



STAFF HUMAN RESOURCES – EMPLOYEE & LABOR RELATIONS

SANTA CRUZ, CALIFORNIA 95064

Sent via Electronic Mail

April 1, 2014

Shelley Errington
Chair, Santa Cruz Faculty Association
Email: sherring@ucsc.edu

Subject: Campus Online Education Course Agreement

Dear Professor Errington,

I write to provide the Santa Cruz Faculty Association with a proposed campus Online Education Course Agreement. As you are aware, three courses developed by our faculty through the UC Office of the President Innovative Learning Technology Initiative (ILTI) will be offered this Spring (one by a senate faculty member and the other two by a unit 18 lecturer). The offering of online courses through the ILTI platform has necessitated the development of the enclosed Online Education Course Agreement. The agreement is between the faculty member contributing the course and the campus administration, and details the rights of each with respect to intellectual property, course modifications, terms, etc. Many of the provisions stem from the ILTI requirement that the course should be offered six times in the next three years. To further clarify several sections of the agreement, I have provided additional explanation below. I appreciate your attention to this matter, and I ask that you provide comment by April 24, 2014.

Sincerely,

A handwritten signature in cursive script that reads "Renée Mayne".

Renée Mayne
Senior Manager, Employee & Labor Relations

Supplementary Comment on the Online Education Course Agreement

Intellectual Property Ownership

This section details ownership of the online course within U.S. copyright law and UC policy. In recognition that the course is to be offered multiple times over the next three years, and that exceptional university resources are being used to create this course, a non-exclusive license is being granted by the course contributor (the faculty member) to the regents (the campus administration). Likewise, for portions of the course developed by the administration—such as a UCSC logo added to the course or animations added by UCSC staff—the administration grants a non-exclusive license to the faculty member.

Course Modifications

In order to fulfill the ILTI expectation that the course is offered six times over the next three years, this section explains the rights of the contributing faculty member, the role of the course sponsoring agency (department), and—when applicable—the rights of the faculty member assigned by the department to teach the online course. Our approach is to give the contributing faculty member the first right to teach the course and to make any course modifications, and to recognize that in situations where the contributor is not available or interested in teaching the course, that the department will be able to assign another faculty member to teach it and that he/she will be able to make non-substantive modifications. We recognize that the department has a role in deciding how many times the online version of this course might be offered each year, and thus we try to accommodate the purview of the department chair in making teaching assignments while allowing the contributing faculty member to have the right of first refusal to teach the online course. Further, if the administration wishes to create derivative works of the course, they can only do so with the prior consent of the contributing faculty member.

Payment

This section is pro-actively included in recognition that revenues may eventually be generated from online courses. We are not expecting revenues for the Spring 2014 offerings of the ILTI courses, so this section is not needed at this time, and thus we have a placeholder for a future policy.

Term and Termination

The term of the agreement is set to three years to be consistent with expectations set by ILTI that funded courses will be offered six times over three years. The agreement is renewable by mutual consent. Additionally, there is a termination clause, but it is not meant to override the ILTI requirement for the number of course offerings, nor is it meant to allow early termination if the university would lose or have to return funding for the course as a result of the early termination.

Contributor Warranty

Clause 7.1.2 acknowledges that faculty may use materials that are not original so long as they are allowable under the fair use doctrine. The language in 7.1.3 addresses third parties (e.g., guest lecturer or similar) that might appear in video segments or otherwise have their names or likenesses used in the Course. For example, if such third parties appear in video segments, the Contributor or appropriate staff working on the Course will need to obtain a signed release.

