

## EDUCATIONAL COURSE MATERIALS DEVELOPMENT AGREEMENT

This Agreement is made the \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between \_\_\_\_\_ [name of author(s)] ("Author," and if there is more than one author, then all of them collectively) and Appalachian State University ( "University") for development of specially-commissioned instructional materials identified on Exhibit A (detailed description) in any media designated by University for a course identified as \_\_\_\_\_.

For and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

### 1. Title and Copyright Assignment

#### (a) Work Made for Hire Acknowledgment

The parties acknowledge and confirm that, in this Agreement, the University has specially ordered or commissioned from Author the designs, graphics, artwork, recordings, manuscripts, or other expressions generally described as instructional materials (said works, together with all other works prepared or contributed to by Author in connection with this agreement being referred to hereinafter collectively as the "Work"), and that, upon full payment for Author's services in accordance with the terms and conditions specified in this Agreement, no party other than the University shall have any rights, titles or interests in the Work. The parties further acknowledge and confirm that the term "Work" includes, but is not limited to, all intellectual property rights of every kind and character associated with the Work, including but not limited to trade secrets, U.S. and international copyrights, patentable inventions, moral rights, rights of publicity and privacy, and trademarks, service marks, and trade dress. Author acknowledges that Author's services, including work on and contributions to the Work, are rendered and made by Author for and at the instigation of the University; and all of Author's work and contributions, as well as the Work, are and at all times shall be regarded as "work made for hire" (as that term is used, understood and interpreted in and under the U.S. Copyright Act, 17 U.S.C. § 101, et seq.) by Author for the University.

#### (b) Assignment

(i) Without curtailing or limiting the aforesaid acknowledgment that the Work is to be deemed "work made for hire," Author hereby assigns, grants and delivers, and upon creation of the Work automatically assigns, grants and delivers, without further consideration, exclusively to University, all rights, titles and interests of every kind and nature whatsoever in and to the Work, and all copies, versions, and derivatives thereof, including: (a) all copyrights, copyright applications and/or registrations and any extensions or renewals thereof; (b) all trademark rights, trademark applications and/or registrations and any extensions or renewals thereof; (c) any and all rights related to and necessary for licensing and merchandising the Work, or any articles of property in which the Work or a part thereof is incorporated, including moral rights and rights of privacy and publicity; and (d) all rights, titles, and interests in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world. Author further agrees to execute and deliver to the University, its successors and assigns, such other and further assignments, instruments, and documents as the University from time to time reasonably may request for the purpose of establishing, evidencing, enforcing, or defending its complete, exclusive, perpetual, and universal ownership of all rights, titles, and interests of every kind and nature whatsoever in and to the Work.

(ii) Author hereby constitutes and appoints the University as its agent and attorney\_in\_fact, with full power of substitution, to execute and to deliver such assignments, instruments or documents as Author may fail or refuse to execute and deliver. If the Work is one to which the provisions of 17 U.S.C. 106A apply, the Author hereby waives and appoints University as its agent and attorney\_in\_fact,

with full power of substitution, to assert on the Author's behalf the Author's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the Work, in any medium, for university purposes. The agency appointments made and powers granted herein are coupled with an interest and irrevocable.

## **2. Work on or Contribution to the Work**

Author represents and warrants that Author has not and will not order, commission or otherwise obtain or receive from any other person (other than an "employee" of the University working "within scope of employment" as those terms are used, understood and interpreted in and under the U.S. Copyright Act, 17 U.S.C. § 101, et seq.) any work on or contribution to the Work. With the exception of short excerpts from others' works, which constitute fair use, the Work will contain no material from other copyrighted works without a written consent of the copyright holder. The Author will obtain such consents after consultation with the University and will file them with the University at the time the Work is delivered.

## **3. Author's Warranty and Indemnification**

The Author warrants that the Author has full power and authority to make this agreement; that the Author shall be the sole creator of the Work; and that the Work shall not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter. Author agrees that if the University receives any legitimate demand from any third party claiming that the Work or any part thereof infringes or otherwise violates its rights, and the validity of the said demand is confirmed by the opinion of legal counsel for the University; or a court, arbitration panel or other authority determines that the Work or any part thereof is confusingly similar to marks or images of any third party or otherwise infringes or violates the rights of any third party, then Author will, at the University's election, and in a reasonable manner acceptable to the University, modify or alter the Work in a manner that cures any claimed infringement or violation, or undertake to create a comparable replacement or substitute for the Work. Author hereby warrants that the Work does not, and the University's use of the Work will not, in any way violate any law or conflict with any prior or remaining obligations Author may have to any other party.

