

NROC NETWORK PREMIUM MEMBERSHIP AGREEMENT (Self-Hosted)

Grant of Rights. The Monterey Institute for Technology and Education (the Organization) hereby grants to Member the right to become a Premium Member of the "NROC Network" with benefits that include, but are not limited to:

- Access to a collaborative network of contributors, NROC users and other educators focused on improving online course quality.
- HippoCampus object repository site customized with Member's logo, hosted and maintained by Organization. Member shall have the right to link to this website through their CMS/Repository software during the term of this Agreement.
- Unlimited access to NROC online content (the "NROC Library") with distribution rights to enrolled students and staff within Member's institution, including the right to host the content locally. Limitations on installation and use rights of NROC Content shall be as defined on Member invoice incorporated herein by reference.
- Priority status as reviewers and subject matter experts (SMEs) in NROC course development and OCEP (Online Course Evaluation Project) projects.
- Premium member support including unlimited email and web access and up to three hours of free telephone support per year.
- Access to downloadable iPod and MP3 files of multimedia for select NROC courses.
- The rights to commission private OCEP course evaluations for internal use at cost.
- Access to professional development and training opportunities available through the Network.

Access to the public NROC Network is open to all faculty, course development staff and faculty development staff in the Member's institution. Up to 5 individuals may have private access to the Network for tech support and administrative purposes. A list of these individuals shall be provided to Organization by the Member.

Member Responsibilities. While membership in the Network does not require that a Member actively participate, all members are encouraged to participate and sustain the Network in the following ways which include, but are not limited to:

- Contributing new course content and technology innovations to NROC
- Sharing supplemental content, software tools, simulations and games with Network members through the NROC library and Network
- Participating as reviewers, subject matter experts and evaluators for NROC and OCEP
- Designing, moderating and participating in online forums around specific issues
- Sharing and documenting development and teaching experiences with peers
- Acting as workgroup leaders on collaborative projects with other members
- Conducting an online presentation in an area of expertise and member interest
- Contributing a column or article to the Network
- Co-presenting related research at conferences with other Network members
- Using Network activities to support teaching and learning research projects
- Participating in Social Authoring Projects for new course development

Fees and Payments. Member shall pay the Organization a fee as defined on attached invoice for the membership rights granted by this Agreement during the term of this Agreement. Payment of the NROC Network membership fee constitutes acceptance of the terms of this Agreement, including the NROC Library Terms of Use which terms are hereby incorporated herein by reference.

Term and Termination. The term of this Member Agreement shall commence on the date payment is received by Organization or as defined on the attached invoice and shall continue in effect for the term specified on the attached invoice. The Organization or Member may terminate this

Agreement early in the event that the other party defaults in the performance of any of its obligations hereunder and fails to cure such default within thirty (30) days after written notice of such default. Member accepts the responsibility for insuring the NROC Library, including all course multimedia files and CMS course content, as well as all revised/adapted content, is removed from Member's or Member's Service Provider CMS environment or servers at the expiration or termination of this Agreement. Should Member decide not to renew their Agreement, all NROC content must be removed from Member's server(s) prior to the beginning of the next school term including links to NROC content objects within CMS and/or Repository software.

Course Information, Delivery Format, Installation and Technical Support, User and Server Requirements. Current information about the courses available in the NROC Library, delivery formats, course management system requirements, installation, technical and content support, end user requirements, and server requirements are available at our website (www.montereyinstitute.org/nrocnetwork). It is the member's responsibility to familiarize themselves with this information before entering into this agreement. (Copies available upon request.)

General. Any notice, request, instruction or other document to be given hereunder by any party to the other shall be in writing and delivered personally or sent by certified mail, postage prepaid by telecopy, or by courier service, to the address provided at the end of this agreement and to the address provided on the attached invoice or to such persons as may be designated in writing by the parties, by a notice given as aforesaid. This Agreement, including Exhibits, constitutes the entire understanding of the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties. This Agreement may be executed in counterparts, and when so executed each counterpart shall be deemed to be an original and said counterparts together shall constitute one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the parties hereto. No party may assign or transfer any rights under this Agreement except in connection with a sale or merger transaction involving substantially all of a party's assets. This Agreement shall be governed by, construed and enforced in accordance with the laws of the state of domicile of the Member as applied to contracts entered into solely between residents of, and to be performed entirely in, such state.

Limitation of Liability and Remedies. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR ITS TERMINATION, WHETHER FOR BREACH OF WARRANTY OR ANY OBLIGATION ARISING THEREFROM OR OTHERWISE, WHETHER LIABILITY IS ASSERTED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY), AND IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVISED OR BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN NO EVENT SHALL EITHER PARTY HAVE ANY RIGHT TO RECOVER OR OBTAIN ANY RIGHTS IN OR TO THE INTELLECTUAL PROPERTY OF THE OTHER.

