

**Intellectual Property**

Reference: 17 U.S.C. 101 et seq.; 35 U.S.C. 101 et seq.; and 37 C.F.R. 1.1 et seq.

In any case of conflict between this administrative procedure and a collective bargaining agreement the appropriate provisions of the collective bargaining agreement shall prevail.

The following intellectual property procedure shall be interpreted consistent with other District policies, including, but not limited to, the District's policy on academic freedom (BP/AP 4030) and federal and state statutes and regulations.

**Definitions**

For the purposes of this procedure, the following definitions apply to the following words or phrases:

"Administrative Activity" means the execution of the District's management or administrative functions such as preparing budgets, policies, contracts, personnel management, printing course materials and catalogues, maintenance of computer data, long range planning, and keeping inventories of equipment. Teaching and academic endeavors are not administrative activities.

"Author" or "Creator" means an individual who alone or as part of a group of other creators, invent, author, discover, or otherwise create intellectual property.

"District Resources" means all tangible resources including buildings, equipment, facilities, computers, software, personnel, and funding.

"Course Materials" Materials prepared for use in teaching, fixed or unfixed, in any form, including, but not limited to, digital, print, audio, visual, or any combination thereof. Course materials include, but are not limited to, lectures, lecture notes, and materials, syllabi, study guides, bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software.

"Course Syllabus" means a document that includes information about the outline, standards for student evaluation, and additional information which reflects the academic work of the faculty member.

"Digital Encoded Work" means a work (on a bit-sequence) that can be stored on computer-readable media, manipulated by computers, and transmitted through data networks.

"Employee" means an individual employed by the District, and shall include full-time and part-time faculty, classified staff, student employees, appointed personnel, persons with "no salary" appointments, and academic professionals, who develop intellectual property using District resources, unless there is an agreement providing otherwise.

"Intellectual Property" means works, products, processes, tangible research property, copyrightable subject matter, works of art, trade secrets, know how, inventions and other

creations, the ownership of which is recognized and protected from unauthorized exploitation by law. Examples of intellectual property include scholarly, artistic, and instructional materials.

“Student” means an individual who was or is enrolled in a class or program at the District at the time the intellectual property was created.

“Student Employee” means a student who is paid by the District, and may include students participating in a work study program or who receive stipends while they are acting within the scope of their employment at the District at the time the intellectual property was created.

“Substantial Use of District Resources” means use of District resources beyond the normal professional, technology, and technical support generally provided by the District and extended to an individual or individuals for development of a product, project or program. The use of District resources must be important and instrumental to the creation of intellectual property. The following do not constitute substantial use of the District’s resources: (1) incidental use of District resources and/or (2) extensive use of District resources commonly available to District employees. A substantial use of the District’s resources may be implicated in situations where the creator spends such time and energy in the creation of a work that results in a great reduction of the creator’s teaching activity.

“Work” means an “original work of authorship fixed in a tangible medium” as used in the Copyright Act.

### **Ownership of Intellectual Property**

The ownership rights to a creation at the District shall be determined generally as set forth below, unless ownership is modified by an agreement.

Employee Intellectual Property Rights. A District employee who is the creator of an academic work in his or her field of expertise owns the copyright in that work. Academic works include textbooks, lecture notes and other course materials, literary works, artistic works, musical works, architectural works and software produced with no more than nominal or incidental use of the District’s resources. Academic works described in this paragraph are owned by the employee even though such works may have been developed within the employee’s scope of employment.

Intellectual property unrelated to an individual’s employment responsibilities at the District, and that is developed on an individual’s own time and without the District’s support or use of District facilities is the exclusive property of the creator and the District has no interest in any such property and holds no claim to any profits resulting from such intellectual property.

District Intellectual Property Rights. The District owns all other intellectual property, including but not limited to patentable inventions, such as computer software, created by its employees under the following circumstances:

- (1) If intellectual property is created through the District’s administrative activities by an employee working within his or her scope of employment; or
- (2) If intellectual property is created by an employee executing a duty or specific assignment designated by the District; or
- (3) If intellectual property is created through the substantial use of District resources; or

- (4) If intellectual property is commissioned by the District pursuant to a signed contract; or
- (5) If intellectual property is produced within one of the nine categories of works considered works for hire under copyright law pursuant to a written contract, or
- (6) If intellectual property is produced from research specifically supported by state or federal funds or third party sponsorship.

