

Ferris State University

AGREEMENT

**FSU & FFA, MEA-NEA
Expires June 30, 2023**

Agreement between the
Board of Trustees
of
Ferris State University
and the
Ferris Faculty Association
MEA-NEA

Appendix B
Intellectual Property Rights And Electronic
Distance Learning Materials Letter of Agreement

A. **Introduction.** Ferris State University is dedicated to teaching, scholarly activity, and the extension of knowledge and services to the public, particularly the citizens of Michigan. The University community recognizes its responsibility to produce and disseminate knowledge. Inherent within this responsibility is the need to encourage the production of creative and scholarly works and the development of new and useful materials, devices, processes, and other intellectual property, some of which may have potential commercial value. These activities contribute to the professional development of the individuals involved, enhance the reputation of the University in which they work, provide additional educational opportunities for students, and promote the public welfare.

B. **Applicability of this Agreement.**

1. **Property Covered.**

This Agreement addresses the creation, use and ownership of intellectual property including but not limited to the following (“intellectual property”):

- a. Copyrights (as defined in Title 17 of the United States Code, referred to herein as “Copyright Law”). This includes but is not limited to scholarly works, creative/artistic works, copyrightable software and courseware, and other developing areas including but not limited to multimedia works, and various forms of electronic communications including media used for distance learning.
- b. Patent rights (as defined in Title 35 of the United States Code, referred to herein as “Patent Law”). This includes and covers any new form of patentable intellectual property that may arise during the time this Agreement is in effect.
- c. Other. This Agreement will also include and cover any new forms of intellectual property that may be added to the above categories during the time this Agreement is in effect.

This Agreement further addresses the development and use of all type of materials used in distance learning by the Employer, as is more fully set forth below.

2. **Purpose.** The purpose of this Agreement is to protect the rights of the bargaining unit Members; to clarify their relationship with the Employer; and to encourage the creation, offering, and use of quality distance learning programs whenever the results of their scholarly activity or creative endeavors are patentable, copyrightable, or otherwise commercially marketable.

3. **Exclusions.** In the event of a conflict between the provisions of this Agreement and those of any duly authorized and executed Agreement between the Employer and a creator (or a person who assists in the creation of intellectual property), or between the Employer and an external funding agency, the terms of the duly authorized and executed agreement will prevail.

4. **Persons Covered.** This Agreement applies to all bargaining unit Members working with or without monetary compensation on any project under the direction and control of the Employer.

5. **Contracts and subcontracts** shall include language determining the ownership of intellectual property that is developed by those working under the terms of the contract or subcontract. This is also true for those hired as independent contractors.

6. **Intellectual Property Covered by the Agreement.** The Agreement covers all intellectual property, including anything that is patentable, copyrightable, or otherwise marketable and/or may be protected. This includes, but is not limited to, the following: inventions, books, articles, study guides, syllabi, workbooks or manuals, bibliographies, instructional materials, tests, video or audio recordings, films, slides, transparencies, charts, other graphic materials, photographic or similar visual materials, film strips, multi-media materials, three-dimensional materials, exhibits, computer software, and web courseware or distance learning materials, which are covered in greater detail below.

7. Any separate agreement with a bargaining unit Member shall be consistent with the terms and provisions of this Agreement. In addition, such agreements shall provide a complete release of the Association.

C. Interpretation of this Agreement. The responsibility for the interpretation and implementation of the provisions contained in this Agreement is delegated to the provost/vice president for Academic Affairs or his/her designee for all of FSU (including FSU-GR), such responsibility to be exercised in consultation with the General Counsel's office as needed. Appeals of the decision made by the provost/vice president for Academic Affairs or his/her designee are to be made to the University's Intellectual Property Rights Committee, which shall advise the president, who will make the final decision for the Employer.

D. Intellectual Property Rights Committee. The Intellectual Property Rights Committee is hereby established as a new University committee, whose Membership shall consist of five (5) persons appointed by the president, one of which shall be a Member of the faculty.