ONLINE EDUCATION COURSE AGREEMENT

BETWEEN

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

ON BEHALF OF

THE UNIVERSITY OF CALIFORNIA, SANTA CRUZ

AND

(Name of Contributor(s))

WHEREAS, The Regents of The University of California, on behalf of The University of California, Santa Cruz (“The Regents”) provides online education; and

WHEREAS, The Regents wishes to offer the course

_____ as online education (“Course”); and

WHEREAS, Faculty Contributor _____ (“Contributor”) wishes to:

- Create and Provide the Course and/or
- Provide the already extant Course; and

THEREFORE, the parties agree as follows as of the last date of execution shown below (the “Effective Date”):

1. Intellectual Property Ownership

- 1.1 To the extent that the Course under this Agreement includes any work of authorship entitled to protection under the copyright laws, the parties agree to the following provisions:
 - 1.1.1 The Contributor owns the portions of the Course created by him/her, in accordance with U.S. copyright law, the University Policy on Copyright Ownership and the University Policy on Ownership of Course Materials.
 - 1.1.2 The Regents owns the portions of the Course created by it, in accordance with U.S. copyright law, the University Policy on Copyright Ownership, and the University Policy on Ownership of Course Materials.
 - 1.1.3 As permitted under the University Policy on Ownership of Course Materials, Contributor hereby grants to The Regents a non-exclusive, perpetual, royalty free, fully paid-up, license to copy, distribute, perform, display, and create derivative works (as set forth in Section 2) of the Course in all mediums either now known or developed in the future, for the duration of the term of this agreement (as set forth in Section 4).
 - 1.1.4 The Regents hereby grants the Contributor a non-exclusive, perpetual, royalty free, fully paid-up, license to copy, distribute, perform, display, and create derivative works of The Regents-owned portions of the Course in all mediums either now known or developed in the future for educational, non-profit purposes.

2. Course Modifications

- 2.1 The Regents has an interest to ensure continued offerings of the Course as online education, and Course modifications or supplementation may be necessary for such continued offerings. Accordingly:
 - 2.1.1 During the term of this agreement, the Contributor has the first right to teach and to make modifications to the Course.
 - 2.1.2 The Course Sponsoring Agency has the option to offer the Course up to twice per academic year. If the Contributor does not exercise his/her first right to teach and to make modifications to the Course, the Course Sponsoring Agency will have the right to assign other faculty members to teach these offerings of the Course in the given academic year. If the Course Sponsoring Agency wishes to offer the Course more than twice in an academic year, a written agreement between the Contributor and Course Sponsoring Agency is required and must be attached as an exhibit to the signed Online Education Course Agreement.

Contributor _____
Course _____

- 2.1.3 If another faculty member is assigned to teach the Course, as per 2.1.2, the faculty member assigned to teach the Course will have the right to use and to make non-substantive changes to the Course as reasonably necessary for teaching the Course as assigned. Following the teaching by a different instructor, The Regents will make reasonable effort to return the Course to its original state.
- 2.1.4 Minor updates or modifications to the Course, not including substantive modifications to content, may be made at the discretion of The Regents at any time. Minor updates or modifications include but are not limited to those relating to Course accessibility and Course compatibility with the offering platform technology.
- 2.2 Any modifications or supplementation of Course content, or creation of derivative works by or on behalf of The Regents beyond those described above in this Section 2 will be made only with the prior written consent of the Contributor. The Regents and the Contributor may elect to enter into a separate written agreement regarding any such additional modification or supplementation of Course content or creation of derivative works by The Regents.
- 2.3 The Regents will make reasonable efforts to address problems identified by the Contributor regarding the Learning Management System on which the Course is hosted.

3. Payment

- 3.1 In the event that net revenues are generated and received by The Regents as a result of the offering of this Course, payment to the Contributor will be negotiated at a future time.

4. Term and Termination

- 4.1 This Agreement shall remain in effect for three (3) years from the Effective Date, with an option to renew on one-year terms if both parties agree.
 - 4.1.1 If no further agreements are made by the end of three years, the Regents agree to return the Course to the Contributor in a useable form.
- 4.2 Termination: Either party may terminate this Agreement upon ninety (90) days' prior written notice to the other party (see Section 9); provided however, that Contributor shall not have the right to terminate as set forth in this Section 4.2 to the extent that an early termination would cause a violation of the terms and conditions of the program for which the Course is being used (e.g., ILTI's RFP terms and conditions) or would subject the campus to loss of funds received or to be received in support of the Course.

