

# SMART Technologies ULC Software End User License Agreement for SMART Notebook™ Collaborative Learning Software 11 and Related SMART Software

Last Revised: January 11, 2012

Please read all of this software end user license agreement (“License”) carefully before using the Software. This License contains provisions dealing with limitation of user rights and SMART liabilities that may apply to your use of the Software. By using the Software, you are agreeing to be bound by the terms and conditions of this License. If you do not agree to the terms of this License, do not use the Software.

This License is a legal agreement between the “End User” (either an individual or an entity) and SMART Technologies ULC and its affiliates and subsidiaries (“SMART”) for Use of the Software. **If End User is an entity (such as a Licensee Organization) or you are accepting this License on behalf of other End Users, a) you acknowledge that you or the entity is responsible to make other End Users aware of and comply with the terms, conditions, limitations and requirements set out in this License, and b) you warrant that you have the authority to accept the terms of this License on such entity’s or other End Users’ behalf.**

## 1. DEFINITIONS:

- 1.1 “**Actively Using**” or “**Actively Use**” means executing, accessing, employing, utilizing, or displaying the Software, but not where the Software is merely loaded onto or stored within the device in question.
- 1.2 “**Classroom**” means the combination of a set number of Instructor Devices (such number of Instructor Devices as designated upon purchase of the Software product license or associated Licensed Product) together with a reasonable number of Student Devices (as determined to be the likely number of students participating in such classroom based on the instructor to student ratio as established by SMART from time to time for the applicable Software product), unless agreed to otherwise by SMART and the Licensee Organization.
- 1.3 “**Computing Device**” means a personal computer, other computing or display device.
- 1.4 “**Documentation**” means SMART Technologies ULC’s (SMART) proprietary manuals and instruction documents for the Software, whether in paper or electronic form.
- 1.5 “**End User**” (or alternatively referred to as “you”) means the Licensee Organization and, where applicable, any employees (including, without limitation, teachers and instructors), consultants, students and other interested members within the Site who Use the Software.
- 1.6 “**Excluded Items**” has the meaning described in section 2.2(m).
- 1.7 “**Instructor Devices**” means the specified number of Qualified Devices that have been licensed for use primarily by teaching staff (meaning either the number of instructor use licenses that have been purchased by the Licensee Organization).
- 1.8 “**Interactive Display Device**” means a whiteboard, screen digitizing device, slate, display screen, monitor or projector that has or projects onto a diagonal screen size of greater than 18” and that allows the user to interact, manipulate, or modify data using means other than the standard keyboard or mouse, and includes, without limitation, touch-enabled or pen-enabled devices.
- 1.9 “**Licensed Product**” means each applicable SMART product that includes in its price, or ships with, the applicable Software application, however, in the case of SMART Notebook software, the following Licensed Products grant the following associated license:

- (a) SMART Board™ interactive whiteboard grants both a SMART Notebook Collaborative License and a SMART Notebook Personal License (Site)
- (b) SMART Podium™ interactive pen display grants both a SMART Notebook Collaborative License and a SMART Notebook Personal License (Site)
- (c) SMART interactive display grants both a SMART Notebook Collaborative License and a SMART Notebook Personal License (Site)
- (d) SMART Response™ interactive response system grants a SMART Notebook Personal License (Site)
- (e) SMART Classroom Suite™ interactive learning software grants the associated number of SMART Notebook Personal License (Single)
- (f) SMART Document Camera™ document camera grants the associated number of SMART Notebook Personal License (Single)
- (g) SMART Slate™ wireless slate grants a SMART Notebook Personal License (Single)
- (h) SMART Table™ interactive learning center grants the associated number of SMART Notebook Personal License (Single)
- (i) SMART LightRaise™ interactive projector grants both a SMART Notebook Collaborative License and a SMART Notebook Personal License (Site)
- (j) such other SMART product introduced by SMART from time-to-time and identified by SMART as a Licensed Product for such license type.

**1.10 “Licensee Organization”** means the entity (or individual if individually acquired) that acquired the Licensed Product and this associated License on its own behalf and, where applicable, on behalf of its End Users.

**1.11 “Maintenance”** means access to commercially released upgrades (meaning new versions and point releases of the Software which contain enhancements improving the functionality or capabilities of the Software), and bug fixes, service packs and updates (meaning Software for which SMART has provided fixes or minor revisions to correct errors or defects in the existing operation of the Software in accordance with the published specifications), for the specific license of Software associated with or offered together with the Maintenance program, in all cases limited to that which SMART makes generally available to its subscribed Maintenance customers at no additional charge. Maintenance specifically excludes services in connection with computer viruses or conflicts involving software that is not installed or introduced by SMART. Maintenance further excludes Excluded Items or other add-ons, plug-ins, customizations, new applications, modules or other software that is not generally and regularly made available to users of the Software for no additional fee, but rather is separately made available by SMART or third parties. . For clarity, certain Software bug fixes, service packs and updates may be provided by SMART to End Users who do not have a Maintenance program in place.

**1.12 “Qualified Device”** means that such device (whether a Computing Device, Student Device, Instructor Device or other permitted device) be either owned or controlled by Licensee Organization within the designated Site, or personally owned by Licensee Organization’s employees, consultants, students or interested members, in each case associated with that Site, provided the Software is used for the primary purpose of activities related to the Licensee Organization and limited to for so long as such individuals continue to act on behalf of, or are students of, Licensee Organization.