Where circumstances give rise to District intellectual property rights, as described above, the creator of the potential intellectual property will promptly disclose the intellectual property to the District. The District and the creator may enter into a written agreement whereby the creator executes documents assigning intellectual property rights to the District.

The Superintendent/President may waive the District's interests in its intellectual property by executing a written waiver.

Student Intellectual Property Rights. District students who created a work are owners of and have intellectual property rights in that work. District students own the intellectual property rights in the following works created while they are students at the District: (1) intellectual property created to meet course requirements using college or District resources, and (2) intellectual property created using resources available to the public. Intellectual property works created by students while acting as District employees shall be governed under provisions for employees.

#### **Modification of Ownership Rights**

The general provisions for ownership of intellectual property rights set forth in Section II (above) may be modified by the parties as follows:

Sabbatical Works. Generally, intellectual property created by District employees during a sabbatical is defined as an academic work. However, where a work to be created as part of an approved sabbatical plan requires resources beyond those normally provided to other employees during a sabbatical (substantial use District resources), the parties may enter into a written agreement to define the District and employee's intellectual property rights in the sabbatical work.

Assignment of Rights. When the conditions outlined in the sections on employee intellectual property rights or student intellectual property are met, ownership will reside with the employee or student responsible for creating the intellectual property. In these circumstances, the creator may pursue intellectual property protection, marketing, and licensing activities without involving the District. If such a decision is made, the creator is entitled to all revenues received.

Any person may agree to assign some or all of his or her intellectual property rights to the District. In the event the creator offers to share or assign intellectual property rights in the creation to the District, the District may support and finance application for intellectual property protection (trademark, patent, or copyright) or it may enter into an agreement for other exploitation of the work, including management, development and commercialization of the property under terms and conditions as may be agreeable to the parties. After evaluating the creator's offer, the District may or may not decide to become involved in a joint investment agreement. A negative response from the District will be communicated in writing to the creator. An affirmative response from the District will be summarized as an offer to enter into a written

contract. If the creator accepts the District's proposed contract, any revenues received from commercialization of the intellectual property will be distributed as defined in the contract.

Sponsorship Agreements. A sponsored work is a work first produced by or through the District in the performance of a written agreement between the District and a sponsor. Sponsored works generally include interim and final technical reports, software, and other works first created in the performance of a sponsored agreement. Sponsored works do not include journal articles, lectures, books or other copyrighted works created through independent academic effort and based on the findings of the sponsored project, unless the sponsored agreement states otherwise. Ownership of copyrights to sponsored works shall be with the District unless the sponsored agreement states otherwise. Where a sponsorship agreement does not define ownership of the intellectual property, ownership shall be determined under applicable law. Any sponsorship agreement that provides for ownership of the work by one other than the District generally shall provide the District with a nonexclusive, world-wide license to use and reproduce the copyrighted work for education and research purposes.

Collaboration/Partnership Agreements. The District may participate in projects with persons/organizations that result in the creation of intellectual property. Ownership rights of such intellectual property will be defined by the collaboration/partnership agreement, or shall be determined under applicable law.

Special Commissions. Intellectual property rights to a work specially ordered or commissioned by the District from a faculty member, professional staff member, other District employee, or other individual or entity, and identified by the District, as a specially commissioned work at the time the work was commissioned, shall belong to the District. The District and the employee shall enter into a written agreement for creation of the specially commissioned work.

Use of Substantial District Resources. In the event the District provides substantial resources to an employee for creation of a work and the work was not created under an agreement (such as a sponsorship agreement, individual agreement, or special commission) the District and the creator shall own the intellectual property rights jointly in proportion to the respective contributions made.

Encoded Works/Software for Administrative Activities. The District may hire an individual or entity to develop software or other encoded works, to be used in the District's administrative activities. The District shall maintain ownership of the intellectual property rights in such encoded works. Similarly, the District shall have ownership of the intellectual property rights in encoded works created by an employee except when the intellectual property was demonstrably created on the employee's own time and not using any District resources. . In the event the intellectual property is related to the employee's job responsibilities, even where the work was created out of the employee's own initiative, the District will be provided with a perpetual, unlimited-use license for the intellectual property within the District and access to any version of the encoded works or source code produced while under employment by the District. However, the employee retains ownership rights of the intellectual property. For example, if an employee in the student records office creates a software program, on his own initiative, that will organize student records, such work is related to the employee's job duties and the District will retain the perpetual right to use this software, receive copies of any executable and source code versions created during the individual's employment by the District and retain the right to modify the intellectual property for use by the District.. Where an employee creates a program that does not relate to his or her job duties, and that program was created on the employee's own time, the work belongs to the employee.