## **4. Delivery of the Work**

(a) The Author will deliver to the University on or before \_\_\_\_\_ the completed Work (with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium designated by University, and in form and content satisfactory to the University.

(b) If the Author fails to deliver the Work on time, the University will have the right to terminate this agreement and to recover from the Author any sums advanced and expenses incurred in connection with the Work. Upon such termination, the Author may not have the Work published elsewhere until such advances have been repaid.

## **5. Consideration**

In consideration for delivery of the Work in accordance with the provisions of this Agreement, University shall pay Author \_\_\_\_\_ (\$) or, in the alternative, grant to Author reassigned time equivalent to a \_\_\_\_\_ semester credit hour teaching load. Such consideration constitutes full payment for Author's services in creating and delivering the Work, and such consideration gives rise to an "ownership" interest in the University within the meaning of The UNC Policy Manual, 500.2, the University of North Carolina Patent and Copyright Policies, Section

XII, Copyrightable Works, 1.c. The Work, a "work made for hire," constitutes a "Directed Work" within the meaning of Section 500.2, XII, Copyrightable Works, 1.c. See Appendix A to this Agreement for the relevant text from The UNC Policy Manual and the parallel provisions of the Appalachian State University "Policies and Procedures on Intellectual Property Transfer."

## **6. Revisions**

The Author shall retain the right to revise the Work between semesters or summer sessions during the term of this agreement in accordance with academic standards. The Author further agrees to update the Work within \_\_\_\_\_ days following receipt of a written request from the University. The provisions of this agreement shall apply to each revision of the Work by the Author as though that revision were the Work being published for the first time under this agreement. In the event that the Author is unable or unwilling to provide a revision within a reasonable time after the University has requested it, or should the Author be deceased, the University may have the revision made and charge the cost against sums due the Author under Section 5 above, if any, and may display, in the revised Work and in advertising, the name of the person or persons who perform the revision. The University shall not request a significant update or revision without providing the Author compensation or reassigned time in addition to that provided under this agreement.

## **7. Term and Termination**

(a) This agreement shall remain in effect for \_\_\_\_\_ (\_\_\_\_) years unless terminated earlier in accordance with this Section 7.

(b) In the event that either party shall be in default of its material obligations under this agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this agreement shall terminate upon expiration of the sixty (60) day period.

(c) Upon the expiration of the term of this agreement, the parties may agree to renew this agreement for an additional \_\_\_\_\_ (\_\_\_\_) year term, upon the same terms and conditions as set forth herein.

## **8. Options/Contracts with Third Parties**

(a) The University shall have the right, but no obligation, to license use of the Work or grant other rights in the Work to third parties in its sole discretion, with or without compensation. Nothing contained in Section 7 shall affect any license or other grant of rights, options, or agreements made with third parties prior to the termination date or the rights of the University in the income resulting from such agreements. If the University enters into a royalty-producing agreement with another institution or organization for use of the Work, the University shall distribute to each Author a pro rata share of such royalty which, when aggregated with shares paid to all other Authors of the Work, will equal (choose one)

\_\_\_\_\_ amounts specified in current university policies.

\_\_\_\_\_ fifty percent (50%) of the gross royalty received by the University.

(b) If the Author receives any offers from third parties to license the work for commercial exploitation, the Author shall refer such offers to designated University personnel for consideration. If the University chooses not to accept an offer and otherwise does not pursue commercial exploitation with potential licensees referred to it by the Author, the University shall assign to the Author the right to license the work to any third party, so long as responsible University officials do not make an affirmative finding that a royalty-producing license would be inconsistent with the University's

institutional mission or interests.

## **9. Amendments**

The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the University concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by Author and an authorized official of the University.

## **10. Severability of Terms**

Rights and restrictions in this agreement may be exercised and shall be applicable only to the extent they do not violate any applicable laws, and are intended to be limited to the extent necessary so they will not render this Agreement illegal, invalid or unenforceable. If any term or provision hereof shall be held illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining terms shall remain in full force and effect.

## **10. Construction, Binding Effect, and Assignment**

This agreement shall be construed and interpreted according to the laws of the State of North Carolina and in consonance with policies, rules and regulations adopted by The University of North Carolina and Appalachian State University. This agreement shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives. References to the Author and to the University shall include their heirs, successors, assigns, and personal representatives.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first written above.

(END OF TEXT; SIGNATURES ON FOLLOWING PAGE)

Author: \_\_\_\_\_

Printed name: \_\_\_\_\_

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

\_\_\_\_\_

Author: \_\_\_\_\_

Printed name: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Appalachian State University

By \_\_\_\_\_

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Title)