**1.13 “Site”** means a single physical location under the jurisdiction or control of the Licensee Organization, for example a school, campus, or constellation of buildings or structures within the same legal property description.

**1.14 “SMART Notebook Collaborative License”** means a license for Use of SMART Notebook software subject to the license terms set out in section 2.2 (a) (i) below.

**1.15 “SMART Notebook Personal License (Single)”** means a license for Use of SMART Notebook software subject to the license terms set out in section 2.2(a)(iii) below.

- 1.16 “SMART Notebook Personal License (Site)”** means a license for Use of SMART Notebook software subject to the license terms set out in section 2.2(a)(ii) below.
- 1.17 “SMART Response interactive response system”** means the SMART Response software, web application and/or the response submission devices used by the students (for example, SMART Response hand-held clickers or remotes or software used by Student Devices to submit responses) as applicable.
- 1.18 “Software”** means each, and collectively all, of the following proprietary SMART supplied software, drivers and firmware (including drivers and firmware embedded in the associated Licensed Product, if applicable) as applicable based on the Licenses acquired: SMART Notebook™ software (excluding the Excluded Items), SMART Notebook™ Student Edition software, SMART Response™ interactive response software (any mode and the associated web application where applicable), SMART Notebook Math Tools™ software, SMART Sync™ classroom management software, SMART Document Camera™ Mixed Reality Tools, SMART Notebook™ 3D Tools software, and SMART Classroom Suite™ interactive learning software, and the respective related firmware, drivers, tools and utilities, each consisting of computer program(s) in object code form (including any and all upgrades, releases, databases and enhancements, subject to Section 5 below) delivered to End User and any copies thereof pursuant to this License. Software shall also include any third party software and the Documentation delivered to End User by SMART. Software may be contained or installed on Licensed Products, downloaded from SMART’s web-site or SMART supplied CD or installed on a SMART supplied USB.
- 1.19 “Student Devices”** means the specified number of Computing Devices that have been licensed or allocated within the Site for use primarily by students (i.e. the number of student use licenses that have been purchased by the Licensee Organization or that have been allocated to the Licensee Organization based on the Classroom student to instructor ratio).
- 1.20 “Use” or “Used”** means to directly or indirectly install, load, execute, access, employ, utilize, store, or display the Software.

## **2. LICENSE GRANT:**

- 2.1 General.** This License is a legal agreement between End User (whether an individual or the Licensee Organization) and SMART Technologies ULC for Use of the Software. In the event a Licensee Organization systems or technical administrator, or other representative, is accepting these terms on behalf of all intended Licensee Organization’s End Users, it is the responsibility of that Licensee Organization to ensure the terms of this License are understood and complied with by each End User. The Software is protected by copyright laws and international copyright treaties as well as other intellectual property laws and treaties. The rights granted in this License are limited to SMART’s and its licensors’ intellectual property rights in the Software and do not include any other patents or intellectual property rights. The Software is licensed (or sub-licensed pursuant to SMART’s re-distribution rights), not sold and is subject to the terms and restrictions of this License. In the event the Software is delivered by SMART to End User on a CD, DVD, USB or other form of physical media, Licensee Organization, or (where applicable) End User, owns the media on which the Software is recorded, but SMART and/or SMART’s licensor(s) retain ownership of the Software itself. The terms of this License will govern any software upgrades, updates or revisions provided by SMART (including through a Maintenance program) that replace and/or supplement the original Software, unless such upgrade is accompanied by a separate license in which case the terms of that license will govern.
- 2.2 Grant of License.** Any rights not granted by this License are reserved. For each Software application licensed and fully paid for by the Licensee Organization, SMART grants and End User accepts a non-exclusive, non-transferable, non-sub-licensable license to Use the Software subject to the following terms, conditions and limitations:

(a) For **SMART Notebook Software:**

Dependent on the type of license, End User is granted:

