

ON-LINE COURSE DEVELOPMENT AGREEMENT

This Agreement (“Agreement”) is entered into by and between on the one hand The Regents of the University of California, on behalf of the University of California, San Diego campus (“University”) and the following persons (collectively “Course Creator”):

Course Creator 1

Course Creator 2

Course Creator 3

RECITALS

- A. Course Creator desires to create an on-line course for distribution through the University.
- B. University wishes to procure a course from Course Creator for distribution on-line.

Therefore, for valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Definitions.** As used in this Agreement, the following terms shall have the meanings provided below:

a. “Course” shall mean _____ ,

Course Title

Course Description

- b. “Course Development Incentive” shall mean financial compensation or material support provided by the University to the Course Creator to incentivize the creation, development, or maintenance of a high-quality on-line version of the Course.
- c. “Course Materials” shall mean materials provided by the Course Creator to be used in connection with the Course. By way of example, Course Materials may include lecture notes, syllabi, study guides, homework assignments, assessment tools (e.g., tests and quizzes), bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software.
- d. “Course Recordings” shall mean audio, visual, or audio-visual recordings that provide instructional material associated with the Course.

- e. “Net Revenue” shall mean Revenue less deductions for refunds and expenses incurred by University in producing or distributing the Course, including without limitation, payments to Platform owners and other distributors, and legal, proctoring, content hosting, and credit-card processing fees, and other fees or expenses that are incurred by the University in connection with or as a result of offering the Course.
- f. “Platform” shall mean an on-line distribution method or service. The Platform may be owned or managed by a third party or by the University.
- g. “Revenue” shall mean cash actually received by the University in a fiscal year (*i.e.*, between July 1 and June 30) as compensation for licensing or distributing the Course or Course Materials on-line; provided however, Revenue does not include any money derived directly or indirectly from tuition or fees paid for credit-bearing courses by students enrolled with the University in a degree program or in a setting where more than fifty percent of the instruction occurs in person.

Course Development Incentive. As compensation for the development of the Course, the University will pay the Course Creator a one-time fee in the amount of

_____ within forty-five (45) days of Course Creator
Total Course Development Incentive

delivering to the University the Course, along with Course Materials and Course Recordings of appropriate academic and technical quality and merit as determined by the University in its sole discretion. Delivery of the Course and all associated materials is due

on _____. If the University determines the Course, Course Materials,
Date

or Course Recordings are not of sufficient academic or technical quality or merit, the University will so advise the Course Creator and give the Course Creator thirty (30) additional days to improve the Course and re-submit for University approval. If the University does not approve the re-submitted material, no Course Development Incentive will be paid and if all or part of a Course Development Incentive has already been paid, Course Creator shall reimburse the University for the amount paid. Time is of the essence for the deadlines in this paragraph. The Course Development Incentive provided in this Section represents the sole financial compensation owed by the University to the Course Creator for use of the Course or Course Materials and for assignment of ownership of the copyright to the Course Recordings. Nothing in this Agreement constitutes any adjustments with respect to the Course Creator’s workload, course enrollments, teaching evaluations, and teaching credit for purposes of review, promotion, tenure, and other employment duties at University. The Course Development Incentive will not be considered covered compensation for purposes of the UC Retirement Plan. The University may withhold all applicable taxes from the Course Development Incentive and may report payments to Course Creator to tax authorities, as the University deems necessary or appropriate.

2. **APM – 670 Expectations Compliance.** For academic appointees subject to APM – 670, Health Sciences Compensation Plan, a Course Development Incentive may be paid as a “Z payment” in the form of bonus compensation; provided however, a Course Development

Incentive payment will only be paid if, at the time the Course Development Incentive would otherwise be due under Paragraph 2 of this Agreement, the Course Creator has satisfied all components of the Course Creator's total negotiated salary obligations and the Course Creator has no deficits with the Course Creator's department or school. If a Course Creator has not satisfied all components of the Course Creator's total negotiated salary obligations or has deficits with the Course Creator's department or school, the Course Development Incentive that would otherwise be due may, at the discretion of the University, be applied to satisfy those obligations and/or repay those deficits. A Course Development Incentive paid as a "Z payment" will not be considered covered compensation for the University of California Retirement Plan (UCRP) and must comply with all Departmental Implementing Procedures that describe the manner in which faculty members within a department, division, or APU may earn incentive compensation beyond base and negotiated compensation, upon approval by the Dean.