E. General Principles of Copyright Law.

1. Copyright Law applies to any original work of authorship, which has been fixed in any tangible medium, including but not limited to computer media, from which the original work can be perceived, reproduced, or otherwise

communicated. A copyright owner has the exclusive right to reproduce his or her work, prepare derivative works, distribute by sale or otherwise, and display or perform the work publicly.

a. Literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; and sound recordings are all examples of materials that are copyright protected. Copyright protection does not extend to any “ideas, procedures, systems, methods of operation, concepts, principles, or discoveries” as defined in Copyright Law.

2. Copyright is automatically conferred at the time the work becomes expressed in a tangible medium of expression. Neither registration nor the copyright notice, © [owner’s name] [year of publication], is required, but this notice and either state or federal registration may confer additional rights, defenses, statutory damages and a right to recover attorney’s fees in any litigation that may take place involving the copyright, and registration is required before a suit for infringement can be filed.

a. The purpose of copyright, as set out in the *U.S. Constitution*, is to “promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Copyrights last for the life of the author plus 70 years. For employers, copyright protection of a work extends for 95 years from year of first publication or 120 years after creation. When the copyright expires, the work belongs to the public domain. The copyright owner may put it in the public domain at any time by expressly saying so.

3. The copyright may be held by a single author or by all those who contributed to the creation of a collective work. If a work is created by a bargaining unit Member within the scope of his or her employment on the Employer’s time or using the Employer’s resources, Copyright Law specifies that the employer owns the copyright in the work, absent an agreement to the contrary. This is known as the “work for hire” doctrine.

4. There has historically been an “academic exception” to the “work for hire” doctrine. The academic tradition has been that faculty own the copyright on course materials and books that they produce. The Employer’s implementation of this exception is set forth under the ownership rights section of this Agreement.

F. Ownership Rights.

1. Ownership retained solely by creator.

a. Intellectual property developed on the employee's own initiative, outside his/her scope of University responsibilities, and without use of substantial University resources (as defined in this Agreement) is owned by the creator. If the intellectual property bears a reasonable relationship to his/her employment responsibilities, then it is the employee's obligation to show that the intellectual property was developed according to these criteria.

b. Faculty shall have personal ownership of books, journal articles, other written reports of scholarly activity, creative works of fiction, textbooks, tests, course-related materials, slides, transparencies, bibliographies, music, and art work and any other material that would fall within the "academic exception" to the "work for hire doctrine" and which were created without substantial Employer support. Intellectual property created by faculty while on sabbatical or "paid leave" shall be deemed created with substantial Employer support, unless otherwise determined during the application and approval process for the sabbatical or paid leave.

c. Ferris State University should be appropriately acknowledged in all instances.

d. Ownership of multimedia materials, video and audio recordings, films, and other works that are created with substantial Employer support and resources are addressed elsewhere in this Agreement.

e. Inventions and other patentable property and software are excluded from this list and are addressed elsewhere in this Agreement.

f. The Employer shall enter in a course development agreement with the bargaining unit Member at issue prior to the creation of any courseware or product offered to be developed by the Employer, said agreement incorporating a list of the material that the bargaining unit Member shall remain the owner of the intellectual property rights in the same.

2. Ownership rests with the University.

a. Intellectual property rights are owned by the University and the net proceeds shall be shared with the creator(s) even when the property is considered a "work for hire," except as otherwise specified by a duly authorized and executed contract and/or this Agreement.

b. Intellectual property rights are owned by the University when the property is offered to the University in the form of a gift or under terms of the agreement, and the Employer agrees to accept the property. The distribution of any income accruing from the property will be determined according to the terms of the acceptance agreement.

c. Intellectual property rights for inventions, whether patented or not patented, other patentable products and software will be owned by the University. Income derived from these types of intellectual property shall be shared between the University and the creator as set forth later in this Agreement.

d. Intellectual property, which is not described elsewhere in this Agreement and is developed with substantial Employer support, will be owned by the University. Income derived from the intellectual property will be shared as set forth later in this Agreement. Substantial Employer support includes, but is not limited to, use of University facilities (other than one's own office and standard office equipment and software); University-owned equipment (including multimedia equipment, videotaping equipment, software or other equipment beyond that routinely supplied to all bargaining unit Members, except as provided through grants or by other means); other staff salaries and effort; and computing and graphic services.