- i) **SMART Notebook Collaborative License:** For each license obtained, the End User is granted a SMART Notebook Collaborative License for Use for one (1) Interactive Display Device, and on the associated Qualified Device that may be connected (including wirelessly) to such Interactive Display Device. End User may not Actively Use the Software with any other Interactive Display Device unless the End User also has a SMART Notebook Collaborative License for Use with that Interactive Display Device as well. End User may also connect the Qualified Device to any number of non-Interactive Display Devices, provided all such devices are owned or controlled by Licensee Organization within the designated Site. End User may obtain this license either through separate purchase, or through the purchase of the applicable Licensed Products, being (a) the SMART Board™ interactive whiteboard, (b) the SMART Podium™ interactive pen display, (c) the SMART interactive display, (d) SMART LightRaise™ interactive projector, and (e) such other SMART product introduced by SMART from time-to-time and identified by SMART as a Licensed Product for this license type. In the case where the license is obtained through separate purchase, subsection (iv) applies.
  - ii) **SMART Notebook Personal License (Single):** For each license obtained, the End User is granted a SMART Notebook Personal License (Single) for Use on one Qualified Device that may be connected (including wirelessly) to any number of non-Interactive Display Devices. End User is not licensed to Actively Use the Software while connected (including wirelessly) to an Interactive Display Device without a separate SMART Notebook Collaborative License. End User may obtain this license either through separate purchase, or through the purchase of the applicable Licensed Products, being (a) the SMART Classroom Suite interactive learning software, (b) the SMART Document Camera™ document camera, (c) the SMART Slate™ wireless slate, (d) the SMART Table™ interactive learning center, and (e) such other SMART product introduced by SMART from time-to-time and identified by SMART as a Licensed Product for this license type. In the case where the license is obtained through separate purchase, subsection (iv) applies.
  - iii) **SMART Notebook Personal License (Site):** For each license obtained, the End User is granted a SMART Notebook Personal License (Site) for Use on a reasonable number of Qualified Devices, where each such Qualified Device may be connected (including wirelessly) to any number of non-Interactive Display Devices. End User is not licensed to Actively Use the Software while connected (including wirelessly) to an Interactive Display Device without a separate SMART Notebook Collaborative License. End User may obtain this license through the purchase of the applicable Licensed Products, being (a) the SMART Board™ interactive whiteboard, (b) the SMART Podium™ interactive pen display, (c) the SMART interactive display, (d) SMART LightRaise™ interactive projector, (e) the SMART Response™ interactive response system, and (f) such other SMART product introduced by SMART from time-to-time and identified by SMART as a Licensed Product for this license type.
  - iv) **Licenses Separately Acquired:** In the event that the End User has obtained a SMART Notebook Collaborative License or the SMART Notebook Personal License (Single) separately (meaning not through a Licensed Product grant), one year of Maintenance is included as part of the Software (including Maintenance) package license fee. The year is calculated commencing on the date of purchase of the Software. Ongoing Maintenance beyond the initial one year term may be separately purchased and shall be subject to the terms of any applicable Maintenance agreement provided by SMART. In the event an extension to the Maintenance term is not obtained prior to the expiry of the Maintenance term then in effect, End User must bring Maintenance fees in arrears up to date to qualify for ongoing Maintenance or may purchase an upgrade for the applicable license (with the associated Maintenance fee, if applicable).
- (b) For **SMART Notebook Student Edition Software:**
- Based on the specified number of licenses obtained, End User may Use the Software:

- i) on one Qualified Device per license provided always it is not the primary device attached or connected (including wirelessly) to an Interactive Display Device Actively Using the Software without the associated SMART Notebook Collaborative License for such Software Use; and
- ii) in the event SMART Notebook Student Edition Software is installed on a SMART USB, End User may Use the Software on any Computing Device in the Site, provided always that the Computing Device is not attached or connected (including wirelessly) to an Interactive Display Device Actively Using the Software without the associated license for such Software Use.

(c) For **SMART Response Software**:

Provided Licensee Organization owns a SMART Response interactive response system (including the related hand-held devices), End User may Use the Software (which includes the PE, LE and XE modes of the Software, as well as mixed mode allowing combinations of these modes) on Qualified Devices provided always that for Use of the Software on any Interactive Display Device, End User must have or obtain a valid SMART Notebook Collaborative License for Use on such Interactive Display Device. Such Use shall be subject to all license terms set out in Section 2.2 (a) (i) above. Data collected Using the Software shall be subject to the terms of Section 2.2(k) below.

(d) For **SMART Response CE Interactive Response Software**:

Based on the number of Instructor Devices licensed and the associated Student Devices allocated for that Classroom, the End Users may use the SMART Response software CE mode on a number of Student Devices permitted based on the Classroom allocation. End Users may also Use SMART Notebook Student Edition on such number of Student Devices licensed. To Actively Use the Software on any Instructor Device connected to an Interactive Display Device, End User must have or obtain a valid SMART Notebook Collaborative License for Use on such Interactive Display Device. Such Use shall be subject to all license terms set out in Section 2.2 (a) (i) above. Use of the Software on Student Devices while connected to an Interactive Display Device shall be governed by the terms set out in Section 2.2(b) (i) above. Data collected Using the Software shall be subject to the terms of Section 2.2(k) below.

(e) For **SMART Response VE Interactive Response Software – Subscription Based License**:

For the duration of the valid subscription period:

- i) Based on the number of Instructor Devices licensed, the End User may use the SMART Response software VE mode on the applicable number of Instructor Devices, provided that in order to Use of the Software on any Interactive Display Device, End User must have or obtain a valid SMART Notebook Collaborative License on such Instructor Device. Such Use shall be subject to all license terms set out in Section 2.2 (a) (i) above, and
- ii) End Users can access the SMART Response VE Interactive Response System web application on a reasonable number of Computing Devices as are associated with the Instructor Devices (referred to in section 2.2(e)(i) above) by way of an assessment ID provided by the Instructor Device and a student ID provided from the Licensee Organization.

In addition to the terms of this License for SMART Response Software, Use of SMART Response VE mode of the Software shall be subject to additional terms of use set out in the applicable SMART online terms of use page. End Users accessing the SMART Response VE Interactive Response System web application must have internet connectivity and a web browser to access the application. Upon expiry of the subscription period, End User shall cease to have access to the SMART Response VE Interactive Response System web application.

For the duration of the valid subscription period, End User shall be entitled to access and Use the most current version of this web application. For the duration of the valid subscription period, the Instructor Devices licenses for SMART Response VE software shall be entitled to

Maintenance for the Software. Data collected Using the Software shall be subject to the terms of Section 2.2(k) below.