Collective Bargaining Agreement. In the event the provisions of these procedures and the provisions of any operative collective bargaining agreement conflict, the collective bargaining agreement shall take precedence.

Jointly Created Works. Ownership of jointly created works shall be determined by separately assessing which of the above categories applies to each creator, respectively. Rights between joint owners of a copyright shall be determined pursuant to copyright law.

Work Acquired by Assignment or Will. The District may acquire copyrights by assignment or will pursuant to the terms of a written agreement or testament. The terms of such agreements should be consistent with District policies and these procedures.

### **Materials Implication Third Party Rights**

District employees and students must comply with District policies and state and federal laws, including copyright and privacy laws, in creating works. District employees and students must obtain all required licenses, consents, and releases necessary to avoid infringing the rights of their parties. District employees and students with questions or concerns regarding third party rights should direct all inquires to the Vice-President of Administrative Services.

### **Intellectual Property Coordinator**

The Vice-President of Administrative Services shall be the District's Intellectual Property Coordinator. The coordinator shall administer this procedure and will implement the District's Intellectual Property Policy. The Intellectual Property Coordinator will also monitor the development and use of the District's intellectual property. Any questions relating to the applicability of the District Intellectual Property or this procedure may be directed and answered by the Intellectual Property Coordinator.

### **Preservation of Intellectual Property Right**

Protection of Rights. The District shall undertake such efforts, as it deems necessary to preserve its rights in original works for which the District is the sole or joint owner of intellectual property rights. The District may apply for a patent, for trademark registration, for copyright registration, or for other protection available by law on any new work in which it maintains intellectual property rights.

Payment of Costs. The District may pay some or all costs required for obtaining a patent, trademark, copyright, or other classification on original works for which it exclusively owns intellectual property rights. If the District has intellectual property rights in a jointly owned work, the District may enter into an agreement with the joint owners concerning payment of such costs.

### **Commercialization of Intellectual Property**

Right of Commercialization. The District may commercialize its Intellectual Property using its resources or it may enter into agreements with others to commercialize the work as authorized by law.

Distribution of Proceeds. An employee who creates a work and retains an intellectual property interest in such work in which the District maintains intellectual property rights is entitled to share in royalties, licenses, and any other payments from commercialization of the work in accordance with applicable agreements and applicable laws. All expenses incurred by the District in protecting and promoting the work including costs incurred in seeking patent or

copyright protection and reasonable costs of marketing the work, shall be deducted and reimbursed to the District before the creator is entitled to share in the proceeds.

**Notification**

The Intellectual Property Coordinator shall provide a copy of these Intellectual Property Procedures to persons upon request. The District shall arrange training on a periodic basis for faculty, staff and/or other persons who are covered by this Intellectual Property Procedure.

See also BP/AP 3710 - Securing of Copyright

See also Sample Agreements attached hereto:

Form A: Work Made for Hire Agreement

Form B: Contract under which Employee Keeps Copyright of the Work and Gives District a License to Use/Exploit Work

09/03/08 College Council Approval

09/23/08 Board First Read

10/28/08 Board Second Read and Approval

## Form A: Work Made For Hire Agreement

### Course Materials

This Agreement made the *[date]* day of *[month]*, 20*[year]*, by and between *[name of author]* ("Author," and if there is more than one author then all of them collectively) and *[name of District]* ("District").

The author and the district agree as follows:

#### 1. Title and Copyright Assignment

(a) Author and District 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 District.

(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 District, 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 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 District 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 District purposes.

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

#### 2. Delivery of the Work

(a) The Author will deliver to the District on or before *[date]* the completed Work (with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium mutually agreed upon for the Work) in form and content satisfactory to the District.

(b) If the Author fails to deliver the Work on time, the District 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 until such advances have been 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 District and will file them with the District at the time the Work is delivered. Any obligations associated with permissions will be the responsibility of the Author.

### 4. Author's Warranty

The Author warrants that he or she is the sole owner of the Work and has full power and authority to make this agreement; that the Work does 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 District and/or its licensees against all claims, suits, costs, damages, and expenses that the District and/or its licensees 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 such claim or suit has been settled or withdrawn, the District may withhold any sums due the Author under this agreement.

### 5. Consideration

In consideration for delivery of the Work in accordance with the provisions of this Agreement, District shall pay Author *[amount]*.

