

Instructional Innovation Policy and Participation Agreement (Approved; 10/13/2011)

This Participation Agreement (this “Agreement”) is between UNC Eshelman School of Pharmacy (the “School” or the “University”) and the undersigned employee(s) of the University. The document also serves as the School’s Policy on the creation, ownership, and distribution of Instructional Materials.

1. Background. As part of its Educational Renaissance Initiative and consistent with its Strategic Plan, the School has embarked on a collaborative effort to revolutionize the manner in which it delivers its educational programs.

This Agreement is intended to engage and incentivize School employees to create highly impactful and innovative Instructional Materials, to allow the School to widely distribute and/or commercialize those Instructional Materials, and to benefit from royalty flow back to the School in much the same way as commonly practiced for tangible intellectual property (patents) or other copyrighted materials.

This Agreement is intended to cover all innovative Instructional Materials pertaining to the following educational programs of the School: Doctor of Pharmacy Program including its Experiential Education Program, Doctor of Philosophy Program, Masters Program, Residency Program, Fellowship Programs, Continuing Education Program, and other Professional Training and Development Programs including those for faculty and staff.

2. Project Goals Relating to Innovative Instructional Materials. An important objective of this Policy and Agreement is to engage and incentivize employees to create innovative Instructional Materials that can:

i) Efficiently deliver foundational content to students outside the classroom setting. By removing the delivery of foundational content from the classroom, the student-instructor contact can be redirected to activities and interactions that differ from traditional lecture, and should focus on aspects of learning that go beyond the acquisition of factual information. The portion(s) of your course that is/are best delivered in this manner, together with the strategy for delivering this content, has been determined through the collaborative efforts of the course coordinator, course faculty, and the instructional design team. As the Instructional Materials are being developed, it will be necessary to devise a strategy for the use of in-class time. You will devise the strategy with the assistance of the course coordinator, and a final plan, in the form of a course syllabus, that will be submitted as part of the completion of this Project; or,

ii) Facilitate access to information that can be efficiently and effectively utilized to make decisions that improve patient care and healthcare outcomes. This may be achieved, for example, by the creation of innovative smart phone applications, web-based programs, or interactive team-based learning modules.

Outline of the Project intending to create and develop Instructional Materials:

<u>Project Title:</u>
<u>Date:</u>
<u>Brief Description of Scope of Work (attach additional pages as required):</u>

3. Project Scope. This Policy applies to the faculty and staff of the School. Compliance with the terms of this Policy is a condition of employment for School faculty and staff. This Policy is supplemental to the Copyright Use and Ownership Policy of the University of North Carolina, but, as permitted by such policy, this Agreement shall govern ownership and use rights of Instructional Materials and other material as defined herein. This Agreement may, however, be subject to any specific provisions in grants or contracts that govern in copyrighted works created in connection with sponsored research. The final structure of the Instructional Materials may change as the Project proceeds to completion.

4. University Ownership of Instructional Materials. All Instructional Materials created or used under this Agreement are considered "Directed Works." As defined in the University's Copyright Policy, Directed Works are works that are specifically created or funded at the direction of the University. The School is investing considerable recurring dollars and providing infrastructure to facilitate this and other like projects. However, such funding and infrastructure need not constitute exceptional use of University resources in order for the Instructional Materials to be considered Directed Work. Under the University's policy, the University shall own all right, title and interest, including copyright, in Directed Works. University shall own all right, title and interest, including copyright, in the Instructional Materials.

5. Creator(s) and Facilitators. A “Creator” is defined as a School employee (faculty, staff, or student) that first creates, identifies, and/or contributes original Instructional Materials that the School concludes would be of value to its educational programs. The Creator(s) must adhere to this Policy and Agreement. A “Facilitator” is an employee that is hired by the School having the primary job responsibility to develop Instructional Materials as described in this Policy. The Facilitator(s) contribute intellectually to the Project (e.g., Project managers, instructional designers, instructional animators and multimedia specialists, and programmers, etc.) in such a manner that the quality of the original Instructional Material is significantly improved by their involvement. Unless agreed otherwise in writing with a Facilitator, such Facilitator is bound by the terms of this Policy and Agreement.

6. Estimated Project Costs. The estimated Project costs should be determined in consultation with the Instructional Design group and include the Instructional Design team, materials and supplies, equipment, and all external expenditures. Faculty % effort should be assigned and documented, but should not be included in the estimate of Project costs. However, the total estimated Project costs should be considered and reported as a grant award to the Faculty for the purposes of appointment, reappointment, promotion, and tenure.

It is estimated that the Project will cost \$_____, primarily representing the following general expenditures contributed by the School (attached additional pages as required):

It is recognized that there are “hidden” costs in pursuing this Project: faculty time, School staff time, and previously acquired technology all represent actual costs that are associated with the project but are difficult to quantify. The School believes its investment in the Project is an investment in its faculty and its students.