(f) For **SMART Notebook Math Tools Software**:

Based on the specified number of Computing Devices licensed, each license allows the End User to Use the Software on a single Computing Device. End User must accept the terms of this License for each install of the Software on any separate Computing Device. In order for the Software to function properly, End User must have a compatible version of SMART Notebook software for Use on such Computing Device, which Use shall be subject to all license terms set out in Section 2.2 (a) above.

(g) For **SMART Sync Classroom Management Software**

Based on the number of Instructor Devices and the associated Student Devices licensed for the applicable Classroom, End Users may Use:

(1) the teacher install version of the Software on such number of Qualified Devices intended for instructors consistent with the number of Instructor Devices licensed, and

(2) the student install version of the Software on such number of Qualified Devices intended for students consistent with the number of Student Devices licensed for that Classroom.

(h) For **SMART Document Camera Mixed Reality Tools**

For each SMART Document Camera obtained by the Licensee Organization, End User may install and Use the Software such Qualified Devices as are required while the Software is in Use on the associated Licensed Product. In order for the Software to function properly, End User must have a valid license of a compatible version of SMART Notebook software for Use on each such Qualified Device, which Use shall be subject to all license terms set out in Section 2.2 (a) above. For each Licensed Product, one SMART Notebook Personal License (Single) is provided for use on such Qualified Device. Additionally, in the event the Qualified Device is connected to an Interactive Display Device while Actively Using the Software, End User must have or obtain a valid SMART Notebook Collaborative License for Use on such Interactive Display Device. Such Use shall be subject to all license terms set out in Section 2.2 (a) (i) above. Each installation of SMART Document Camera Mixed Reality Tools includes SMART Notebook 3D Tools software.

(i) For **SMART Notebook 3D Tools Software**:

For this Software licensed independent of SMART Document Camera Mixed Reality Tools, based on the specified number of Computing Devices licensed, each license allows the End User to Use the Software on a single Computing Device. In order for the Software to function properly, End User must have a compatible version of SMART Notebook software (version 10.8 or higher) for Use on such Computing Device, which Use shall be subject to all license terms set out in Section 2.2 (a) above.

(j) For **SMART Classroom Suite Interactive Learning Software**

Based on the number of Instructor Devices licensed and the associated Student Devices allocated per Classroom, the following licenses are granted:

i) **SMART Notebook Software - SMART Classroom Suite Installation:**

End Users are granted one (1) SMART Notebook Personal License per Instructor Device licensed provided always that in order to Use of the Software on any Interactive Display Device, End User must have or obtain a valid license of SMART Notebook Collaboration License for use with such Interactive Display Device. Such Use shall be subject to all license terms set out in Section 2.2 (a) (i).

ii) **SMART Notebook Student Edition Software – SMART Classroom Suite Installation:**

Based on the number of associated Student Devices per Classroom, End Users may Use the Software on such number of Student Devices, and in the manner as set out above in Section 2.2(b).

iii) **SMART Response CE Interactive Response Software - SMART Classroom Suite Installation:**

Based on the number of Instructor Devices licensed, End Users may Use the Software (in CE mode) on such number of Instructor Devices. SMART Notebook Student Edition Software is licensed (pursuant to Section 2.2(b) above) to the associated number of Student Devices.

iv) **SMART Sync Software - SMART Classroom Suite Installation:**

Based on the number of Instructor Devices and the associated Student Devices licensed for the applicable Classroom, End Users may Use:

- i) the teacher install version of the Software on such number of Qualified Devices intended for instructors consistent with the number of Instructor Devices licensed, and
- ii) the student install version of the Software on such number of Qualified Devices intended for students consistent with the number of Student Devices licensed for that Classroom.

(k) **Trial Versions.** In connection with the foregoing license grants, End User may Use a copy of the trial version of the applicable Software (1) for the amount of time specified in the copy of such Software, or on the download website for such Software, and if no such date is specified, the earlier of: (a) thirty (30) days from the date of End User's acceptance of this License or (b) End User's Use of the Software; and (2) according to the license grants above in Section 2.2 (a) through (j) inclusive during such trial period, including the limitations regarding Use on Licensed Products only. To the extent the End User does not have the associated Licensed Product(s), the trial version grant of the Software is limited to such portions of the Software that do not require the associated Licensed Product to make such Software fully functional. Trial versions are provided solely to enable End Users to try the Software in order to inform their own purchasing decisions. Under no circumstance without SMART's express written consent shall an End User be entitled to Use the Software to publicly promote third party products or service, including the Use of the Software at demonstrations, trade shows or similar public forums. BY USE OF THE TRIAL VERSION OF THE SOFTWARE END USER ACKNOWLEDGES AND AGREES THAT AFTER THE AMOUNT OF TIME SPECIFIED IN THE SOFTWARE OR IN THE MATERIALS ACCOMPANYING THE SOFTWARE, THE TRIAL LICENSE SHALL TERMINATE AND THE SOFTWARE MAY AUTOMATICALLY DISABLE USER FROM CONTINUED ACCESS AND/OR USE OF SUCH TRIAL SOFTWARE AND ANY DATA OR CONTENT END USER MAY HAVE ENTERED INTO SUCH SOFTWARE UNLESS END USER TIMELY PURCHASES A LICENSE TO THE APPROPRIATE FULL VERSION OF SUCH SOFTWARE. All other terms of this License apply to the Trial Use of the Software, including, without limitation, the restrictions set out in Section 2.3 below. At the end of the trial period, End User's Use of the Software shall be terminated. If End User elects to convert from the trial version of the Software to the full licensed version of the Software using the unlock license purchase process within the Software (if applicable) or through some other license purchase process, End User's use of the new unlocked version of the Software shall be in accordance with the corresponding terms and conditions of this License.