3. Ownership determined by third party agreements.

a. Whenever there is a possibility that an externally funded project will result in intellectual property, the ownership of that property will be determined prior to the Employer accepting the award. If the funding agency is a federal or state agency, then the standard practices of that agency will determine ownership rights. The University's ownership rights *vis a vis* all other sponsors will be determined by written agreement.

b. The other provisions of this Agreement will determine the employee's ownership or income rights *vis a vis* the University.

4. Materials developed by bargaining unit Members in conjunction with their teaching and scholarly activity responsibilities.

a. The Employer disclaims ownership of:

i. Lecture notes, course outlines, hand-outs, class exercises, class tests, etc. developed by bargaining unit Members for use in their own teaching activities or on their own initiative, even if the materials have commercial value for use in other classes and at other universities.

ii. Scholarly activity data or written reports of scholarly activity that are developed on one's own initiative because one is pursuing one's scholarly activity work, provided the scholarly activity is not covered under other sections of this Agreement. However, where the University may own all or part of the intellectual property rights for inventions, software, or other patentable products, the author and the Employer must consult and have written agreement from the provost/vice president for Academic Affairs' office before publication of the written reports so that the rights of both the author and the University may be protected.

iii. The Employer agrees to execute and deliver at the request of the creating bargaining unit Member to perform any reasonable acts to vest all rights, title, and interest in the materials described in 4.a.i and 4.a.ii above in the bargaining unit Member and/or provide such person with evidence to support any of the foregoing in the event such evidence is deemed necessary by the bargaining unit Member.

b. Except to the extent provided under 4.a above, the University shall have ownership of:

i. All of its courses.

ii. Course syllabi that are submitted to departmental offices by bargaining unit Members for every course.

iii. Course outlines, class tests, proficiency exams, etc., that are developed in response to a specific assignment beyond that of preparing to teach one's own classes.

a) For example, course-related materials that were developed specifically to benefit teaching activities of more than the individual who developed the materials, such as a multi-section course or as part of a series of lectures for use in some courses. When it is initially made clear to the bargaining unit Member that these materials are for use by anyone who is responsible for the course, then the University owns the materials.

iv. Instructional materials developed at the request of Extended and International Operations or any academic unit when the individual is paid or receives release time for the development, then it is a "work for hire."

c. Ownership of the intellectual property rights is not to be confused with the Employer's right of access to materials. The Employer

reserves the right to review all materials used in the teaching of a course or in the conduct of or resulting from scholarly activity at the University. These materials must be made available upon request and at no cost to the Employer when the Employer needs access to these materials in fulfilling its institutional responsibilities. When the Employer requires access to the materials, it will, to the best of its ability, do nothing that will impair the commercial value of the materials to the employees.

5. Decision regarding ownership issues. When there are questions of ownership, the initial decision about ownership shall be made by the provost/vice president for Academic Affairs or his/her designee. Any appeal of a decision made by the provost/vice president for Academic Affairs or his/her designee shall be made to the University's Intellectual Property Rights Committee, which shall advise the president, who shall make the final decision for the Employer.

G. Transferring Ownership Rights.

1. Copyrightable property.

a. If the Employer determines that it does not wish to retain the ownership of copyrightable materials, it may elect to place the materials in the public domain, assign the ownership rights to an outside party, or offer the rights to the creator, unless a third party agreement prevents such an assignment. Any transfer of ownership must be in writing, and signed by the vice president for Administration and Finance or the president.

b. If the copyright is assigned to the creator, the Employer may require that the University be allowed to use the copyrighted materials without charge; provided such use is only on the University's campus or satellite campus. A satellite campus is defined as any campus where the University is delivering a course for credit or non-credit.

c. If the copyright is assigned to an outside party, the Employer may enter into an agreement, which sells the copyright, licenses the copyright, or gives the copyright to the third party. It may require that the Employer be allowed to use the copyrighted materials without charge.

d. If the transfer of the copyright to a third party results in revenue for the University, the principles of this Agreement or a written agreement between the Employer and the bargaining unit Member will determine if and how those revenues will be shared with the creator.

2. Patentable property.

a. If the Employer determines within six months from the date the invention is reduced to practice and notice of the same is provided to

the Employer that it does not wish to patent, license, or otherwise market an invention, the Employer will offer the intellectual property rights to the creator, unless a third party agreement prohibits such an offer.

b. A mutually agreeable written agreement will determine the terms of the ownership transfer. For the University, the Agreement must be signed by the vice president for Administration and Finance or the president.