3. **Copyright Ownership.** As between the University and the Course Creator, the Course Creator will own the copyright in the Course and the Course Materials to the extent authorized by University policy and U.S. copyright law. The University will own the copyright to the Course Recordings, and the Course Creator hereby assigns to the University any copyright ownership interest the Course Creator may have in or to the Course Recordings. Course Creator agrees to execute any document reasonably necessary to assign, secure, or protect the University's copyright to the Course Recordings.
4. **License to University.** The Course Creator hereby grants the University a non-exclusive, irrevocable, worldwide, fully paid-up, perpetual license to use, copy, sell, distribute, make derivative works, publicly display, and publicly perform, and authorize others to use, copy, sell, distribute, make derivative works, publicly display, and publicly perform the Course and Course Materials (or any portions thereof) through any means that currently exists or may be developed in the future, including without limitation through the use, public performance, and public display of the Course Recordings. This license includes the right to make alterations and derivative works to make the Course, Course Materials, or Course Recordings compatible with or otherwise suitable for distribution or licensing, to translate the Course or Course Materials into foreign languages, to make the Course or Course Materials accessible to people with disabilities, or to update, revise, or modify the Course, the Course Materials, and the Course Recordings to preserve or enhance their educational value as determined by the University. If the University determines that enforcement in court or other legal forum of copyright rights in the Course or the Course Materials is necessary to preserve the value of the license or assignment granted herein, Course Creator will fully cooperate with the University to assist the University in protecting the value of the license and assignment granted herein, including without limitation by taking such acts and executing such documents as may be necessary to allow the University to timely initiate and prosecute legal action; provided however, nothing herein obligates the University to initiate such an action.
5. **Right to Use Name and Likeness.** Course Creator hereby grants to the University a non-exclusive worldwide right to use, and to authorize others to use, Course Creator's name, voice, image or likeness (whether still, photograph, or video) in connection with the University's exercise of the licenses and assignments provided in this Agreement and to

promote, market, or advertise the Course and other University offerings for so long as the license to the University in Section 5 remains in effect.

6. **Option Not To Distribute.** The University reserves the right not to make the Course available to the public and, after the Course has been made available to the public, to discontinue the Course for any reason at its sole discretion. Whether credit towards a University degree will be granted for learners who complete the Course and the terms and conditions for granting credit shall be matters left to the University's sole discretion.
7. **Reserved Rights.** The Course Creator reserves the right to teach the Course and Course Materials in classes taught by Course Creator, including classes taught at other colleges or universities; provided however, unless Course Creator first obtains written consent from the Executive Vice Chancellor of the San Diego campus of the University, Course Creator will not offer the Course, or another course that is substantially similar, for distribution on-line while Course Creator remains employed by the University or for two years after separating from the University. For clarity, notwithstanding the foregoing, Course Creator will have no rights to copy, sell, distribute, license, modify, publicly display, or publicly perform the Course Recordings without the express written permission of the University.
8. **Course Modifications.** If the University decides to revise or update the substantive educational content of the Course by making changes to the Course Materials or the Course Recordings, and if at that time the original Course Creator holds an active academic appointment (recalled emeriti faculty included) with the San Diego campus, the University will offer the original Course Creator an opportunity to make the revisions, updates, or modifications in exchange for an additional Course Development Incentive to be negotiated and mutually agreed upon by both the University and the original Course Creator. If the original Course Creator declines or if the original Course Creator does not at that time hold an active academic appointment (recalled emeriti faculty included) with the San Diego campus of the University or if the University and the original Course Creator cannot reach agreement on the Course Development Incentive, the University may ask another academic appointee to make the revisions, updates, or modifications. If modifications are made by the Course Creator, such modifications shall be treated as if the modifications were part of the original Course, Course Materials, or Course Recordings, as applicable, subject to the terms and conditions provided in this Agreement. If modifications are made by someone other than the original Course Creator, the original Course Creator will own no rights to the revised, updated, or otherwise modified materials.
9. **Course Creator Representations and Warranties.** The Course Creator represents and warrants as follows:
 - a. The Course and Course Materials will be Course Creator's original work.
 - b. The Course and Course Materials will not violate the right of privacy or publicity or infringe upon any copyright or other proprietary rights of any other person.
 - c. The Course and Course Materials will not contain defamatory or other unlawful material.

- d. Course Creator has secured all necessary rights and permissions from all other persons who have contributed to the Course or the Course Materials.
 - e. Course Creator has the full right, power, and authority to grant the license contained herein and has exercised reasonable diligence to ensure that the Course and Course Materials do not violate the rights of third parties.
10. **Indemnification.** To the extent permitted by law, Course Creator agrees to hold harmless and indemnify the University against any claim, demand, suit, action, proceeding, recovery, or expense of any nature whatsoever arising under this Agreement, including claims of infringement of copyrights or proprietary rights resulting from the publication or distribution of the Course, Course Materials, or Course Recordings, or claims of libel, unlawfulness, or invasion of privacy or right to publicity based on or arising out of any matter or thing contained in the Course or Course Materials or Course Recordings as furnished by Course Creator, or any breach of the warranties set forth in this Agreement. Nothing in this Agreement impairs or expands the rights of the Course Creator to indemnification and defense as provided in Regents Policy 4202.
 11. **Waiver of Moral Rights.** To the greatest extent permitted by law, Course Creator hereby irrevocably waives all moral rights (including the rights set forth in Section 106A of the Copyright Act) and similar rights that Course Creator may have in the Course, Course Materials, or Course Recordings.
 12. **Counterparts.** This Agreement may be executed in counterparts. A copy of the Agreement is as admissible as the original in any legal or other official proceeding.
 13. **Opportunity for Review.** The Course Creator acknowledges that Course Creator has had an opportunity to discuss this document with legal counsel or other representative of Course Creator's own choosing, and has done so to the extent Course Creator considers necessary.
 14. **Modifications in Writing Only.** This document may not be modified except by written amendment, characterized as such, and signed by the parties.
 15. **California Law.** This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced in accordance with California law. The exclusive jurisdiction and venue for disputes arising under or related to this Agreement will be the state courts in San Diego County, California.
 16. **Binding Effect.** This Agreement shall bind the heirs, personal representatives, successors, and assigns of each party, and inure to the benefit of each party, its heirs, successors, and assigns.
 17. **No Waiver.** The waiver by either Party of a breach of or a default under any provision of this Agreement, shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