(l) **SMART Drivers and Firmware.** End User is granted a license to Use the drivers and firmware portion of the Software only on SMART supplied hardware, even if a broader license right has been granted for other components of the Software in other subsections of this Section 2.2.

(m) **SMART Gallery Collection and Add-ons.** End User's use of the SMART supplied images, pictures, multimedia, SMART Notebook files or pages, backgrounds or themes, or SMART or third party supplied Notebook widgets (defined below), forming all or part of the SMART Gallery (each referred to as an "Item"), and use of the SMART or third party supplied add-on items (defined below) are all subject to the following conditions:

- i. End User may access, copy, distribute, publish, printed, and otherwise use unmodified Items or add-on items subject to the condition that such use be either a) for personal use, or b) for internal circulation within the Licensee Organization or otherwise (such as

reposting to the SMART Exchange Website) provided such use is for educational purposes only;

- ii. End User does not remove, modify or obscure any trade-mark, copyright or other proprietary notices contained in or appearing on such Items or add-on items;
- iii. End User shall not modify, adapt, reverse engineer, or otherwise alter Items that are Notebook widgets, images or the SMART Lesson Activity toolkit template (including flash) code. Items that are SMART Notebook files, backgrounds, pages, themes, interactive files, or multimedia may be modified, subject to the other terms of this License, including that End User retain and conspicuously reproduce source information and/or attribution to the original creator referred to in the Item;
- iv. End User shall not modify, adapt, reverse engineer, or otherwise alter add-on items;
- v. End User is permitted to use Item that is in a .widget, a .galleryitem or a .gallerycollection file format, or an add-on item that is in a .addon format, only with Software. Use for any other purpose is not permitted. End User may not use the Item or add-on item on third party software, or include it in any product for sale or for a fee. End User may not import directly into any third party software any .widget, .galleryitem or .gallerycollection Item, or any add-on item. This restriction may not be circumvented by altering the .widget, .galleryitem or .gallerycollection Items file format, or the .addon file format, or otherwise altering these Items or add-on items;
- vi. Items may be incorporated into a .notebook file (meaning part of a lesson or more than just the .widget, .galleryitem or .gallerycollection Item); the .notebook file may be exported into another file format; and that other file format may be used on third party software, provided it is not included in a third party product for sale or for a fee;
- vii. End User are not permitted to use the Items or add-on items in whole or in part for resale or any commercial purpose, whether or not incorporated into another product or offering, and whether the original SMART Gallery Item, an add-on item, or a derivative of any such items or Items; and
- viii. End User are not permitted to download the Items or add-on items in mass or bulk amounts, regardless of whether the intent is to use such content for commercial purposes; and are not to be (whether in original form or modified) offered, distributed, transmitted, or displayed, on or in a site, product, offering or service, including those competitive to SMART's offerings or otherwise.

In this subsection, “**Notebook widgets**” means interactive content created by SMART or third parties, which interact with the SMART Notebook object model through API's, and “**add-on items**” means items in .addon file format created by SMART or third parties that enable the provider of the .addon file to modify the SMART Notebook graphical user interface and/or add functionality, such as the “Activity Builder” add-on item. Third party supplied Notebook widgets and add-on items are “**Excluded Items**”.

**2.3 Other License Terms.** The license grant in section 2.2 is subject to the following additional license terms:

- (a) **Copies.** End User may make one copy of the Software in machine-readable form for backup purposes only, provided that the backup copy must include all trademarks, copyright or other proprietary notices contained on the original media. End User may copy the Documentation for internal purposes only. End User may not distribute copies of the Software or any component thereof, or make copies of the Software beyond what is described in this subsection or the applicable license terms set out in Section 2.2;
- (b) **Preservation of Rights.** All rights not expressly granted are reserved by SMART;
- (c) **Use on Third Party Interactive Display Devices.** Individuals may use SMART Notebook Express (subject to the Terms of Use on that site) located at: [express.smarttech.com](http://express.smarttech.com) with any device, including a third party Interactive Display Device. In the event that the End User wishes

to Use the SMART Notebook, SMART Response, or SMART Notebook Student Edition Software with any third party Interactive Display Device, End User must obtain a SMART Notebook Collaborative License in accordance with the terms above.