H. Responsibilities of Inventors and Authors.

1. Disclosure responsibilities.

a. If there will be no royalties or other income resulting from the intellectual property and if it is absolutely unambiguous that, under the terms of this Agreement, the ownership will be retained by the creator, there is no obligation to report to the Employer the development of intellectual property.

b. Prior to filing any patent or copyright applications and prior to signing any agreements that will produce royalties or other income in regards to intellectual property, the creator must notify the provost/vice president for Academic Affairs' office even if the creator believes they have sole rights to the intellectual property.

i. No agreements should be signed until the provost/vice president for Academic Affairs' office provides written confirmation that the University does not own the property.

2. Ownership rests with the University.

a. For potentially patentable products, as soon as the inventor recognizes that there is a possibility of a patentable product or discovery and before disclosing it to any party outside the University, the creator must notify the provost/vice president for Academic Affairs' office about the product.

b. For intellectual property not subject to patent law; if there is any possibility that the University will own the intellectual property rights, the creator is encouraged to discuss the idea with the provost/vice president for Academic Affairs' office when the creator first recognizes that the intellectual property will be developed.

c. If funding was provided by an external agency that requires notification when intellectual property is developed, the principal investigator is responsible for notifying the agency and the provost/vice president for Academic Affairs' office. The project director is responsible

for assisting the provost/vice president for Academic Affairs' office by providing the necessary information and completing any required forms.

3. Ownership determined by third party agreement. The provost/vice president for Academic Affairs' office, in consultation with the General Counsel's office should be consulted for assistance in determining the appropriate disclosure procedures for intellectual property developed pursuant to a grant or contract with an external entity.

I. Other Responsibilities.

1. When the University owns the intellectual property rights, each creator is expected to work cooperatively with the Employer and with anyone to whom the Employer designates the right to evaluate or commercialize the intellectual property.

2. When the University does not have an ownership interest in the intellectual property, the name of the University shall not be used in connection with the property without prior written permission from the provost/vice president for Academic Affairs' office, (such permission shall not be unreasonably withheld), except as specified below:

a. Copyrightable materials may indicate that the author is an employee of the University; and

b. If the Employer has provided substantial support in connection with producing the work, the creator shall acknowledge in writing the support of Ferris State University in producing the work.

J. Control of the Intellectual Property Owned by the Employer.

Appropriate University personnel are responsible for decisions regarding the patenting, copyrighting, licensing, loaning, selling, or otherwise controlling the marketing and disposition of intellectual property that is owned in whole or part by the University. When the creator is entitled to a share of the earnings, the provost/vice president for Academic Affairs or his/her designee will consult with the creator prior to finalizing any decisions. The creator has the right to appeal to University's Committee on Intellectual Property Rights and no actions will be taken while a decision is being appealed.

1. Copyrightable property.

a. The Employer will determine, in consultation with the creator, whether to file an application with the U.S. Copyright Office. If a copyright is pursued, the author is expected to cooperate in filing the necessary paperwork. All costs will be paid by the Employer or as otherwise agreed in writing.

b. The Employer will develop and approve agreements about the assignment of copyright and the publishing and/or marketing of the

work. The creator may not enter into any agreements to publish or otherwise market the intellectual property, but he/she is encouraged to advise the Employer on the best outlets for the copyrightable material.

c. As owner of the copyright, the Employer may allow or direct others to create derivatives of the material, including course material developed as a “work for hire” for Extended and International Operations or other academic units. Notwithstanding the terms and conditions contained in this paragraph, if the creating bargaining unit Member has used his or her best efforts to comply with the applicable material terms and conditions of this Agreement and/or Course Development Agreement, such bargaining unit Member shall have the option to elect to create any and all derivatives of the materials at issue.

2. Patentable property.

a. The Employer will determine whether to pursue a domestic and/or foreign patent, and if so, through what means. The Employer will also make decisions relating to the licensing and marketing of patentable products.

b. The inventor will advise the Employer on the best course of action.

c. If the Employer wishes to file for a patent or for an evaluation for a patent, the inventor will cooperate by completing all of the necessary paperwork. All costs will be paid by the Employer or as otherwise agreed in writing by the inventor and the Employer.