5. Copyright Permissions

Contributor _____
Course _____

- 5.1 Contributor will comply with the copyright clearance policies and practices of his/her academic department and campus in preparing the Course, and The Regents and the Contributor shall work together, in good faith, to ensure compliance to the best of their ability with all applicable copyright laws, including the TEACH ACT and requirements for obtaining permissions with respect to copyright clearance.

6. ADA Compliance

- 6.1 In designing the Course, Contributor will make good faith efforts, in cooperation with The Regents, to comply with all ADA requirements, including but not limited to those relating to Course accessibility.

7. Contributor Warranty and Release

- 7.1 Contributor represents and warrants that in performing the services under this agreement:
 - 7.1.1 The Contributor will review the full Course prior to the first offering.
 - 7.1.2 The Course will be the Contributor’s original work, but may include material allowable under the fair use doctrine, and will not infringe upon any copyright or other proprietary rights of any other person or entity.
 - 7.1.3 The Course will not violate the right of privacy or publicity of any other person or entity.
 - 7.1.4 The Course will not contain libelous, defamatory or other unlawful material.
 - 7.1.5 Contributor is the original and sole author of the Course and has the full right, power and authority to grant the licenses contained herein to The Regents.
 - 7.1.6 Contributor hereby grants to The Regents permission to use Contributor’s name, likeness, identity, voice, photographic or videographic image, and oral or recorded statements in connection with The Regents’ offering the Course and exercise of its rights as provided herein.

8. Indemnification

- 8.1 Only to the extent permitted by law and UC policy, Contributor agrees to hold harmless and indemnify The Regents against any claim, demand, suit, action, proceeding, recovery, or expense of any nature whatsoever arising under this Agreement with respect to the Contributor-owned portions of the Course (excluding non-Contributor modifications), including (a) claims of infringement of copyrights or proprietary rights resulting from The Regents’ publication and distribution of the Course; (b) claims of

Contributor _____
Course _____

libel, obscenity, unlawfulness, or invasion of privacy based on or arising out of any matter or thing contained in the Course as furnished by the Contributor; or (c) any breach of the warranties set forth above.

8.2 The Regents shall indemnify Contributor in accordance with The Regents' obligations to Contributor based on Contributor's status as an employee of The Regents.

9. Notice

9.1 Any notice or payment required to be given to either party must be sent to the respective address given below and is effective: (a) on the date of delivery if delivered in person, (b) five (5) days after mailing if mailed by first-class certified mail, postage paid, or (c) on the next business day if sent by overnight delivery. Either party may change its designated address by written notice to the other party.

Contributor:

The Regents:

Herbert Lee
Vice Provost for Academic Affairs
MS: Chancellor's Office
1156 High Street
UC Santa Cruz
Santa Cruz, CA 95064

10. Miscellaneous

10.1 This Agreement is not binding upon the parties until it has been signed below on behalf of each party.

10.2 No amendment or modification of this Agreement will be valid or binding upon the parties unless made in writing and signed by each party.

10.3 This Agreement and any exhibits to it embody the entire understanding of the parties and supersede all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof.

Contributor _____
Course _____

- 10.4 If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable as long as a party’s rights under this Agreement are not materially affected. In lieu of the unenforceable provision, the parties will substitute or add as part of this Agreement a provision that will be as similar as possible in economic and business objectives as was intended by the unenforceable provision.
- 10.5 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile, Portable Document Format (PDF) or photocopied signatures of the parties will have the same legal validity as original signatures.
- 10.6 This Agreement is personal to Contributor and is not assignable by Contributor except with prior written consent of The Regents.
- 10.7 This Agreement shall be governed by the laws of the State of California, without regard to conflict of laws principles that would result in the application of any law other than the laws of the State of California.

Agreed to by the parties as follows:

By: Vice Provost for Academic Affairs
 MS: Chancellor’s Office
 1156 High Street
 UC Santa Cruz
 Santa Cruz, CA 95064

 Herbert Lee

 Date

By: Contributor

 (Contributor)

 Date

A copy of this Agreement will be provided to Contributor’s Dean:

Contributor _____
 Course _____

A copy of this Agreement will be provided to Contributor's Chair:

Contributor _____
Course _____