- (d) **End User Modifications and Enhancements.** End User may not modify, enhance, adapt, vary the Software, or create derivative works based on the Software, or merge or separate the Software or any component thereof without SMART's prior written consent;
- (e) **Prohibition Against Reverse Engineering.** End User may not reverse engineer, reverse compile, translate, decompile, disassemble, modify, create derivative works or otherwise attempt to derive source code from (or the underlying ideas, algorithms, structure or organization of) the Software or any component thereof, for any purpose, including for the purpose of discovering any aspect of the technology inherent therein. End User may undertake such activities provided that such activities are limited to the minimum extent required for the purpose of achieving interoperability of other independently developed computer programs and only to the minimum extent that such activity is expressly and strictly permitted by applicable law notwithstanding the foregoing limitation;
- (f) **Transfer.** Other than as expressly permitted in this License, End User may not rent, lease, lend or sublicense, distribute or supply the Software or any component thereof to any other party. This restriction extends to the product license key the End User receives or has been granted access to by SMART for Software installation or activation. This restriction also applies to posting of any portion of the Software on public websites;
- (g) **Applicable Laws.** End User must comply with all applicable laws regarding the use of the Software and any component thereof;
- (h) **Proprietary Notices.** End User must maintain all trademarks, copyright and other proprietary notices on all copies of the Software;
- (i) **Access to Third Party Programs.** The Software may include and/or be accompanied by third party software programs and content (collectively, "Third Party Components") that may require a separate end-user license agreement from the third party, some of which may be provided for your review upon initial installation or subsequent updates of the Software. None of the rights described in this license apply to such Third Party Components if accompanied by a separate end-user license agreement. Some of freeware or open source Third Party Components are made available subject to the terms of their respective licenses (referred to in the Intellectual Property Tab in the About Window) which terms may be different from or additional to those contained in this License. Acceptance of this License also confirms End User's acceptance of such freeware or open source license terms. SMART does not endorse or promote any products or services provided by third parties providing the Third Party Components. Software may also contain and/or be accompanied by SMART development tools and utilities, which may be subject to separate license agreements. You acknowledge that it is your responsibility to read, accept and comply with the terms and conditions of all such Third Party Component and SMART development tools and utilities license agreements;
- (j) **Links to Third Party Websites.** Links to third party websites are provided for 'information purposes' only and SMART is not responsible for any third party content provided by such sites including but not limited to information relating to any products or services;
- (k) **Software Usage Data: Customer Experience Program.** End User acknowledges that End User product usage information may be tracked by SMART for research and usability assessment purposes. This feature may be opted into or out of by the individual End User, or by the Licensee Organization (through the Licensee Organization's administrator). This usage tracking does not collect personal information (as defined in the *Personal Information Protection and Electronic Documents Act* (Canada)). It is the responsibility of the Licensee Organization to ensure that the default selection is consistent with its internal policies;
- (l) **Response Data Collected from any mode of SMART Response Assessment Software.** Any assessment or other data or information collected through or compiled by the Software

(collectively, the "Assessment Data") is the responsibility of the Licensee Organization. Assessment Data should be stored by the representative of the Licensee Organization on the Instructor Device, the Licensee Organization's network or some other digital storage device. Assessment Data handling policies and practices (including security and back-ups) are the sole responsibility of the Licensee Organization. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SMART DISCLAIMS ANY RESPONSIBILITY OR LIABILITY RELATING TO ACCESS, STORAGE, HANDLING, PRIVACY, SECURITY, INTEGRITY, MISUSE OR BACK-UP OF SUCH ASSESSMENT DATA; and

(m) **Content Copyright.** All title and intellectual property rights in and to the content which may be incorporated through use of Software or SMART products is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. Other than as expressly provided in this provision, this License grants End User no rights to use such content.

**2.4 Proper Use of Software.** End User acknowledges that the continued integrity of the Software and SMART's performance of its obligations described in this License relies upon the proper Use and maintenance of the Software by End User. Proper Use and maintenance means that End User will:

- (a) install all upgrades and releases made available by SMART;
- (b) use the Software in accordance with the Documentation supplied by SMART and the terms and conditions of this License; and
- (c) follow SMART's instructions for installing new releases and for correcting and circumventing bugs and fixes to the Software.

### **3. DELIVERY AND INSTALLATION:**

**3.1 Delivery.** Software may be downloaded from SMART's website, CD, or DVD, or installed on SMART USB. Unless Software is shipped with a Licensed Product, Software will be delivered F.C.A. (Incoterms 2000) SMART's point of manufacture. End User understands and agrees that it shall be primarily responsible for the installation of the Software.

**3.2 Acceptance.** End User agrees that the Software shall be deemed delivered and accepted upon receipt of Software and/or (if applicable) Licensed Product.

**4. SUPPORT SERVICES:** During such hours of support as are provided by SMART, technical support may be provided by SMART at no additional charge for any installation issues that arise during initial deployment of the Software. Any technical support related to the Software beyond its initial deployment ("Support Services") will be provided by SMART in its discretion and may be subject to a fee. End User acknowledges that SMART reserves the right to impose additional fees and/or decline the Support Services for Software provided after the end of the applicable Maintenance period. Support Services if any is limited to the current version of the Software and the two immediately preceding minor versions (0.X to 0.X-2). Use of Support Services, if any, is governed by the SMART policies and programs described in the Documentation and/or other SMART provided materials as modified by SMART from time to time. Any supplemental software or firmware provided to End User as part of Support Services shall be considered part of the Software and is subject to the terms of this License. In all cases, the End User, and not SMART, assumes responsibility for (i) the selection of the Software to achieve its intended results; and (ii) the installation, use and results obtained from the Software. End User acknowledges that no Support Services shall be provided by SMART for any trial version of the Software.