### 6. Revisions

*[Choose one paragraph.]*

The Author shall retain the right to revise the Work *[insert time, such as at one year intervals]* during the term of this agreement in accordance with academic standards. The Author further agrees to update the Work within *[Insert length of time, such as 90]* days upon the receipt of a written request from the District. 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 *[Insert length of time, such as 90]* days after the District has requested it, or should the Author be deceased, the District 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.

or

This paragraph has been deleted because the Author's contribution is not a work expressing academic expertise requiring periodic review and revision.

### 7. Term and Termination

(a) This agreement shall remain in effect for *[insert length of time, such as three (3)]* 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 *[Insert length of time, such as sixty]* days after receipt of written notice thereof, this agreement shall terminate upon expiration of the *[Insert length of time, such as sixty]* day period.

(c) Upon the expiration of the term of this agreement, the parties may agree to renew this agreement for an additional *[Insert length of time, such as three]* year term, upon the same terms and conditions as set forth herein.

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

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 District in the income resulting from such agreements.

#### 9. Amendments

The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the District concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

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

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

*[Insert signature lines for author and district designee]*

## Form B: Contract under which Employee Keeps Copyright of the Work and Gives District a License to Use/Exploit Work

### Course Materials

This Agreement made the *[date]* day of *[month]*, 20*[year]*, by and between *[name of author]* ("Author," and if there is more than one author then all of them collectively) and *[name of District]* ("District").

### Recitals

The Author will be the sole contributor of copyrightable expression to the educational course materials anticipated to result from this project. The District will be contributing significant kinds and/or amounts of District resources. The Parties recognize that under law, the District is obligated to obtain appropriate consideration for the transfer of state resources. In furtherance of their mutual objectives, the Parties agree to allocate certain of their rights and responsibilities as set forth in this agreement.

The author and the District agree as follows:

#### 1. Rights Granted

*[Choose one of the following paragraphs.]*

Nonprofit Educational Uses. The Author hereby grants to the District for the full term of this agreement the non-exclusive right to copy, distribute, display, perform, transmit, and publish for nonprofit educational purposes the educational course materials entitled: *[name of work]* (hereinafter called "Work").

or

Non-exclusive Commercial License. The Author hereby grants to the District for the full term of this agreement the non-exclusive right to copy, distribute, display, perform, transmit, publish and sell throughout the world the educational course materials entitled: *[name of work]* (hereinafter called "Work"). This license grant also includes, without limitation, the rights to the Work listed in Paragraph 8 below, with authority to license those rights in all countries and in all languages.

or

Exclusive Commercial License. The Author hereby grants to the District for the full term of this agreement the exclusive right to copy, distribute, display, perform, transmit, publish and sell throughout the world the educational course materials entitled: *[name of work]* (hereinafter called "Work"). This license grant also includes, without limitation, the rights to the Work listed in Paragraph 8 below, with authority to license those rights in all countries and in all languages.

#### 2. Delivery of the Work

(a) The Author will prepare and deliver to the District on or before *[date]* the completed Work (with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium mutually agreed upon for the Work) in form and content satisfactory to the District.

(b) If the Author fails to deliver the Work on time, the District will have the right to terminate this agreement and to recover from the Author any sums or other resources advanced in connection with the Work. Upon such termination, the Author may not have the Work published elsewhere until such advances have been 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 District and will file them with the District at the time the Work is delivered. Any obligations associated with permissions will be the responsibility of the Author.

### 4. Publication of the Work

The Work shall be distributed, transmitted or published by the *[District/Author]* as soon as circumstances permit after receipt, at its own expense, in such manner as the *[District/Author]* shall deem appropriate.

### 5. Copyright Registration

The Author authorizes the District to register copyright in the Work in the Author's name in the United States and elsewhere as the District may elect.

### 6. Author's Warranty

(a) The Author warrants that he or she is the sole owner of the Work and has full power and authority to make this agreement; that he or she has made a good faith effort to follow the District's Intellectual Property Policy and Procedures and that the Work 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 District's Intellectual Property Policy and Procedures, in accordance with that Policy and to the extent authorized by the Constitution and laws of the State of California, the District, will defend, indemnify and hold harmless the Author against all claims, suits, costs, damages and expenses that the Author may sustain by reason of such infringement or violation by the Work of any copyright.

(c) In all other cases, the Author will defend, indemnify, and hold harmless the District and/or its licensees against all claims, suits, costs, damages, and expenses that the District and/or its licensees 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 such claim or suit has been settled or withdrawn, the District may withhold any sums due the Author under this agreement.

