

**AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING**
Between THE TEXAS EDUCATION AGENCY ("TEA") and THE UNIVERSITY
OF TEXAS SYSTEM ("UTS") Regarding Copyrights in Works Created
by UTS Component Institutions with TEA Funding

PURPOSE:

The purpose of the Memorandum of Understanding (MOU) is to establish the respective responsibilities and roles of each participating agency with respect to ownership and use of copyrights in works created with funding through TEA.

BACKGROUND:

The parties have previously entered into one or more agreements detailing how copyrights in materials created by a UTS component institution with funding through TEA would be owned and managed. They now desire to consolidate and amend the terms of their earlier agreements. This document describes their consolidated and amended agreement, and hereby terminates the earlier agreements, superseding the earlier terms.

PARTICIPATING AGENCIES:

UTS and TEA are the participants in this MOU regarding copyright.

BINDING:

All aspects of this agreement regarding copyrights are binding upon TEA, UTS and UTS's component institutions.

AREAS OF AGREEMENT IDENTIFIED IN DETAIL BELOW:

- Ownership of existing copyrights
 - Copyright of new course content
 - Distribution and pricing
 - Licensing
 - Dispute resolution
 - Royalties
 - Revisions
 - Enforcement
 - Audit rights; records; reports
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- FURTHER DETAILS REGARDING THE ABOVE AREAS OF AGREEMENT:

- **Ownership of Existing Copyrights**

UTS or its component institutions shall maintain exclusive ownership of their pre-existing content, including but not limited to the materials described in any funding agreement or amendment thereto executed by a component institution and TEA.

- **Copyright and Use of New Course Content, Materials, and Products**

All course content, materials and products created by a UTS component, its employees, agents, consultants or subcontractors arising out of a contract project as may be specifically described in any funding agreement or amendment thereto executed by a UTS component institution and TEA shall be the joint property of UTS or its component and TEA, and any use thereof must be licensed as set forth herein. Unless otherwise provided, UTS shall be responsible for all administrative responsibilities associated with the activities set forth herein. UTS shall be responsible for filing all copyright and trademark, etc. registrations for materials jointly owned by the parties.

- **Faculty and Graduate Student Research Results**

In accordance with UTS's mission to publish the results of its research and its Intellectual Property Policy, which allocates ownership of publications containing research results to their authors, the faculty and students who conduct research pursuant to this agreement shall own and be free to publish the results.

- **Commercial Activity Not Expected**

UTS and TEA do not anticipate any use for the deliverables hereunder outside the work-scope. The parties agree, however, that they shall jointly own the copyright therein and that if it appears likely that a work whose creation was funded through this contract may be commercialized by either of them, in consideration of the funding provided hereunder by TEA and the work performed by UTS, they will agree upon royalty-sharing and other provisions as set forth in this MOU. For purposes of this section, commercialized shall mean commercial sales or licenses of a work product to entities for their independent use outside the scope of uses contemplated by the project receiving TEA funding.

- **Distribution and Pricing**

All course content for which TEA and UTS or its component institutions hold joint copyright ownership shall be distributed within the State of Texas in accordance with instructions set forth in the funding agreement for that particular project.

- **Royalties**

TEA and UTS shall share Net Royalties (defined below) from the licensing

of all materials for which TEA and UTS hold joint copyright ownership evenly (50/50); provided that such royalty-sharing percentage shall be equitably adjusted by mutual agreement of the parties when TEA funding supports the further development, significant modification or improvement of preexisting materials that were created with non-TEA funding.

Net Royalties shall mean gross royalties received by UTS from the sale or license of products covered hereunder, less amounts UTS actually paid or allowed for direct costs to manufacture, distribute, print or otherwise create the product sold or licensed, direct costs for intellectual property protection and enforcement and costs to service licensees, if any.

- **Licensing**

Parties acknowledge that UTS or its component institutions may provide course content to secondary school students or students enrolled in a degree program at a UT System component institution, and charge tuition and fees. Such tuition does not constitute commercial activity to which royalty-sharing provisions would apply. Any transfer of materials, including but not limited to course content, jointly owned by TEA and UTS or a component institution to a third party giving that party the right to provide access to such content to said students independently of the component institution, would constitute commercial activity to which the royalty sharing provisions below would apply. UTS shall exclusively hold the right to license rights to materials for which TEA and UTS or a component institution hold joint copyright ownership. UTS, in its discretion, may grant back to TEA a limited right to license rights in jointly owned materials. Final authority with respect to decisions affecting licensing shall remain with UTS.