**5. REPLACEMENT, MODIFICATION AND UPGRADE OF THE SOFTWARE:** SMART reserves the right to replace, modify or upgrade the Software, or any component thereof, at any time by offering End User a replacement or modified version of the Software, or any component thereof, or such upgrade and to charge End User for such replacement, modification or upgrade. Additional charges will not apply during the term of any valid Maintenance period. Any such replacement or modified Software or upgrade to the Software, or any component thereof, offered to End User by SMART (whether for an additional charge, without additional charge or as part of Maintenance) shall be considered part of the Software and subject to the terms of this License, unless provided under a separate license, in which case, the terms of that subsequent license shall govern the Use of the Software. In the event SMART offers a replacement or modified version of or

upgrade to the Software at no cost to the End User or as part of the Maintenance: (a) End User's continued Use of the Software is conditioned on End User acceptance of such replacement or modified version of or upgrade to the Software and any accompanying superseding End User license agreement and (b) in the case of the replacement, modification, or upgrade of the Software, End User's license to Use of all prior versions of the Software is terminated.

6. **TERMINATION:** This License is effective until terminated. The End User may terminate this License at any time by ceasing the Use of the Software and destroying all copies of the Software in the End User's possession. The end of a trial period or subscription period shall be an event of automatic termination and the End User must at the end of such trial period or subscription period cease the Use of the Software and destroy all copies of the Software in the End User's possession. Without prejudice to any other rights, SMART may terminate this License if, in SMART's sole discretion, End User fails to comply with the terms and conditions of this License. In such event, End User must immediately stop using the Software, destroy all copies of the Software and all of its component parts, return or destroy all Documentation in its possession and upon request, provide an affidavit certifying End User's compliance with the foregoing.
7. **EXPORT RESTRICTIONS:** End User agrees that End User will not export or re-export the Software, or any component thereof, or any process or service that is the direct product of the Software (the foregoing collectively referred to as the "Restricted Components") to any country, person or entity subject to Canadian or U.S. export restrictions. End User specifically agrees not to export or re-export any of the Restricted Components (i) to any country to which Canada or the US has embargoed or restricted the export of goods or services or to any national of such country, wherever located, (ii) to any person or entity who End User know or have reason to know will utilize the Restricted Components in the design, development, production or operation of nuclear, chemical or biological weapons, or missile end-use or training related thereto or (iii) to any person or entity who has been prohibited from participating in Canadian or U.S. export transactions by any official body of the Canadian or U.S. government. End User represents and warrants that no official of the Canadian or US government has suspended, revoked or denied End User's export privileges.
8. **U.S. GOVERNMENT RESTRICTED RIGHTS:** The Software is a "Commercial Item", as that term is defined at 48 CFR 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 CFR 12.212 or 48 CFR 227.7202, as applicable. Consistent with 48 CFR 12.212 or 48 CFR 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to US Government End Users (a) only as Commercial Items; and (b) with only those rights as are granted to all other End Users pursuant to the terms and conditions herein.
9. **LIMITED WARRANTY:** The Software shall operate in substantial accordance with SMART's published specifications for a period of ninety (90) days from the date of Licensee Organization's purchase of the Software license. Subject to entitlements under a Maintenance program, the Licensee Organization assumes the entire cost of all necessary servicing, repair or correction of the Software. SMART's sole obligation under this express warranty shall be, at SMART's option and expense, to either i) refund the purchase price paid by Licensee Organization for any defective Software product which is returned to SMART with a copy of the applicable receipt, or ii) to replace any defective media with software which substantially conforms to applicable SMART published specifications. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. SMART does not warrant that the Software, or any portion thereof, or any Excluded Item works with any Interactive Display Device that is not a Licensed Product in the same manner that it works with Licensed Product. ANY USE OF THE SOFTWARE OR AN EXCLUDED ITEM IS PROVIDED "AS-IS" AND AT END USER'S OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SMART AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND CONDITIONS, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT WITH REGARD TO THE LICENSED PRODUCT, THE SOFTWARE, ANY COMPONENT(S) THEREOF, ANY EXCLUDED ITEM, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. SMART DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE IS INTERRUPTION OR DEFECT FREE. SMART DOES NOT TEST THE SOFTWARE ON PRODUCTS NOT SUPPLIED BY SMART. END USER ASSUMES ALL RISK THAT THE SOFTWARE WILL NOT FULLY OR PROPERLY FUNCTION WHEN USED WITH PRODUCTS NOT

SUPPLIED BY SMART. THIS LIMITED WARRANTY GIVES END USER SPECIFIC LEGAL RIGHTS. END USER MAY HAVE OTHERS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