7. Relationship to the Curriculum. The development of the Instructional Materials is only one component of an ambitious effort to revolutionize the manner in which the School delivers its educational programs. In order to have a consistent and cohesive curriculum, several elements of philosophy, general strategy, and design have been adopted and will carry across all of our educational programs. However, within these broad constraints you and your colleagues are expected to use an instructional strategy and approach that best suits the needs of the Instructional Materials you deliver. These Instructional Materials may be in the form of multi-media work products including, but not limited to video or other digitally captured content, animations, e-books, web-pages, smart phone applications, computer programs, or in written or printed form including fliers, books, or manuals, or similar types of written or printed materials.

An important element of the broader project is the development of a multi-dimensional curricular map that will link specific course content to particular educational outcomes, to compatible content in other courses, to other sources of learning or information outside of the formal curriculum, and to the general taxonomy of learning. Your participation will be required to ensure that all of this important information is captured as your material is being developed.

8. Scholarship. This Project provides our employees (faculty, staff, and students) with an unprecedented opportunity to study the educational process related to the different disciplinary areas that form the foundation of pharmacy and the pharmaceutical sciences. To be good stewards of the funding devoted to this project, as well as good citizens of our scholarly community, we must learn as much as we can from our efforts in this area, and we must communicate what we have learned to others. With the support provided to you to proceed with this Project comes an explicit expectation that you will use this activity as an important opportunity for scholarship, that you will study the efficacy of the material you have developed (i.e., that you will pursue “evidence-based education”) and that you will communicate your results at relevant meetings and in relevant literature. The Division Chair will be responsible for ensuring that Faculty can devote sufficient effort to this Project and evaluating the success of the Faculty efforts

from the standpoint of scholarship. As mentioned above, the total estimated Project costs should be considered and reported as a grant award to the Faculty for the purposes of appointment, reappointment, promotion, and tenure.

9. Your Participation. This Project involves the efforts of a considerable number of people, as well as significant financial resources. As a whole, the University's undertaking is relatively high profile and must be completed in a reasonable time frame. By signing below, you agree to:

- Comply with the development schedule that has been set for the Project;
- Provide required materials when they are requested;
- Attend Project meetings in which your input is required;
- And provide timely feedback to the Instructional Design team.

10. Pre-Existing Instructional Materials. As part of your participation in the Project, some of the materials that you provide to the University and/or incorporate in the Instructional Materials will have existed prior to your participation in the Project ("Pre-Existing Instructional Material"). To the extent you have the legal right to do so, you hereby grant the University a paid-up, royalty-free, non-exclusive, worldwide, perpetual and irrevocable right and license to; (1) publish, reproduce, print, transmit, license, promote sell, distribute develop, sell, publicly display, and otherwise use the Pre-Existing Instructional Materials in any media throughout the world, (2) create derivative forms of the Pre-Existing Instructional Materials in any media, and (3) grant others the right to do any of the foregoing. For avoidance of doubt, you shall continue to have the right to use the Pre-Existing Instructional Materials for any purpose you wish to use it.

11. Instructional Materials. As part of your participation in the Project, you may create new material, including, without limitation, derivatives of the Pre-Existing Instructional Materials ("Instructional Materials"). Instructional Material includes any and all inventions, research data, tangible property, logos and identifiers, and other work products discovered, conceived, invented, reduced to practice, authored, developed, either solely or jointly with others, which are developed within the scope of work, or responsive to, the Project, and any and all proprietary rights thereto, including patents, trademarks, copyrights, and other proprietary rights. Under the terms of this Policy and Agreement, the University owns all right, title, and interest, including the copyright, in the Instructional Material. If, for any reason, some or all Instructional Materials are deemed not to be owned by the University, then you hereby transfer and assign to the University ownership of all right, title, and interest, including the copyright in the Instructional Materials. To the extent any applicable law or treaty prohibits the transfer or assignment of any moral rights or rights of restraint that you may have in the Instructional Materials, you hereby waive such rights.

12. Use of Instructional Materials. You acknowledge that transfer, assignment, or licensing of rights in any Instructional Materials for your own use or that of any third party shall be solely with the authorization of the Dean of the UNC Eshelman School of Pharmacy. You agree to not disclose, export, or publish Instructional Materials, or any proprietary information or other subject matter of any third party, unless authorized in writing by the Dean. You agree not to involve others (including but not limited to University students, employees, and visitors) in Project work unless they have signed a Participation Agreement (such as this one) appropriate to the Project. Any use of parties not employed by the University requires such parties to sign a contract that, at a minimum, assigns copyright in any work created by such party to the University. The fair use of the Instructional Materials, including such use by reproduction in copies or by any other means specified by that section, for purposes such as criticism, comment, teaching, scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered (pursuant to 17 U.S.C. § 107) shall include:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

13. Commercialization. As described above, the primary purpose for the Project is to revolutionize the manner in which the School delivers its educational programs. However, to ensure that the Project is of the highest possible quality and that it is sustainable, it may be advisable to engage the private sector. Such engagement may include raising money to fund the creating and maintaining of the Project, commercializing the Project, partnering with the industry in other ways, or selling, licensing or distributing the Project. The University has the right but no obligation to commercialize or otherwise exploit the Project, including the Pre-Existing Instructional Material and the Instructional Material, in any of these or other ways. It is anticipated that the School may experience expenses relating to licensing and commercialization of Instructional Materials. The School will be reimbursed for such expenses prior to the distribution of royalties.