- **Dispute Resolution**

Disputes between TEA and UTS relating to contract interpretation or performance shall be resolved by a committee with one member appointed by TEA, one member appointed by UTS, and one member agreed upon by TEA and UTS.

- **Revisions**

UTS shall retain the right to revise the materials for which TEA and UTS hold joint copyright ownership in accordance with academic standards. UTS further agrees to update materials for which TEA and UTS or a component institution hold joint copyright ownership upon the receipt of a written request and appropriate funding. In the event that UTS agrees that the revision of jointly owned materials is needed in order to maintain the academic integrity of the materials, but is unable or unwilling within a reasonable time specified by TEA to provide the revision after TEA has requested it, TEA may arrange for such revisions and may display, in the revised work and in any promotional materials, the name of the person or persons who performed the revision. All revisions to materials that will be

distributed to Texas public and charter schools must be approved by UTS and TEA.

For purposes of this section, a revision subject to the provisions of this section includes changes to the jointly owned course materials based on research findings that update or modify it to keep it current, accurate and appropriate for its intended purpose. Revisions expressly do not include changes to UTS's or a component's pre-existing content, including but not limited to the materials described in a funding agreement or amendment thereto as pre-existing, or changes that would create a work fundamentally different from the materials originally created pursuant to this contract, or that change the character of the work, its overall scope or its philosophical basis.

- Enforcement

UTS shall enforce the copyrights in the materials for which TEA and UTS hold joint copyright ownership. If UTS refuses or fails to enforce a copyright in the materials, TEA may take legal action to enforce the copyright.

- Audit Rights; Records; Reports

The parties anticipate that UTS, as the party with the exclusive right to license the materials, will likely be the party that would commercialize the materials subject to royalty-sharing provisions, but it is possible that TEA could do so also, if permitted by UTS. Regardless of who commercializes materials, during the term of this Agreement and for 3 years thereafter, the Licensing Party agrees to keep complete and accurate records of its and its sublicense(s)' sales of products covered by this Agreement in sufficient detail to enable the amounts payable hereunder to be determined. Licensing Party agrees to permit the party receiving a share of royalty income ("Royalty Recipient") or its representatives, at Royalty Recipient's expense, to periodically examine Licensing Party's books, ledgers, and records during regular business hours, with 14 days advance notice, for the purpose of and to the extent necessary to verify any report required under this Agreement. Licensing Party agrees to make available to Royalty Recipient the Licensing Party's personnel who are familiar with the books and records to explain the books and records as needed for audit or inspection. If the amounts due to Royalty Recipient are determined to have been underpaid by three percent (3%) or more, Licensing Party will pay the cost of the examination up to a maximum amount of \$5000.00, and accrued interest at three percent (3%) above the current Prime Rate or, if not permissible under state law, that amount that is permissible under state law.

Beginning immediately after the effective date of this Agreement, Licensing Party will deliver to Royalty Recipient true and accurate written reports, even if no payments are due, within 60 days after Licensing Party receives sales reports from its sublicensee(s) (in most cases, quarterly), giving the

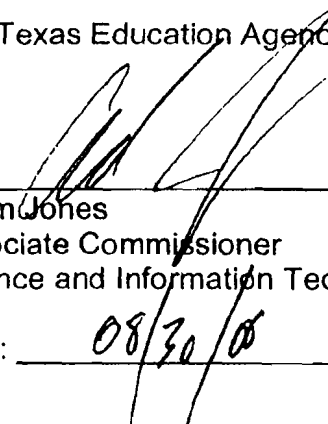
particulars of the business conducted by Licensing Party and its sublicensee(s), if any exist, as are pertinent to calculating payments hereunder. This report will include at least:

- a. the total sales of products covered by this Agreement;
- b. the calculation of Net Royalties, as set forth above;
- c. the calculation of Royalty Recipient's royalty share based on Net Royalties.

Simultaneously with the delivery of each report, Licensing Party will pay to Royalty Recipient the amount, if any, due for the period of each report.

In witness whereof, the parties have caused their duly authorized representatives to sign this Agreement.

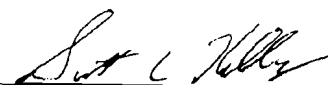
The Texas Education Agency



Adam Jones
Associate Commissioner
Finance and Information Technology

Date: 08/30/06

The University of Texas System



Scott C. Kelley
Executive Vice Chancellor for
Business Affairs

Date: 8/18/06