K. Sharing of Royalties or Other Income.

1. Ownership retained by creator (materials other than distance learning materials). Neither the University nor any of its employees should benefit financially from the sale of materials that are developed solely for sale to Ferris State University students (e.g., course packs).

2. Distribution of Royalties for Intellectual Property Owned by the University.

a. An agreement or contract between the Employer and the creator(s) will specify whether the material is patented or copyrighted, what constitutes the Employer’s direct expenses in creating the material, who the creator(s) are that receive distribution of royalties, and what percentage of the distribution each contributor will receive and any related issues.

b. The determination of direct expenses will include, but is not limited to, the costs associated with investigating and/or obtaining the

patent, filing the copyright, use of University resources, or other extraordinary resources, such as outside consultants or resources not available from the University. The Employer will recover its direct expenses incurred on patenting, copyrighting, and licensing of the materials from its sales or licensing proceeds before distributing the net proceeds remaining in accordance with the following royalty schedule, except where Section L. applies or unless otherwise agreed to by contract.

c. Sales and Licensing Proceeds shall include any revenues generated in connection with the sale, license, and use of patentable or copyrightable materials including any amounts recovered by the Employer, its licensees, or sublicensees in connection with any infringement claims based on the materials but excluding tuition.

Net Sales or Licensing Proceeds	Creator	College or Equivalent Unit	Academic Affairs or Division	General Fund
The first \$5,000	100%			
The portion between \$5,001 – \$50,000	60%	20%	20%	
The portion between \$50,001 – \$100,000	40%	30%	20%	10%
The portion over \$100,000	25%	15%	15%	45%

L. Electronic Distance Learning Materials.

1. Definitions.

a. Distance education is defined as a formal educational process in which the instruction occurs when students and instructors are not in the same place. Instruction may be synchronous or asynchronous, and employ audio, video or computer technologies.

b. Electronic distance learning materials are instructional materials or courseware that requires the creation of copyright-protected work in a medium provided by the Employer. Electronic distance learning materials shall include all instructional materials produced, stored and/or reproduced in any form including in any form of computer storage or in digital format, such as on CD-ROM, digital video disc, and server hard drives for access on computers, computer work stations, and through the internet/extranet.

2. Copyright Ownership and Royalty Rights for Distance Learning Instructional Materials.

a. Copyright.

i. The copyright of all distance learning instructional materials shall vest in the University except as otherwise provided in this Section L., or as otherwise provided in a written agreement between the Employer and the bargaining unit Member, so long as the Employer asserts rights/ownership in the materials.

ii. If the Employer does not assert rights of ownership in the materials within six (6) months from creation and notice to the Employer, the ownership of such materials shall vest in the creating bargaining unit Member. The Employer agrees to execute and deliver at the request of the creating bargaining unit Member and to perform any reasonable acts to vest all rights, title, and interest in the materials at issue in the bargaining unit Member and/or provide such person with evidence to support any of the foregoing in the event such evidence is deemed necessary by the bargaining unit Member, except to the extent such ownership issues are addressed in separate written agreement between the parties.

iii. The Employer shall bear all costs in protecting the materials.

iv. All such materials will be marked with a “© Ferris State University” indicator in a manner appropriate to the medium and the bargaining unit Member shall receive full credit on the materials as the named author or principal developer of all copies of the materials. The bargaining unit Member, however, shall have the right to remove his or her name from any copies of the materials upon written notice of the same to the Employer. For materials recorded on fixed media, such as videotapes or CD-ROMs, the developer will place a warning at the beginning of each recording or affixed as a label on the medium that Ferris State University owns the copyright and that it is against federal copyright law to duplicate the recording.

b. Related Issues.

