

Appendix C
Course Development Agreement

This Course Development Agreement (“CDA”) is made and freely and voluntarily entered into this ___ day of _____, 20___ by and between Ferris State University (hereinafter referred to as “the Employer”) and _____, whose address is _____ (hereinafter referred to as “the course developer”).

BACKGROUND

A. The Employer agrees to have created the approved distance learning course _____ (course title and number) which will be included in the curriculum at FSU, pursuant to the responsibilities contained in Attachment C-1 (Course Developer Responsibilities);

B. The course developer agrees to create for the Employer the approved distance learning course (“the approved distance learning course”) in exchange for the compensation described herein;

C. The Employer and the course developer recognize the mutual benefits to be derived from creation of the approved distance learning course and the necessity for faithful performance of the terms and conditions of this CDA;

NOW THEREFORE, the parties hereby mutually agree as follows:

1. The course developer will create, for approval, the distance learning course in accordance with the Employer requirements for distance learning courses. A set of suggested guidelines for tasks to be performed by the course developer are set forth in Attachment C-2 (Suggested Online Course Development Guidelines - filling out this chart is optional).

2. As used in this CDA, the term “approved distance learning course” includes, without limitation, all materials submitted to the Employer in accordance with this CDA, including but not limited to videotapes, audio tapes, text, graphics, study guides, syllabi, tests, study aids of any type, written protocols, outlines, drafts, articles or other literary work in any format, including paper, electronic, computer-readable, machine-readable, CD-ROM, sound or video recording.

3. In consideration for the services to be provided by the course developer under this CDA the following compensation or release time will be provided to the course developer. (Check the box below for the option that matches the course being developed through this agreement.)

a. First course developed by the course designer

i. Development of a new online course - \$1,864 per credit hour

ii. Conversion of a hybrid/mixed course to fully online - \$1400 per credit hour

iii. Online Course redesign - \$850 per credit hour

b. Release time may be granted by the college with prior arrangements made between the college and the developer.

4. The course developer warrants that all of his/her work associated with the creation, preparation, construction or development of the approved distance learning course will be in accordance with the provisions of the 2018-2023 Collective Bargaining Agreement between the Ferris State University Board of Trustees and the Ferris Faculty Association/MEA/NEA including Appendix B, the Intellectual Property Rights and Electronic Distance Learning Materials Agreement.

5. The course developer will work with _____(dean) of _____(college) and/or the Dean of Extended and International Operations or his/her designee, (and, if necessary, the provost/vice president for Academic Affairs) to develop the distance learning course.

6. If the completed version of the distance learning course is not accepted by _____(dean) of _____(college) or the Dean of Extended and International Operations, as set forth in Paragraph 5 above and Attachment C-3 (Distance Learning Course Completion Checklist and Course Payment Authorization), the course developer will make reasonable efforts and allocate a reasonable amount of time to resolve any outstanding issues or concerns. The provost/vice president for Academic Affairs will attempt to resolve any disputes that cannot be resolved by mutual agreement between the deans and the course developer. If compensation takes the form of a stipend, after the completed course is accepted, the dean of _____(college) or the Dean of Extended and International Operations will process the Distance Learning Course Completion Checklist and Course Payment Authorization Form (Attachment C-3) to acknowledge that release time obligations have been met.

7. Upon request, before the distance learning course is accepted as set forth above, the course developer agrees to make reasonable changes related to the course developer responsibilities listed on Attachment C-1 and allocate a reasonable amount of time in the making of the same to the distance learning course as deemed necessary by the _____(dean) of _____(college). The course developer shall make any such changes within a mutually agreed upon timeline.

8. The course developer's signature on the Distance Learning Course Completion Checklist and Course Payment Authorization Form (Attachment C-3) also constitutes his/her agreement to grant, assign, transfer and relinquish to the University all present, future or potential rights, including patent rights, copyrights or other intellectual property rights, in the approved distance learning course, including the right to modify, rearrange or create derivative works. Notwithstanding the terms and conditions of the

