees to treat the terms and conditions of this Agreement (including the fees set forth in any Order Schedule hereto) as confidential information of WebCT and, to the maximum extent permitted by applicable law, shall not disclose such information, except to (a) those persons within its organization with a need to know for purposes of performing their duties, (b) to Licensee's attorneys, accountants or other fiduciary advisors as reasonably necessary, or (c) as required by law. Licensee shall adopt reasonable measures to assure that its Users will make no disclosure of the Software or the information contained therein to other persons or legal entities and that such Users adhere to the restrictions set forth in this Section 4.

**4.4 Third Parties.** Licensee shall not (i) host the Software for access by any unauthorized user; (ii) rent, lease, loan, sublicense, or otherwise distribute the Software to any third party; or (iii) offer the Software in connection with timesharing, facility management, or service bureau usage.

### 5. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

**5.1 Infringement.** WebCT shall, at WebCT's expense, defend or settle any action brought against Licensee based on a claim that the Software infringes a third party's United States or Canadian patent, copyright, trade secret or other intellectual property right and shall pay all costs and damages finally awarded against Licensee in any such action which are attributable to such claim, subject to the exclusions set forth in Section 5.2 below. In addition, should the Software or any part thereof become, or in WebCT's opinion, be likely to become, the subject of a claim of infringement, WebCT may, at its option and at its own expense, (i) procure for Licensee the right to continue using such Software as contemplated hereunder, (ii) modify the Software to render it non-infringing or (iii) replace the Software with functionally equivalent software. If WebCT determines that none of the foregoing is reasonably available to WebCT, then WebCT may terminate this Agreement upon thirty (30) days prior written notification to Licensee and, upon such termination and the return or destruction of the affected Software, WebCT shall provide to Licensee a pro-rata refund of any prepaid license fees for such Software. Except as set forth in this Section 5, WebCT shall have no further liability to Licensee with respect to such intellectual property infringement claim.

**5.2 Exclusions.** The obligations set forth in this Section 5 are contingent on prompt written notice by Licensee to WebCT of any third party claim, action or demand, sole control of the defense and settlement thereof by WebCT and reasonable cooperation of Licensee in such defense or settlement. Moreover, the obligations set forth herein shall not apply to any claim arising out of (a) the combination of the Software with other products not supplied by WebCT, to the extent that the claimed infringement would have been avoided absent such combination, and (b) the modification of the Software by anyone other than WebCT.



Apr-22-03 01:46R CIT

(802) 656 - 0872

P.04

**5.3 Entire Liability.** THIS SECTION 5 STATES THE ENTIRE LIABILITY OF WebCT FOR ANY LOSS AND DAMAGES WHATSOEVER ARISING OUT OF OR RELATING TO THE INFRINGEMENT OF ANY COPYRIGHT, PATENT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS.

## 6. WARRANTY AND DISCLAIMER

**6.1 Warranty.** WebCT warrants that, for a period of one (1) year following the first delivery under this Agreement of a license key for the WebCT Campus Edition software to Licensee (the "Warranty Period"), the WebCT Campus Edition software shall operate substantially in accordance with the then-current system administrator guide generally released by WebCT to its licensees, provided that (i) the WebCT Campus Edition software is operated in accordance with such guide and (ii) Licensee does not modify or otherwise alter the WebCT Campus Edition software. This warranty is void if the non-performance of the WebCT Campus Edition software has resulted from accident, abuse, or misapplication by Licensee. Replacement software or modifications, updates, releases and enhancements delivered pursuant to Support Services (as defined in Section 8) shall not extend the duration of the Warranty Period, nor shall such warranty apply to any renewal of a License granted hereunder.