i. Copyright Ownership. Bargaining unit Members own the copyrights in scholarly works created by the bargaining unit Members and any and all additional materials that would fall within the “academic exception,” including, but not limited to, those materials specifically listed on any Appendix attached to any

applicable Course Development Agreement. Therefore, bargaining unit Members shall hold copyright in electronically published materials they create solely on their own initiative. Copyright in final works created under contract, with substantial support from the Employer, and/or as works for hire reside with the University. 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 bargaining unit Member from retaining or making copies, royalty free, of the works for use in connection with his or her University teaching, scholarship and research, creating compilations or other composite works and as a part or use in the bargaining unit Member'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 obligations, representations, warranties, confirmations and acknowledgements of the parties set forth herein shall continue, survive and shall remain in full force and effect after termination or expiration of this Agreement or the termination of the bargaining unit Member'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.

ii. Course Development. Bargaining unit Members may receive release time or other compensation as determined by the appropriate dean(s) for duties performed in the best interests of the University's distance education instructional program, including the development of electronically published course materials. Courseware created by bargaining unit Members receiving course release or receiving other compensation is the property of the University.

iii. Revision Rights. Bargaining unit Members that have used their best efforts to comply with the material applicable terms of this Agreement and/or Course Development Agreement shall have the right to elect to update, edit and otherwise revise electronically developed course materials that become out of date, or, in certain circumstances may by agreement with the Employer, place a time limit upon the use of electronically developed course materials that are particularly time sensitive, regardless of who owns copyright in the electronically developed course materials. Such rights and limitations may be negotiated by the bargaining unit Member and the Employer in advance of the creation of the electronically developed course materials and should be reduced to

writing. Absent a written agreement, each bargaining unit Member will have the right and moral obligation to revise work on an annual basis in order to maintain academic standards. If a bargaining unit Member chooses to revise the work and the revision is made in a satisfactory manner, the bargaining unit Member retains the right to full royalties and fees as set forth herein. If the Employer believes a revision is necessary and no timely revision is made, or the revisions made do not maintain academic standards, the Employer may refuse to market the product, employ another bargaining unit Member, faculty Member, staff Member or other person to update the work, and charge the cost of doing so against any royalties or fees paid to the original author

iv. Royalties. In accordance with this Agreement, bargaining unit Members shall receive all royalties that may accrue from the commercialization of electronically published course materials they create on their own initiative, unless they are commercialized through the joint effort of the bargaining unit Member and the Employer, then royalties shall be shared pursuant to written agreement. The Employer retains all royalties that may accrue from the commercialization of electronically published course materials created by bargaining unit Members pursuant to contract or as a work for hire, including electronically published course materials created as a condition of employment, except as otherwise provided in this Agreement. Copyright law permits joint owners to pursue commercialization either jointly or separately, with accounting. Other circumstances may require review on a case-by-case basis. Absent a written agreement to the contrary, specific division of royalties is addressed in subsection xi below. In instances of joint ownership between bargaining unit Members where the Employer also retains rights to royalties, the bargaining unit Members shall mutually agree in writing as to the division of royalties. Absent a written agreement of division of royalties, the bargaining unit Members shall divide their share *pro rata* based on the number of bargaining unit Members, faculty Members, staff Members, or other persons who have contributed to the materials at issue.

v. Contributed Materials. Liabilities may be incurred with respect to the inclusion of materials in electronically published course materials other than materials created by the author of the electronically developed course materials and inclusion of voices or images of persons in the electronically developed course materials, including audience Members and guest lecturers. It is the policy of the University that all faculty and staff comply with the law, including copyright and privacy

laws; therefore, it is the responsibility of the creator of electronically published course materials (normally the bargaining unit Member) to obtain all permissions and releases necessary to avoid infringing copyright or invading the personal rights of others. The bargaining unit Member shall be deemed to have complied with the obligations contained in this paragraph if he or she has used his or her best efforts upon reasonable due diligence to comply with the same. Nothing contained in this paragraph, Agreement, and/or Course Development Agreement shall prohibit or bar any bargaining unit Member from requesting defense and indemnification under the Legal Representation and Indemnification Policy provided in Board Policy and/or business policy letters.

vi. Use of University's Name. Bargaining unit Members must observe the same requirements that apply in other contexts with respect to the use of the University's name as set forth in this Agreement.

vii. Protecting the Work. The Employer will determine whether to register the copyright and will be responsible for enforcement of University-owned works. Bargaining unit Members will make such decisions and take such steps to protect works they own. Any one of the authors of a joint work may register and enforce the copyright in the names of all owners, with accounting upon giving prior written notice of same to the other joint owners.

