

1/2/07

WORK MADE FOR HIRE AGREEMENT

Educational Course Materials

This Agreement is made and entered into this _____ day of _____, 2007, by and between _____ (“Author”), and the West Virginia University Board of Governors on behalf of West Virginia University (“University”).

RECITALS

The Author shall be the sole contributor of copyrightable expression to the educational course materials anticipated to result from this project. The University shall be contributing significant kinds and/or amounts of University resources. In furtherance of their mutual objectives, the parties hereto agree to allocate certain of their rights and responsibilities, as further set forth in this Agreement.

1. Title and Copyright Assignment

(a) Author and University intend this to be a contract for services and each considers the products and results of the services to be rendered by Author hereunder (the “Work”) to be a work made for hire. Author acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of University.

(b) If, for any reason, the Work would not be considered a work made for hire under applicable law, Author does hereby sell, assign, and transfer to University, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and 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 and related to the foregoing throughout the world.

(c) If the Work is one to which the provisions of 17 U.S.C. 106A apply, the Author hereby waives and appoints University 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.

(d) Author agrees to execute all papers and to perform such other proper acts as University may deem necessary to secure for University or its designee the rights herein assigned.

2. Delivery of the Work

(a) The Author will prepare and deliver to the University on or before _____, 20____, the completed Work (a detailed description of which is included in Appendix A attached hereto) 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 in connection with the Work. Upon such termination, the Author may not have the Work published elsewhere, in any way, shape or form, until such advances have been fully repaid

3. Quoted Material

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 at his or her own expense after consultation with the University and will file them with the University at the time the Work is delivered. Any obligations associated with permissions will be the sole responsibility of the Author.

4. Author's Warranties

The Author warrants that he or she is the sole owner of the Work, and has full power and authority to enter into this Agreement and to grant the rights granted hereunder. The Author also warrants that the Work does not, and will not, infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter. The Author will defend, indemnify, and hold harmless the University and/or its licensees, and the officers, employees and agents of each, (collectively, the "Indemnified Parties") against all claims, suits, costs, penalties, damages, and expenses (including attorneys' fees) that the Indemnified Parties may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the Work or any infringement or violation by the Work of any copyright or property right; and until any such claim or suit has been settled or withdrawn, the University may withhold any sums due the Author under this Agreement. The provisions of this Section 4 shall survive the expiration or termination of this Agreement.

5. Consideration

(a) In consideration for delivery of the Work in accordance with the provisions of this Agreement, University shall pay the Author the total sum of _____ (\$ _____) at the time and in the manner agreed to by the parties hereto.

(b) Upon acceptance of the Work as contemplated in Section 2(a) above, and subject to the other terms and conditions set forth herein, the University shall grant back to Author a non-exclusive, non-transferable limited license, allowing the Author to use the Work solely for Author's own academic and professional purposes of a non-commercial nature, provided that any such use does not directly compete with University's use or intended use of the Work, and that Author indemnifies the Indemnified Parties in accordance with the provisions of Section 4 above, for any such use by Author. Without limiting the foregoing, the use referenced herein shall be restricted to Author, and Author shall not otherwise license, authorize or permit the use of the Work by any other person or

organization. Any and all other uses of the Work by Author shall require, in advance, the permission of, or a separate license from, University. University reserves unto itself any and all of its rights of every kind and nature, except those specifically granted to Author herein.

6. Revisions

The Author shall retain the right to revise the Work once a year during the term of this Agreement in accordance with academic standards. The Author further agrees to update the Work within ninety (90) days upon the 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 ninety (90) days after the University has requested it, or should the Author be deceased, the University may have the revision made elsewhere and charge the cost of such revision 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.

7. Term and Termination

(a) This Agreement shall remain in effect for three (3) years, unless terminated earlier in accordance with this Section 7.

(b) In the event that either party hereto shall be in default of its material obligations under this Agreement and shall fail to remedy such default within thirty (30) days after receipt of written notice thereof, the other party shall have the right to terminate this Agreement upon expiration of the above-mentioned thirty (30) day period.

(c) Upon the expiration of the term of this Agreement, as set forth in Section 7(a) above, the parties hereto may agree to renew this Agreement for an additional three (3) years, upon the same terms and conditions as set forth herein.

8. Miscellaneous

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 both parties. No condition, covenant, duty or obligation contained in this Agreement can be waived, except by written agreement signed by both parties. Forbearance or indulgence in any form or manner by either party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. The Author shall not sell, assign, transfer, lease, sub-license or otherwise convey any of its rights, or delegate any of its obligations, under this Agreement, without the prior written consent of the University. This Agreement shall be construed and interpreted according to the laws of the State of West Virginia and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Author and to the University shall include their heirs, successors, assigns, and personal representatives.

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

AUTHOR

Name: _____

Signature: _____

Address: _____

UNIVERSITY

By: _____

Signature: _____

Address: _____

APPENDIX A: DESCRIPTION OF THE WORK