**6.2 Disclaimer.** EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 6.1, THE SOFTWARE AND SUPPORT SERVICES ARE PROVIDED WITHOUT WARRANTY OF ANY KIND. THE EXPRESS WARRANTY SET FORTH IN SECTION 6.1 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. WebCT SPECIFICALLY DOES NOT WARRANT THAT THE SOFTWARE SHALL MEET ALL OF LICENSEE'S REQUIREMENTS OR SHALL OPERATE IN ALL THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY LICENSEE; THAT THE OPERATION OF THE SOFTWARE SHALL BE ERROR-FREE OR UNINTERRUPTED; OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE SHALL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THAT THE ABOVE EXCLUSIONS MAY NOT APPLY TO LICENSEE. THIS WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

**6.3 Sole Remedy.** In the event the WebCT Campus Edition software fails to perform as warranted in Section 6.1 above and Licensee advises WebCT in writing of a reproducible error in the WebCT Campus Edition software prior to the expiration of the Warranty Period, WebCT shall use commercially reasonable efforts to correct or provide a workaround for such error. In the event that WebCT is unable to correct the error or is unable to make the WebCT Campus Edition software operate as warranted within ninety (90) days following receipt of such written notification from Licensee, Licensee may terminate the License for the Software in accordance with the terms of Section 2.4 above. Upon such termination and the return or destruction of the Software as set forth in Section 2.5, Licensee shall be entitled to recover the fees paid to WebCT by Licensee for the WebCT Campus Edition License. This Section 6.3 sets forth Licensee's sole remedy, and WebCT's sole obligation, relating to performance of the Software and for breach of the warranty in Section 6.1.

## 7. LIMITATION OF LIABILITY

**7.1 Limitation of WebCT's Liability.** To the maximum extent permitted by applicable law, WebCT's liability in contract, tort (including negligence) or otherwise with respect to the Software and Support Services provided hereunder shall be limited to direct damages and, except as set forth in Section 3.1 of this Agreement, shall not exceed the amount of the license fee or Support Services fee, respectively, paid to WebCT with respect to such Software or Support Services during the twelve month period immediately preceding the date the claim arose.

**7.2 Limitation of Licensee's Liability.** To the maximum extent permitted by applicable law, except for Licensee's liability under Section 4.2 or a breach by Licensee of Sections 1.1, 1.2 or 4 of this Agreement, Licensee's liability in contract, tort (including negligence) or otherwise with respect to this Agreement shall not exceed the amount of the license fee(s) and Support Services fee(s) set forth in all fully-executed Order Schedules attached hereto.

**7.3 No Consequential Damages.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT THAT NO SUCH LIMITATION SHALL APPLY IN THE EVENT OF A BREACH BY LICENSEE OF SECTIONS 1.1, 1.2 OR 4 OF THIS AGREEMENT.

## 8. SUPPORT SERVICES

**8.1 Support Services.** During the Initial License Term and, if generally available to WebCT's licensees at the time, during any renewal thereof or during the term of any additional License, WebCT shall provide a basic level of support for the Software ("WebCT Basic System Admin Support") to Licensee, free of charge, which shall include (i) upgrades or releases to the Software which WebCT makes generally available to its licensees and (ii) certain other services in accordance with the then-current WebCT Basic System Admin Support description set forth on WebCT's website at [www.webct.com/options](http://www.webct.com/options). In addition, at any time during the term of any License or any renewal thereof, Licensee may elect to purchase one of the then-available enhanced support options offered by WebCT as described on such WebCT website, by executing an Order Schedule to this Agreement indicating its selection and paying the applicable Support Service fees set forth therein. Any support option purchased by Licensee shall be contemporaneous with the then-current year of the License term or, if purchased after the start of any year of the License term, with the remaining portion of such year in which case the applicable Support Service Fee shall be prorated accordingly. Together with the WebCT Basic System Admin Support, such support options shall be collectively referred to herein as the "Support Services". All such Support Services will be provided in accordance with the then current applicable support option description set forth on [www.webct.com/options](http://www.webct.com/options), subject to the terms and conditions set forth herein. Licensee assumes all risks arising from Licensee's failure to implement updates and any other corrections released by WebCT. WebCT shall in no event be required to perform any on-site Support Services.

**8.2 Support Service Fees.** Support Services fees for any enhanced Support Service option selected by Licensee shall be as specified in the applicable Order Schedule and shall be due and payable within thirty (30) days following receipt of an invoice. If Licensee fails to pay Support Service fees when due, WebCT shall have no obligation to correct or support the Software in accordance with such selected option.