preceding sentence, the Employer agrees and acknowledges that all works created by the course developer, and owned exclusively by the course developer, prior to the creation of the approved distance learning course that is the subject matter of this CDA, including but not limited to, those works or items specifically listed in Attachment C-4 (List of Works Created and Owned Exclusively by Course Developer Prior to Creation of Distance Learning Course) and attached and made a part of this CDA (to be delivered before the course development work begins), and that is incorporated in the course, is and shall remain the intellectual property of the course developer. Course developer grants an irrevocable nonexclusive license to the Employer to use these materials as incorporated in the course or subsequent versions of the course or in derivative works. The Employer further agrees that, provided course developer has used his or her best efforts to comply with the material terms and conditions of this CDA, and while an employee at FSU, course developer shall have the right to elect to make any and all modifications, rearrangements, updates and/or create any and all derivative works of the approved distance learning course. As a result of the University's ownership of the approved distance learning course, it shall have the exclusive right to reproduce, sell, market, lease, license, commercially exploit, publish, and distribute the approved distance learning course; provided, nothing contained in this sentence shall prohibit or bar the course developer from retaining or making copies, royalty free, of the approved distance learning course for use in connection with his/her FSU teaching, scholarship and research, creating compilations or other composite works and as a part of or use in the course developer's personal or professional portfolio or for job, tenure, or graduate school interviews or consulting profession upon receiving the prior written consent of the Employer, such consent shall not be unreasonably withheld. The course developer will cooperate fully with and assist the Employer, at the Employer's expense, in obtaining patent protection, copyright protection, or any other intellectual property protection for the approved distance learning courses that the Employer may desire. Nothing contained herein grants such license to any other person or entity or grants the course developer any right to convey or grant to any third party any rights whatsoever in the approved distance learning course or employ or permit any third party to teach the approved distance learning course in any educational setting. The obligations, representations, warranties, confirmations and acknowledgements of the parties set forth in this paragraph shall continue, survive and shall remain in full force and effect after termination or expiration of this CDA or the termination of the course developer's employment relationship with the University, if applicable, and shall be binding upon and inure to the benefit of the parties and their administrators, heirs, successors and assigns. Notwithstanding the foregoing, the course developer's right to receive compensation or royalties under this CDA, right to revise or update, and right to teach the course shall terminate with the termination of his/her employment with the University.

9. The approved distance learning course contains trade secrets, confidential information and proprietary information. It is the express intention of the parties hereto that the University shall remain the sole owner of all proprietary information which is in any way related to the approved course, which information, as a matter of necessity is known or may be disclosed, in whole or in part, to the course developer in the development of the approved course. Title to all proprietary information and to the approved course, whether in the form of documents, data, software programs or otherwise,

shall at all times belong to the University. The approved course shall not be used or divulged to others by the course developer without the Employer's prior, written consent. Any such proprietary information shall remain with and be returned to the Employer. Notwithstanding the terms and conditions of the preceding sentence, the Employer agrees and acknowledges that all works or proprietary information created by the course developer prior to the creation of the approved distance learning course that is the subject matter of this CDA, and owned exclusively by the course developer, including but not limited to, those works or items specifically listed in Attachment C-4 (List of Works Created and Owned Exclusively by Course Developer Prior to Creation of Distance Learning Course), attached and made a part of this CDA (to be delivered before the course development work begins) is and shall remain the sole property of the course developer; and the parties further agree that nothing contained in this sentence shall prohibit or bar the course developer from retaining or making copies, royalty free, of the proprietary information owned by the University for use in connection with his/her FSU teaching, scholarship and research, creating compilations or other composite works and as a part or use in the course developer's personal or professional portfolio or for job, tenure, or graduate school interviews or consulting profession, upon receiving the prior written consent of the Employer, such consent shall not be unreasonably withheld.

10. Based on information and belief after exercising reasonable due diligence, to course developer's knowledge, the course developer represents and warrants that he/she has full power to enter into this CDA; that the materials he/she will provide do not violate any rights, are not defamatory, libelous, or obscene; and do not infringe upon any statutory or common law copyright. Nothing contained in this paragraph shall prohibit or bar the course developer from making a claim under the legal representation and indemnification policy contained in Business Policy Letter 99:10 (Attachment C-5).

11. If course developer is a teaching faculty Member at FSU, the course developer hereby acknowledges the approved distance learning course developed pursuant to this CDA is developed and created pursuant to the course developer's employment with the University and not on an independent contractor basis. The course developer however acknowledges that the approved distance learning course is being created pursuant to the specific request, order and commission of the Employer. The parties hereto expressly agree that the approved distance learning course shall be considered a work made for hire, owned solely by the University, except to the extent ownership shall remain or vest in the course developer as set forth in paragraphs 8 and 9 above.

12. The course developer acknowledges that the restrictions contained herein are reasonable and necessary and that any violation of these restrictions would cause substantial injury to the University. In the event of any material violation of this Agreement by either party, the Employer and the course developer shall retain the right to seek money damages, preliminary and permanent injunctive relief, and/or any other remedies at law.

13. The Employer and the course developer release and discharge the Ferris Faculty Association/MEA/NEA from any and all known claims, demands, actions, causes of action, damages, obligations, agreements and/or losses of every kind and description

whether in law, in equity, or otherwise, which it may have ever had or have upon the execution of this Agreement, against the Ferris Faculty Association/MEA/NEA arising out of this Agreement.

14. This CDA and the intellectual property rights and electronic distance learning materials (Appendix B of the 2018-2023 Collective Bargaining Agreement between the Ferris State University Board of Trustees and the Ferris Faculty Association/MEA/NEA) herein incorporated constitute the entire agreement between the parties hereto concerning the subject matter hereof. It may not be changed orally, but only by an agreement in writing, signed by the parties against whom enforcement of any waiver, change, modification, extension or discharge is sought.