Organization Contact Information

Attn: Dr. Gary Lopez, Monterey Institute of Technology, 3 Beach Way, Monterey, CA 93940 Fax: (831) 642-0243

NROC LIBRARY TERMS OF USE

Grant of Rights. The Monterey Institute for Technology and Education (the Organization) hereby grants to Member the nonexclusive right and license to make available the NROC Library materials and to distribute the NROC Library to Member's enrolled students subject to the following restrictions: (a) NROC Library Distribution. Member shall make the NROC Library available for access only by its students and staff through its own CMS/Repository environment or a CMS/Repository environment provided by third party, on CD/DVD media, through closed circuit broadcast, or through other secure distribution channels. The NROC Library may not be accessed through, linked to or posted on third party websites without the prior written consent of the Organization. No other means of access to the NROC Library may be made available without the prior written consent of the Organization. (b) Third Party Distribution. Distribution of the NROC Library to third parties for re-distribution is strictly prohibited without the prior written consent of Organization. (c) Content Revision. Member may utilize the NROC Library in their present form and/or revise or adapt the course content to meet Member requirements, provided that Member may make structural or organizational changes to a course but may not alter the course multimedia files. In the event that the Member desires to revise and/or adapt the course content multimedia files in any way, Member agrees to notify the Organization in writing of the desired revisions and obtain the Organization's prior written consent to such revisions, such consent not to be unreasonably withheld. Any revisions done by Member must be performed with Organization consent and shall be performed at Member's sole cost and expense. Member shall deliver to Organization on master CD/DVD media a copy of all revisions to the NROC Library multimedia files developed by Member. Organization shall not be responsible for supporting content modified by Member. (d) Rights Reserved to Organization. Except as expressly authorized in this Agreement, this grant of rights to Member does not include the right to allow downloads, sell, transfer, license or distribute the NROC Library in any other format, context, manner or means or for any other purpose not specifically authorized in this Agreement without the Organization's prior written consent. All rights not expressly granted to Member in this Agreement are reserved to Organization.

Intellectual Property. All ownership, copyrights, trademarks and other rights in the NROC Library ("Intellectual Property") shall belong to the Organization or its licensors and title to the Intellectual Property shall remain with the Organization or its licensors. All updates, revisions and derivatives to the NROC Library developed by the parties shall belong to the Organization or its licensors. Member may incorporate the NROC Library into Member branded courses but shall include attribution prominently displayed in the form of:

"Portions of the content made available through The National Repository of Online Courses (NROC)".

Member shall not in any way alter or removed copyright information from any NROC content. Member shall maintain such notices in its sales and marketing materials and communications that incorporate any portion of the NROC Library or any reference to the NROC Library. If Member's use of the Intellectual Property is improper, Member will take all reasonable steps necessary to resolve such improper use within ten (10) days of receiving written notice from the Organization. The Organization may reasonably monitor the quality of Member's products and services utilizing the Intellectual Property under this Agreement.

Each party shall defend and indemnify the other, its directors, officers, employees, agents and representatives from any liability and expense (including reasonable attorneys' fees) imposed upon the indemnified party as a result of any claim arising out of the acts or omissions of, or breach of any representation or warranty hereunder by, the indemnitor under this Agreement and including all costs, expenses and damages incurred or suffered by the indemnified party in connection therewith; provided that the party seeking indemnification shall promptly notify the other of any such claim, and permit such other party to control the defense or resolution thereof, and the party seeking indemnification shall fully cooperate with the other in connection therewith. In the event that the NROC Library or any portion thereof is held in such a suit or proceeding to infringe a third-party copyright or other proprietary right, Organization shall, at its sole option and expense (1) procure the right to continue using the NROC Library or portion thereof or (2) replace the same with non-infringing content. All copyrighted content developed by the Member or the Members employees, will be retained by the Member and will not be included in the Organization's courses without express written consent of the Member.

Warranty. The Organization warrants that it owns and/or has all the necessary rights to license the NROC Library to Member in accordance with this Agreement; that it will not assume any contractual obligation that conflicts with its obligations granted in this Agreement; and that there are no claims pending or, to the best of the Organization's knowledge, threatened that relate to the NROC Library. Except for the foregoing, Member agrees that the NROC Library is delivered "AS IS" without any express or implied warranties, including warranties of merchantability or fitness for a particular purpose. The maximum liability of the Organization arising out of or in connection with any license, use or other employment of any of the NROC Library delivered to Member under this Agreement, whether such liability arises from any claim based on breach or repudiation of contract, warranty, tort or otherwise, shall in no case exceed the actual price paid to the Organization by Member for the NROC Library whose license, use, or other employment gives rise to the liability.

Dispute Resolution Procedure. The parties agree that any dispute under this Agreement shall be resolved by final and binding arbitration in the state of domicile of the Member, subject to the arbitration Rules of the American Arbitration Association. The arbitration shall be before a single arbitrator if the parties can agree on a single arbitrator, and if they cannot agree, then the arbitration shall be before a panel of three arbitrators mutually selected by the parties or, if no agreement is reached, then under the Arbitration Rules of the American Arbitration Association, except that the Arbitrators shall be selected by alternately striking names from the panel of five arbitrators designated by the American Arbitration Association. The arbitrator shall have the authority to grant any relief authorized by law. The arbitrator shall not have the authority to modify, change or refuse to enforce the terms of this Agreement. The prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in connection with the dispute and arbitration. The arbitration hearing shall be transcribed. Arbitration shall be the exclusive final remedy for any dispute between the parties.

The Monterey Institute for Technology and Education, 3 Beach Way, Monterey, CA 93940, (831) 642-9459, www.montereyinstitute.org.