viii. Retention of Nonexclusive License. Except in Category I, as set forth in subsection xii below, the University shall retain an exclusive educational license to reproduce and use the electronically developed course materials in teaching University classes on or off campus. Compensation to the bargaining unit Member for use of the course shall be as specified below in subsection xii.

ix. Administration. The provost/vice president for Academic Affairs shall be responsible for the administration of this Agreement and applying the Agreement equitably throughout the University. The bargaining unit Member should meet with his/her department head and dean to determine which category the electronically published materials will be assigned and the ownership, institutional resource commitment, and the royalties. A copy of the Agreement will be forwarded to the provost/vice president for Academic Affairs' office for his/her review and assurance that the Agreement is being applied in an equitable manner. The provost/vice president for Academic Affairs shall

inform the dean and department head of any inequitable applications of the Agreement and it shall be the responsibility of the provost/vice president for Academic Affairs or his/her designee, dean, and department head to resolve the issue with the bargaining unit Member. If the bargaining unit Member and the dean and department head cannot resolve the issue, the provost/vice president for Academic Affairs or his/her designee will resolve the issue. Appeals of the decision made by the provost/vice president for Academic Affairs or his/her designee are made to the University's Intellectual Property Rights Committee, which shall advise the president, who makes the final decision for the Employer.

x. Ownership Rights and Compensation Relative to Category.

(1) Category I – Totally Bargaining Unit Member Generated. The work resulting from an individual's efforts on his own personal time without any direct support from or through the Employer and without the use of any University resources beyond those normally provided by the Employer. The individual owns the property and may receive compensation for the work and retains distribution rights. Notwithstanding the foregoing, the individual may negotiate with the Employer for the use of the materials within the University and for the sale of the property outside the University.

(2) Category II – Employer Contracts with a Bargaining Unit Member to Develop a Work. A bargaining unit Member is contracted to develop a specific product. The Employer provides all resources for the work. The work was carried out totally as a part of the bargaining unit Member's assigned time or for additional compensation. The University owns all intellectual property in the final products other than the material incorporated into the final products that fall within the "Academic Exception" and those materials specifically listed on any Appendix to any applicable separate written agreement, and have an exclusive educational and commercial ownership and license authority. The bargaining unit Member is not entitled to payment of royalty except to the extent the proceeds are generated by the Employer as a result of sale or license of the products to a third party and except to the extent otherwise provided under this Agreement and/or as agreed in a separate written agreement.

(3) Category III. The bargaining unit Member is using a work that he/she created as part of teaching at the University using, in whole or in part, University resources. The University owns all intellectual property except as otherwise agreed in writing or as set forth in this Section. There will be no extra compensation beyond normal teaching compensation for use of the work on its campuses or satellite campuses as defined in Section G. and except as otherwise agreed in writing.

xi. Sale of Courses and Royalties.

(1) After consultation with the bargaining unit Member and dean, the Employer may sell courses in a variety of media.

(2) FSU office or offices identified by the provost/vice president for Academic Affairs will consult with the bargaining unit Member and dean to sell a selected course prior to the start of class.

(3) FSU office or offices identified by the provost/vice president for Academic Affairs will be responsible for producing the copies in appropriate format as well as for any special editing required and packaging for shipment.

(4) The bargaining unit Member will be afforded the opportunity to review segments of the course prior to its sale and for the duration of the use and distribution by the Employer as long as employed by the University. The bargaining unit Member may request editing or re-recording from the Employer. Final decisions regarding requests for re-editing or re-recording will be made by the provost/vice president for Academic Affairs or his/her designee, after consultation with the appropriate department head and dean.

(5) Net proceeds received from the sale of courses (e.g., royalty or fee payments to the Employer or any amount recovered by the Employer in connection with any claim of infringement based on the courses) will be distributed with the bargaining unit Member(s) receiving 40%, the division 20%, the bargaining unit Member's college and department 20%, and the general fund 20%, in accordance with the royalty schedule set forth in Section K. 2.