15. The invalidity or unenforceability of any particular provision of this CDA or the related attachments shall not affect its other provisions, and this CDA shall be construed in all respects as if such invalid or unenforceable provision were omitted.

16. This CDA may be executed in one or more counterparts, but in such event, each counterpart shall constitute an original, and all such counterparts shall constitute one CDA.

17. This CDA shall be construed and performance hereunder shall be governed by and controlled by the 2018-2023 Collective Bargaining Agreement between the Board of Trustees of Ferris State University and the Ferris Faculty Association/MEA/NEA including Appendix B, the Intellectual Property Rights and Electronic Distance Learning Materials Agreement, the laws of the State of Michigan, with the exception of the provisions dealing with patent and copyright protection, which shall be governed by federal law.

18. The waiver by either party of a breach of any portion of this CDA by the other party shall not operate or be construed as a waiver of any subsequent breach.

19. Any controversy or claim arising out of, or related to this CDA, or the interpretation or breach thereof, shall be settled by binding arbitration as set forth in Section 9.3 – Step 5 – Arbitration of the 2018-2023 Collective Bargaining Agreement between the Board of Trustees of Ferris State University and the Ferris Faculty Association/MEA/NEA.

20. The course developer shall have full control of the substantive and intellectual content of the approved distance learning course, both at the time of its production and any time during the use by the Employer subject to the oversight consistent with normal FSU curricular processes. Notwithstanding the foregoing, others using the materials to teach the approved distance learning course shall have the right to exercise their own academic freedom in delivering the approved distance learning course while adhering to the approved course standards, if any, of the academic college in which the course originates.

21. Supplemental Updates. Subject to the terms and conditions of this CDA as set forth above, the course developer may at his/her discretion produce any revised or

supplemental materials or reflect developments or insights that come to the course developer's attention following completion of the approved distance learning course.

22. Procedures for updates. In the event the course developer becomes aware of the need or desire to produce a supplemental update to the approved distance learning course, the course developer shall notify, in writing, the department head/dean that offers the course of such a need. Upon delivery of the written notice, the course developer shall thereby have the authority to create the supplemental materials as soon as practically possible but in any event no later than the period of forty-five (45) calendar days after delivery of the written notice. If the department head/dean recognizes the need to prepare such a supplemental update, the department head/dean may deliver a written notice to the course developer, which shall also authorize the course developer to make such updates as soon as practically possible but no later than the subsequent forty-five (45) calendar days.

23. Pending updates. Before updates or supplemental materials are ready for distribution with the approved distance learning course, the Employer and the course developer or others using the materials shall use their best efforts to coordinate with the course developer regarding the continued use of portions of the approved distance learning course that may not reflect current or the most accurate information. Absent agreement between the Employer and the course developer, the Employer shall use its best efforts to inform users of the approved distance learning course about the availability of current or more accurate information.

24. The course developer shall receive full credit as the named author or principal developer of all copies of the approved distance learning course prepared by or authorized by the Employer. The course developer shall have the right to remove the course developer's name from any copies of approved distance learning course made or authorized by the Employer upon written notice of the same to the Employer.

25. Right to teach. Provided that the course developer has complied with the materials terms and conditions of this CDA, the course developer who has created the approved distance learning course shall have the first option to teach the course for which the approved distance learning course shall be used. This option shall be exercised within a reasonable manner and period of time. Notwithstanding the foregoing option, the Employer shall have the right to reasonably distribute its course load among the faculty available to teach its courses in a manner consistent with the Collective Bargaining Agreement.

26. All notices and other required communications must be in writing and will be deemed to have been duly received: (a) five (5) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested to the address specified below; or (b) when delivery is made in person, or sent by a commercial courier service. Notices must be sent to the party at the address shown below or to such other place as the party may subsequently designate for receipt of notices.

If provided to the Employer, mail or give to:
Provost/Vice President for Academic Affairs Ferris State University
1201 S. State St., CSS 310
Big Rapids, MI 49307

If provided to course developer, mail or give to:

Name: _____

Address: _____

City/State/Zip _____

27. Neither this CDA nor performance hereunder can be assigned without the Employer's prior, written consent and, upon any such assignment, this CDA shall be binding upon all successors and assigns hereto.

IN WITNESS WHEREOF, the undersigned parties have caused this CDA to be executed under their hands and seals this _____ day of _____, 20__.

COURSE DEVELOPER

FERRIS STATE UNIVERSITY

By: _____

By: _____
Provost/Vice President for Academic
Affairs or his/her designee

By: _____
Dean of the College of

Copies of signed contract sent to:

Dean of the College of _____
Dean of Extended and International Operations
Provost/vice president for Academic Affairs (File Copy)
President of the Ferris Faculty Association/MEA/NEA