Joint Creation and Ownership Agreement
for UTEP Educational Course Materials

Course Materials Jointly Owned by Author and University

This Agreement is made effective the ________________   day of ______ , by and between

___________________________________________________________________________

("Author," and if there is more than one author then all of them collectively, jointly or severally “Author”), and The University of Texas at El Paso ("University").

Recitals

A. The Author and University desire to develop or modify a course titled

__________________________________________________________ (hereafter the "Course").

B. The Author and University shall each contribute copyrightable expression to and intend to be joint owners of educational course materials anticipated to result from this collaboration (the “Work”) that will constitute the Course.

C. The Parties recognize that under law, each could act independently of the other in exploiting the Work, with only an obligation to account to each other for a share of any profits. In furtherance of their mutual objectives, the Parties instead will allocate certain of their jointly held rights and responsibilities as set forth in this agreement.

D. The Course will be offered through the University’s current course management system (CMS), or as otherwise stated herein or agreed to by the Parties.

THE AUTHOR AND THE UNIVERSITY AGREE THAT:

1. Rights Granted

(a) All contributions of original manuscripts or other original materials developed and contributed by Author in connection with this Agreement as part of the Work which constitutes the Course for delivery (the "Author’s Contribution") shall remain the nonexclusive property of the Author.

(b) University shall have the exclusive right to license the Work which constitutes the Course to others, including, without limitation, the rights described in Section 8 below.

(c) Author agrees that University may offer the Author’s Contribution as a course on an unlimited basis during the term of this Agreement and renewals thereof, as set forth in this Agreement.

(d) The University has the right to sublicense any use of the Author’s Contribution within The University of Texas System ("U.T. System"), and to the University’s collaborative educational partners, including but not limited to the El Paso Community College District and the El Paso, Socorro, Ysleta and Canutillo Independent School Districts in connection with dual-credit programs.

(e) The parties shall share in royalties, if any, as set forth in this Agreement.
2. Completion of Author's Contribution to the Course; Other Obligations

(a) The Author and the University will jointly prepare the Work (which shall include all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc.), and deliver the Course according to the schedule established with the instructional designer, to be offered in the medium mutually agreed upon for the Course in form and content satisfactory to the University.

(b) Author's failure to meet any of the obligations under this Agreement shall be a material breach of this Agreement. Upon such breach, the University shall have the right to terminate this Agreement and recover from Author any sums or other resources advanced in connection to the Work that constitutes the Course as well as any portion of the consideration paid under the corresponding agreement. Upon such termination, the Author may not have the Author’s Contribution to the Work published elsewhere until said sums and/or consideration has been repaid to University.

3. Quoted Material

With the exception of short excerpts from others' works, which constitute fair use, Author’s Contribution to the Work which constitutes the Course will contain no material from other copyrighted works without a written consent/permission of the copyright holder. The Author shall be responsible for obtaining all consents/permissions required to be secured for copyrighted work thru the Copyright Clearance Center or other appropriate licensing agencies or directly from the other copyright holder. Except as established in section 7 (c) below, the Author shall obtain such consents/permissions at Author’s own expense and Author shall file copies of the consents/permissions with the University’s designated instructional designer at the time the Course is submitted for review. Any obligations associated with permissions will be the responsibility of the Author.

4. Publication of the Work which constitutes the Course.

The Work which constitutes the Course shall be distributed, transmitted or published by the University as soon as circumstances permit after receipt, at its own expense, in such a manner as the University shall deem appropriate.

5. Copyright.

The Author authorizes the University to, at the University’s sole discretion, register copyright in the Work which constitutes the Course in the Author’s and University’s names in the United States of America and elsewhere as the University may elect.

6. Author's Warranty

(a) The Author warrants that he or she is the owner of the Author's Contribution and has full power and authority to make this Agreement; that he or she has made a good faith effort to follow the U.T. System Copyright Policy and that the Author's Contribution does not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter.

(b) To the extent that an act of the Author that results in a claim of copyright infringement was authorized by the U.T. System Copyright Policy, in accordance with that Policy and to the extent authorized by the Constitution and laws of the State of Texas, the U.T. System will defend,
indemnify and hold harmless the Author against all claims, suits, costs, damages and expenses that he or she may sustain by reason of such infringement or violation by them of any copyright.

(c) In all other cases, the Author will defend, indemnify, and hold harmless the University and/or its licensees against all claims, suits, costs, damages, and expenses that the University and/or its licensees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the Author's Contribution or any infringement or violation by the Author's Contribution of any copyright or property right; and until such claim or suit has been settled or withdrawn, the University may withhold any sums due the Author under this agreement.