(6) FSU office or offices identified by the provost/vice president for Academic Affairs, in conjunction with the vice president for Administration and Finance, may also market and sell noncredit programs for which it holds licensing and distribution agreements. Royalties for the use of such a program will be paid to individuals, both internal and external to the University, according to the licensing and distribution agreement executed for the specific program.

xii. Compensation for Use of Course/Materials.

(1) If an entirely previously recorded course is offered for credit in subsequent semesters, the bargaining unit Member who created and/or taught the course may be given first right to administer/teach and revise the rebroadcast of the course, provided that he/she has used his/her best efforts to comply with the applicable material terms of this Agreement and/or any applicable written agreement.

(2) If the bargaining unit Member who created and/or taught the course is unable or declines to administer/teach the course, the sponsoring department may recruit another bargaining unit Member, faculty Member, staff Member, or other person with appropriate expertise to administer the course, but the bargaining unit Member who created and/or taught the course shall be paid a fee of one-tenth (1/10th) of overload pay, so long as they are employed at the University for the first three (3) years after development of the material. The bargaining unit Member is responsible for requesting this payment. The bargaining unit Member will be responsible for consulting with and providing support to other bargaining unit Members, faculty Members, staff Members or other persons using the course materials.

(3) If an entirely previously-recorded course is offered in additional sections, the sponsoring department may recruit other bargaining unit Members, faculty Members, staff Members, or other persons with appropriate expertise to administer/teach the additional sections, but the bargaining unit Member who created and/or taught the course shall be paid a fee of one-tenth (1/10th) of overload pay. The bargaining unit Member is responsible for requesting this payment. The bargaining unit Member will be responsible for consulting with and providing support to

other bargaining unit Members, faculty Members, staff Members or other persons using the course materials.

xiii. Licensing Agreements and Releases.

(1) Whenever the Employer produces a video program, those who appear in the program (i.e., the talent) may be required to sign a release permitting the recording and use of an "image of their person and sound of their voice." The provost/vice president for Academic Affairs or his/her designee will be responsible for obtaining signed releases during the production of technology-based programs provided the bargaining unit Member has used his or her best efforts upon reasonable due diligence to provide the provost/vice president for Academic Affairs or his/her designee with the necessary information needed to obtain such releases, the Employer shall hold the bargaining unit Member harmless from any and all claims, costs and expenses arising in connection with the same.

(2) The provost/vice president for Academic Affairs or his/her designee and/or bargaining unit Member is responsible for obtaining all releases for intellectual property used in the production of technology-based programs and executing licensing agreements with those holding the copyrights for such intellectual property.

(3) Vice president for Administration and Finance will be responsible for developing and executing license agreements for programs produced by the Employer. At a minimum, each agreement will include stipulations that:

(a) the licensee will not duplicate the recording, unless expressly provided in the license;

(b) the license is provided for a specified period of time, usually one year;

(c) the licensee will not retransmit the program, unless expressly provided in the license; and

(d) the licensee will not edit or resell the program.

M. Term. The term of this Agreement shall be for the duration of the current 2018-2023 Agreement between the Ferris Faculty Association and the Ferris State University Board of Trustees.

N. Reporting and Payment. The Employer shall provide the bargaining unit Member and the president of the Association with annual statements related to any applicable patentable or copyrightable materials (the "materials") indicating the quantity of the materials sold, licensed or distributed and the amount due the Member in accordance with this Agreement and shall simultaneously pay to the bargaining unit Member the amount shown due the bargaining unit Member in such statement. The Employer shall keep accurate books of account and records at its principal place of business covering all transactions related to the materials, and the bargaining unit Member or his/her agents shall have the right, at reasonable hours of the day, to audit not more than once annually, the Employer's books of account and records on ten (10) days prior notice. Should an audit by the bargaining unit Member or his/her agents establish a deficiency between the amounts found to be due and the amount actually paid or reported by the Employer, the Employer shall pay the Member's amount of the deficiency, plus interest at a rate of one percent (1.0 %) per month from the date such amount became due until the date of payment. The Employer shall remit payment in such amount within thirty (30) days of the bargaining unit Member's delivery to the Employer of written notice of the same. The Employer shall keep all such materials, books of account and records available for at least four (4) years after the date its rights granted herein to the materials are hereby terminated and/or from the date the bargaining unit Member's employment with the University is terminated.

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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.

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

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