10. **NO LIABILITY FOR CONSEQUENTIAL DAMAGES:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SMART OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR ANY INJURY TO ANY PERSON OR PROPERTY, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF PRIVACY, DAMAGES FOR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, DAMAGES FOR LOSS OF USE, DATA, DAMAGES FOR FAILURE TO MEET ANY DUTY INCLUDING THE DUTIES OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED PRODUCT, OR OTHER SMART PRODUCT, THE SOFTWARE OR ANY COMPONENT THEREOF, AN EXCLUDED ITEM, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SMART OR ANY SUPPLIER OR LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO END USER.
11. **LIMITATION OF LIABILITY:** IN ANY CASE, SMART'S ENTIRE LIABILITY AND END USER'S EXCLUSIVE REMEDY UNDER THIS LICENSE SHALL NOT EXCEED TEN DOLLARS (CAD \$10.00).
12. **SMART'S SUPPLIERS AND LICENSORS:** ANY RELEASE, DISCLAIMER OR LIMITATION OF SMART'S LIABILITY OR DAMAGES PURSUANT TO THIS LICENSE SHALL BE CONSTRUED, IN ADDITION TO SMART'S BENEFIT, ALSO TO THE BENEFIT OF SMART'S SUPPLIERS, LICENSORS, EMPLOYEES AND CONTRACTORS, AND WITHOUT LIMITING ANY OTHER DEFENSES THAT SUCH SUPPLIERS, LICENSORS, EMPLOYEES AND CONTRACTORS MAY HAVE, END USER AGREE TO RELEASE SUCH PARTIES FROM LIABILITY OR DAMAGES IN ACCORDANCE WITH SUCH RELEASE, DISCLAIMER OR LIMITATION OF LIABILITY OR DAMAGES TO THE SAME EXTENT THAT SUCH PROVISIONS APPLY TO SMART.
13. **GENERAL:**
  - 13.1 **Confidentiality.** End User acknowledges that the Software embodies confidential information of SMART and/or its suppliers and licensors. To the extent End User has access to any such information; End User agrees to use such information only for the authorized Use of the Licensed Products and Software. End User further agree not to disclose such confidential information to any other party and to protect such confidential information to the same degree it protects its own confidential information, but with no less than a reasonable degree of care. Software licensed under this License shall also be considered confidential information and, except as specifically permitted herein, shall not be disclosed to any third party.
  - 13.2 **Injunctive Relief.** End User acknowledge that, in the event End User breaches any provision of this License, SMART will not have an adequate remedy in money or damages. SMART shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request without posting bond. SMART's right to obtain injunctive relief shall not limit its right to seek further remedies.
  - 13.3 **Assignment.** End User may not assign this License or any of End User's rights hereunder (by operation of law or otherwise) without SMART's prior written consent which may be unreasonably withheld. For the purposes of this section, an assignment or transfer shall include any change in majority ownership or control of End User, including merger or other transfer of voting securities. SMART may assign this License without End User consent. Subject to the foregoing, this License shall be binding upon and inure to the benefit of the parties to it and their respective legal representatives, successors and permitted assigns.
  - 13.4 **Amendment.** No modification of this License shall be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought.

- 13.5 Language.** Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License will govern.
- 13.6 Governing Law.** This License is governed by the laws of the Province of Alberta, Canada. Also to the extent permitted by applicable law, the parties irrevocably agree that any litigation involving this License, the Software, or a Licensed Product, shall be brought in the provincial courts in the Province of Alberta or the federal courts of Canada, as the case may be. End User agree that End User shall not assert any claim that End User is not subject to the jurisdiction of such courts, that the venue is improper, that the forum is inconvenient or any similar objection, claim or argument. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- 13.7 Entire License.** This License constitutes the entire understanding and License of the parties and supersedes any and all prior or contemporaneous representations, negotiations, tender documents, proposals, understandings and Licenses between the parties with respect of the subject matter of this License. If any provision of this License is held invalid, the remainder of this License shall continue in full force and effect.
- 13.8 Waiver.** The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.
- 13.9 Force Majeure.** Either party's failure to perform its obligations hereunder shall not be deemed a breach of this License if such failure is due to fire, strike war, civil unrest, acts of terrorism, government regulations, acts of nature, or other causes beyond the reasonable control of the party claiming force majeure.
- 13.10 Questions.** Should End User have any questions concerning this License, or if End User desires to contact SMART for any reason, please write:
- SMART Technologies ULC  
3636 Research Road NW  
CALGARY, AB CANADA T2L 1Y1
- 13.11 Feedback.** Should End User provide SMART with any suggestions, comments or feedback (including modifications or suggested modifications to any component of the Software, Licensed Product, or other SMART product) regarding the Software, Licensed Product, or other SMART product, SMART shall treat it as non-confidential and be free to use it for any and all purposes, without any compensation, acknowledgment or other obligation of any kind to End User.
- 13.12 Notices.** End User may provide SMART notice hereunder by sending it to the above address, or such other address SMART shall most recently have notified End User, and shall be sent "Attention: Legal Department". Notice to the End User, including, without limitation, of upgrades or updates to the Software or this License, may be provided by SMART either by a) sending it to the End User's email or business address on record, or such email or business address as End User may have most recently notified SMART, or b) providing notification on the SMART Product Updater program, accessible through the "Check for Updates" selection in the "Help" menu tab.
- 13.13 Publicity.** In consideration of the license(s) granted hereunder, SMART may identify Licensee Organization in full or partial published lists of SMART customers.
- 13.14 Survival.** The obligations set forth in Sections 2.2(l), 2.3 (b), (d), (e), (f), (g), (k), (l) and (m), 6, 7, 8, 10, 11, 12, 13.1, 13.2, 13.6, 13.11, 13.12, 13.13 and this 13.14 shall survive termination of this License for any reason.

SMART and SMART related brands are trade-marks of SMART Technologies ULC or its affiliates, and may be registered in the United States and other jurisdictions. Other brands, logos and marks are trade-marks of their respective owners. PDF technology in SMART Ink™ is powered by PDFNet SDK, © PDFTron™ Systems Inc., 2001-2011, and distributed by SMART Technologies under license.