7. Consideration

(a) University will contribute the following resources to the creation of the Work which constitutes the Course: Training, access to course management system, 24 hour a day Blackboard support for faculty and students when the course is delivered as 100% online OR 8:00 am-5:00 pm weekday technical support when the course is offered as Hybrid or Technology Enhanced (excluding University observed holidays), digital library resources, and other services as they become available, such as online tutoring services and plagiarism-detection tools; materials, hardware, software, production assistance, other assistance, videotaping and programming.

(b) University may, in its sole discretion, provide course release time to the Author for the development of the Course in accordance with the obligations of this Agreement. Such release may only be granted with the approval of the Author’s Department Chair, Dean and the Provost.

(c) In the event that a reasonable open source solution cannot be found, and subject to budgetary availability, University may provide the funds reasonably required to secure copyright licenses, permissions or consents needed pursuant to the terms of this Agreement. All required permission fees shall be submitted by Author and the Dean of Extended University for review and recommendation concerning approval. The University will make no disbursement until such fees are recommended for approval by the Dean of Extended University to the Author’s Dean who may then approve the funding for such fees upon said Dean’s discretion.

(d) The parties do not anticipate commercial exploitation of the Work and so have not addressed University’s recovery of its contribution or allocated royalty percentages to either Party.

8. Subsidiary Rights

The University shall have the right to license, sell, or otherwise dispose of the following rights in the Work which constitutes the Course: Publication or sale by any means, including but not limited to book clubs; reprint rights; foreign rights; translation rights; publication in anthologies, compilations, digests, condensations; first and second serial rights (in one or more installments); dramatic, motion picture, and television rights; broadcast by radio; recordings; electronic, mechanical, and visual reproduction; computer programs; microprint, microfiche, and microfilm editions; syndication rights; permission rights (quotations, excerpts, illustrations, etc.); any other rights to the Work not specifically enumerated; and otherwise utilize the Work and material based on the Work.

9. Revisions

In the event the Author is also the University’s course instructor, the Author shall retain the right to revise the Work.
the Author's Contribution during the time the Author is developing and teaching the course, in accordance with University's academic standards. The Author further agrees to update the Author's Contribution within sixty (60) days after the receipt of a written request from the University. All requested revisions should be completed ninety (90) days before the next Course offering. The provisions of this Agreement shall apply to each revision of the Work by the Author as though that revision were Work which constitutes the Course being published for the first time under this Agreement. In the event that the Author is unable or unwilling to provide a revision within the above-referenced time frame after the University has requested it, or should the Author be deceased, or at any time after the Author’s teaching period has ended, the University may have revisions made and charge the cost against Author’s royalties, if any, and may display, in the revised work and in advertising, the name of the person or persons who performed such revisions.

10. Term and Termination

(a) This Agreement shall remain in effect for a period of seven (7) years from the date of the Course offering unless terminated earlier in accordance with this Agreement. Upon expiration of the term and any renewal term(s) described in this Section of the Agreement, or upon earlier termination in accordance with the terms of this Agreement, the rights granted in the Work which constitutes the Course shall revert to those provided to joint owners under law. This notwithstanding, the University shall retain a non-exclusive right to use the structure and organization of the Course.

(b) If Author breaches any obligation contained in Section 2, the University shall be entitled to terminate this Agreement immediately and obtain the remedy set forth in Section 2.

(c) In the event that either party shall be in default of its material obligations (other than obligations specified in Section 2 herein) under this Agreement and shall fail to remedy such default within thirty (30) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the thirty (30) day period.

(d) The Work which constitutes the Course shall be considered to be "in use" if it is used by the University as part of the University’s teaching curriculum, made available by the University for distribution or transmission, offered for sale or licensed for distribution, transmission or sale during the term of this agreement. If the University fails to keep the Work in use and the other party makes a written request to terminate this agreement, the University shall notify the other party in writing of its decision in the matter within sixty (60) days after receipt of the written request. If the University elects to keep the Work in use, it shall have six (6) months thereafter to comply. If the University elects not to keep the Work in use or fails to comply with the six (6) months deadline (unless the failure is due to circumstances beyond control), then this agreement shall terminate.

(e) Upon the expiration of the term of this Agreement, this Agreement shall automatically renew for additional one (1) year term, upon the same terms and conditions as set forth herein, unless a party notifies the other within 180 days prior to the expiration of the term or prior to the end of any renewal term that it desires to terminate the Agreement.
11. Options/Contracts Third Parties

Nothing contained in this Agreement 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 either the University or the Author in the income resulting from such agreements.

12. Amendments

The written provisions contained in this Agreement constitute the sole and entire agreement made among 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 all parties.

13. Construction, Binding Effect, and Assignment

This Agreement shall be construed and interpreted according to the Constitution and laws of the State of Texas and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Author and 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.

Author

The University of Texas at El Paso

Signature of Author

Signature of Authorized Officer

Richard Adaugo

Printed Name

Printed Name

Executive Vice President

Title

Date

Date