## 9. GENERAL

**9.1 U.S. Government Restricted Rights.** In the event that Licensee is an agency of the United States Government, or that a License granted hereunder is pursuant to a contract with either a defense or civilian agency of the United States Government, Licensee hereby acknowledges that the Software licensed hereunder is commercial computer software developed at private expense and provided to Licensee subject to restricted rights. Use, duplication, or disclosure by the Government is subject to the restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights clause at 48 CFR 52.227-19, as applicable, or in successor provisions, as well as the limitations set forth herein. Manufacturer is WebCT, Inc., Six Kimball Lane, Lynnfield, Massachusetts 01940.

**9.2 Export Control.** Licensee acknowledges that it is subject to United States laws and regulations controlling the export of technical



Apr-22-03 01:47P CIT

(802) 656 - 0872

P.05

data, computer software and other commodities and agrees not to export or allow the export or re-export of such data, software or other commodities in violation of such laws and regulations.

9.3 **Notices.** Any notice that is required to be given hereunder shall be in writing and delivered to the addressee and files set forth below by certified mail (return receipt requested), a recorded delivery service, or by other means of delivery requiring a signed receipt. All notices shall be effective upon receipt. If no address is supplied by Licensee below, notices to Licensee shall be sent to the address set forth on the first page of this Agreement, to the attention of the signature name set forth below. The addressee provided herein may be changed at any time on prior written notice.

If to WebCT: Six Kimball Lane  
Lynnfield, Massachusetts 01940  
Attn: Exec. VP, C.F.O and Treasurer

If to Licensee:

9.4 **Assignment.** This Agreement and the License granted hereunder may not be assigned, sublicensed, or otherwise transferred to another person or legal entity, whether by merger, consolidation, sale of assets or otherwise, without the prior written consent of WebCT.

9.5 **Waiver.** The failure of either party to enforce in any one or more instances any of the terms and conditions of this Agreement shall not be construed as a waiver of future performance of any such term or condition. Waiver of any term or condition shall be deemed to have been made only if expressed in writing by the party granting such waiver.

9.6 **Severability.** If any provision of this Agreement shall be held

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement.

LICENSEE:

By:

(Authorized Signature)

Name: Roger A Lawson

Title: Director, CIT

Date: April 18, 2003

WebCT, Inc.

By:

(Authorized Signature)

John Giordano

Name: Executive Vice President  
Chief Financial Officer & Treasurer

Title:

Date: APR 22 2003

WebCT  
6 Kimball Lane  
Lynnfield, MA 01940

by a court of law of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be reformed, construed and enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect.

9.7 **Governing Law.** The parties agree that this Agreement will be governed by, interpreted, and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A. Each of the parties hereby irrevocably submits to the exclusive venue and jurisdiction of any federal or state court sitting in Boston, Massachusetts in any action, suit or proceeding brought against it by the other party under this Agreement. The UN Convention on Contracts for the International Sale of Goods will not apply. The English language version of this Agreement shall govern.

9.8 **Entire Agreement.** This Agreement and all fully executed Order Schedules attached hereto constitute the entire agreement and understanding between the parties relating to the subject matter hereof, and supersede any and all oral and prior written representations, understandings or agreements between the parties with respect thereto. Printed terms and conditions on Licensee's purchase order shall not apply, even if executed by WebCT before or after the Effective Date of this Agreement. The subject matter of this Agreement is limited to the rights expressly granted herein. The terms of this Agreement shall have no force and effect with respect to any claim based on the use of the Software outside the scope of the License and rights expressly granted herein. In the event of any conflict between the terms of this Agreement, and the terms of any Order Schedule, the terms of this Agreement shall prevail, unless an express term of an Order Schedule provides otherwise. Any modification or amendment to this Agreement, including the Order Schedules, must be in writing and signed by authorized representatives of both parties. This Agreement shall be deemed when executed to have been made in the Commonwealth of Massachusetts. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.