18. **Interpretation; Construction.** The paragraph headings contained in this Agreement are for convenience only and shall not be used when interpreting this Agreement.
19. **Entire Agreement.** The parties declare and represent that no promise, inducement, or agreement not discussed in this document has been made between the parties and that this document and Exhibit A attached hereto contain the entire expression of agreement between the parties on the subjects addressed herein. (Exhibit B is attached for information purposes only and may not be used as the basis for imposing or implying obligations on the part of the University.) No amendment or modification to this Agreement will be valid or binding unless made in writing and signed by the party to be charged.
20. **Severability.** The provisions of this Agreement are severable and, if part of it is ever found to be invalid or unenforceable, in whole or in part, the invalid or unenforceable part shall be deemed deleted, and the remainder of this Agreement shall remain fully valid and enforceable.
21. **Notices.** All notices that may or are required to be sent under this Agreement must be sent, if to the University, Executive Vice Chancellor, University of California, San Diego, 9500 Gilman Drive, Mail Code 0001, La Jolla, CA 92093-0001, and if to the Course Creator,

Street Address

City, State, Zip

22. **Effective Date.** The Effective Date of this Agreement is the date last signed below.

Name of Course Creator 1

Signature Course Creator 1

Date

Name of Course Creator 2

Signature Course Creator 2

Date

Name of Course Creator 3

Signature Course Creator 3

Date

***Name and Title of Authorized
University Representative***

Signature Authorized University Representative

Date

EXHIBIT A

If any changes occur in the information below, Course Creator shall provide an updated copy of this Exhibit to the digital learning office or such other office as the University may designate from time to time.

A. Disposition of Course Development Incentive

The Course Development Incentive may be provided in the form of a one-time payment and/or placed in a Research Account. Any monies that will be taken as personal income will be subject to federal and state taxes. Monies that are placed in a Research Account can be used in support of research but cannot be subsequently used for Course Creator’s salary.

For each Course Creator, the following information should be provided.

1. **Course Creator 1**

- a. Name: _____ _____ *Initials*
Email: _____
Telephone: _____
- b. If there are multiple Course Creators, what share/percentage of the total Course Development Incentive will this Course Creator receive? _____
- c. Percentage of this Course Creator’s share to be paid as one-time payment (number from 0%-100%): _____
- d. Percentage of this Course Creator’s share to be paid into Research Account (number from 0%-100%): _____
- e. Research Account index number, if known: _____

NB: Percentages in (c) and (d) for each Course Creator must total 100%. Percentages in (b), across all Course Creators, must total 100%.

2. Course Creator 2

- a. Name: _____ _____ *Initials*
Email: _____
Telephone: _____
- b. If there are multiple Course Creators, what share/percentage of the total Course Development Incentive will this Course Creator receive? _____
- c. Percentage of this Course Creator's share to be paid as one-time payment (number from 0%-100%): _____
- d. Percentage of this Course Creator's share to be paid into Research Account (number from 0%-100%): _____
- e. Research Account index number, if known: _____

3. Course Creator 3

- a. Name: _____ _____ *Initials*
Email: _____
Telephone: _____
- b. If there are multiple Course Creators, what share/percentage of the total Course Development Incentive will this Course Creator receive? _____
- c. Percentage of this Course Creator's share to be paid as one-time payment (number from 0%-100%): _____ %
- d. Percentage of this Course Creator's share to be paid into Research Account (number from 0%-100%): _____ %
- e. Research Account index number, if known: _____

NB: Percentages in (c) and (d) for each Course Creator must total 100%. Percentages in (b), across all Course Creators, must total 100%.

EXHIBIT B

Exhibit B is for internal University use only and may be changed by the University at any time with or without notice to the Course Creator. Exhibit B does not form part of the On-line Course Development Agreement.

B. Disposition of Department/Unit Allocation

a. Fiscal contact who will accept Department/Unit Revenue Share:

Name: _____

Email: _____

Telephone: _____

b. If known, fund/index into which Research Account payment (if any) will be transferred:

Fund: _____

Index: _____

Organization number: _____

C. Other Adjustments

If Department/Unit Allocation is to be re-allocated to or shared with another entity, please explain and provide details of that allocation.