## 7. Consideration

(a) District will contribute the following resources to the creation of the Work:

*[List: Materials, Hardware, Software, Technical Assistance, Other Assistance, Videotaping, Programming, Teaching Load Credit, or Funding.]*

*[Choose one of the following paragraphs.]*

(b) The parties shall share in any revenues from the commercialization of the Work as follows: District will first recover its resource contribution in the amount of \$\_\_\_\_\_, then the Parties shall share profits 50% to the District and 50% to all Authors (to be shared evenly among the Authors if more than one.)

or

(b) The parties shall share in any revenues from the commercialization of the Work as follows: The Parties shall share profits 50% to the District and 50% to all Authors (to be shared evenly among the Authors if more than one.)

or

(b) The Parties do not anticipate commercial exploitation of the Work and so have not addressed District's recovery of its contribution or allocated royalty percentages to either Party.

## 8. Subsidiary Rights

*[Choose the paragraph below that corresponds to the paragraph chosen for Section 1.]*

Nonprofit Educational Uses. The District has been granted a limited right to use the Work for nonprofit educational purposes only and therefore does not need subsidiary rights and all such rights are retained by the Author.

or

Non-exclusive Commercial License. The District shall have the right to license, sell, or otherwise dispose of the following rights in the Work: Publication or sale by 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.

or

Exclusive Commercial License. The District shall have the sole right to license, sell, or otherwise dispose of the following rights in the Work: Publication or sale by 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

The Author shall retain the right to revise the Work [at one year intervals] 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 District. 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 District has requested it, or should the Author be deceased, the District may have the revision made and charge the cost against the Author's royalties and may display, in the revised Work and in advertising, the name of the person or persons who perform the revision.

#### 10. Term and Termination

*[Choose this first set of paragraphs if the District was granted an Exclusive Commercial License in Section 1.]*

(a) This agreement shall remain in effect for *[insert length of time, such as three (3)]* years unless terminated earlier in accordance with this Section 10. Upon expiration of the term and any renewal term[s] agreed upon pursuant to Section 10(d), or upon earlier termination in accordance with Sections 10(b) or

(b), the rights granted in the Work shall revert to the Author, subject to retention by the District of the non-exclusive, perpetual right and license to use the Work for internal nonprofit educational purposes and to use the structure and organization of the Work as a guide for the creation of a new course.

(c) 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 *[Insert length of time, such as sixty]* days after receipt of written notice thereof, this agreement shall terminate upon expiration of the *[Insert length of time, such as sixty]* day period.

(d) The Work shall be considered to be "in use" if it is made available by District for distribution or transmission, offered for sale or licensed for distribution, transmission or sale during the term of this agreement. If the District fails to keep the Work in use and the Author makes a written request of the District to terminate this agreement, the District shall notify the Author in writing of the District's decision in the matter within *[Insert length of time, such as sixty]* days after receipt of the written request. If the District elects to keep the Work in use, it shall have *[Insert length of time, such as six]* months thereafter to comply. If the District elects not to keep the Work in use or fails to comply with the *[Insert length of time, such as six]* months deadline (unless the failure is due to circumstances beyond its control), then this agreement shall terminate.

(e) Upon the expiration of the term of this agreement, the parties may agree to renew this agreement for an additional *[insert length of time, such as three (3)]* year term, upon the same terms and conditions as set forth herein.

*[Choose this second set of paragraphs if the District has either a Nonprofit Educational Use License or a Non-exclusive Commercial License in Section 1.]*

(a) This Agreement shall remain in effect for *[insert length of time, such as three (3)]* year(s) unless terminated earlier in accordance with this Section 10. Upon expiration of the term and any renewal term(s) agreed upon pursuant to Section 10(c), or upon earlier termination in accordance with Section 10(b), the rights granted in the Work shall revert to the Author, subject to retention by the District of the non-exclusive, perpetual right and license to use the Work for internal nonprofit educational purposes and to use the structure and organization of the Work as a guide for the creation of a new course.

(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 *[Insert length of time, such as sixty]* day period.

(c) Upon the expiration of the term of this Agreement, the parties may agree to renew this Agreement for an additional *[insert length of time, such as three]* year term, upon the same terms and conditions as set forth herein.

#### 11. Options/Contracts with Third Parties

Nothing contained in Section 10 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 District in the income resulting from such agreements.

#### 12. Amendments

The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the District concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

#### 13. Construction, Binding Effect, and Assignment

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

*[Insert signature lines for author and district designee]*