14. Non-Competition. In the event that any creator(s) develop(s) a competing product for another institution or entity, he or she will forfeit all rights to subsequent royalties from this Project.

15. Subsequent Versions. As new versions of this material are released, royalty sharing may be renegotiated based on relative efforts of original and new contributors, if any. The School recognizes that the contributions of employees to this Project will likely change over time as the Project is developed, completed, and then improved over time. Thus, the School will review royalty assignments no less than annually.

16. Representation & Warranty. The execution of this Agreement by the undersigned employee is also such employee's representation and warranty that (a) the undersigned employee is the sole author and sole owner of all rights in and to my contribution to the Pre-Existing Instructional Material and the Instructional Material; (b) such contribution to the Pre-Existing Instructional Material and the Instructional Material is original; (c) to the best of the knowledge of the undersigned employee, neither the Pre-Existing Instructional Material nor the Instructional Material violates or infringes on any personal or property rights of others; (d) to the best of the knowledge of the undersigned employee, the Pre-Existing Instructional Material and the Instructional Material contains nothing libelous; (e) the contribution to the Pre-Existing Instructional Material and the Instructional Material made by the undersigned employee contains no material from other copyrighted or unpublished works which has been used without the written consent of the copyright owner and/or of the owner of any other rights to or in such other works, and (f) the undersigned employee has full power and authority to enter this Agreement.

17. Royalty Sharing. In the event that the University receives revenue from the use of the Project, including the Pre-Existing Instructional Material and the Instructional Material, gross revenues (less reasonable costs of licensing and commercialization) will be distributed in a manner as described below. Distribution of funds to all relevant parties will be made at the end of each fiscal year.

(50%) to the School;
 (40%) to the Dean’s Office;
 (10%) to Facilitators who significantly improve the Project by their involvement. Facilitators will only receive royalty as long as they are employees of the School. If Facilitators are no longer employed by the School, then their shares will revert back to the Dean’s Office.

Employee _____ %
 Employee _____ %
 Employee _____ %
 Employee _____ %
 Employee _____ %

Total 50%

(10%) to the Division(s) of the School that encourage and foster the creation of the Instructional Materials. The divisional shares will be prorated based on the relative contributions of material and effort. These funds will be used to enhance the budgets of the contributing divisions. For this Project, divisional shares will be distributed as follows:

Division _____ %
 Division _____ %
 Division _____ %

Total 10%

(40%) to the Creator(s) of the Instructional Materials. The shares will be prorated based on the relative contributions. Creator(s) will receive royalty for their lifetime; shares cannot be gifted or inherited. For this Project, the shares will be distributed as follows:

Creator _____ %
 Creator _____ %
 Creator _____ %
 Creator _____ %
 Creator _____ %

Total 40%

This Agreement is (check one): an Original Agreement [] dated _____
 an Amended Agreement [] dated _____
 If an Amendment, this is Amendment No. ____

18. Miscellaneous.

(a) This Agreement is binding upon and shall inure to the benefit of University, its successors and assigns. However, this Agreement shall be personal to the undersigned employee, and it is not assignable by such employee to any other person or entity without the prior written consent of University, such consent to be in University's sole discretion.

(b) It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

(c) Neither party hereto is an agent of the other for any purpose.

(d) Any notice required or permitted to be given to the parties hereto shall be in writing and deemed to have been properly given if delivered in person or mailed by first-class mail to the other party at the appropriate address as set forth below. Other addresses may be designated in writing by the parties during the term of this Agreement.

(e) This Agreement shall be interpreted and construed in accordance with the laws of the State of North Carolina. The State and Federal Courts of North Carolina shall have exclusive jurisdiction to hear any legal action arising out of this Agreement.

(f) In the event that a court of competent jurisdiction holds any provision of this Agreement to be invalid, such holding shall have no effect on the remaining provisions of this Agreement, and they shall continue in full force and effect.

(g) Anything contained in this Agreement to the contrary notwithstanding, the obligations of the Licensee shall be subject to all laws, present and future and regulations, of any government having jurisdiction over the Licensee, and to orders, regulations, directions, or requests of any such government. Licensee shall undertake to comply with and be solely responsible for complying with such laws applicable to Licensee.

(h) The undersigned employee shall be solely responsible for the payment of any and all taxes, and fees, if any, incurred in relation to its receipt of payments under this agreement.

(i) It is understood and agreed between University and the undersigned employee that this writing constitutes the entire agreement, both written and oral, between the parties, and that all prior agreements respecting the subject matter hereof, either written or oral, expressed or implied, shall be abrogated, cancelled, and are null and void and of no effect.

(j) The undersigned employee further agrees to make, execute and deliver to the University, upon request, any and all papers, documents, affidavits, or other instruments that may be reasonably necessary in the protection of copyright in the Pre-Existing Instructional Materials or Instructional Materials, and to assist the University as may be requested in protecting said copyright, provided that any expense of extending such assistance shall be paid by the University.

