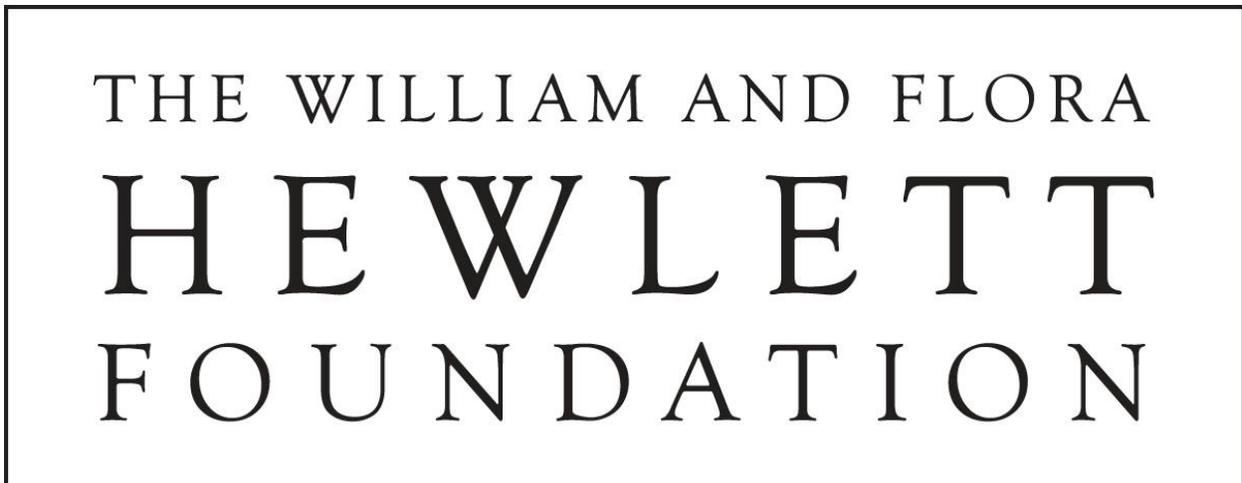




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Hewlett Foundation Open Licensing Toolkit for Staff

May 2015

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Hewlett Foundation Commitment to Open Licensing

As part of [our commitment to openness and transparency](#), the Hewlett Foundation has long supported open licensing—an alternative for traditional copyright that allows and encourages sharing of intellectual property. Open licenses, such as those developed by our longtime grantee Creative Commons, protect authors’ rights while giving explicit permission to others to freely use, distribute, and build upon their work. The benefits of open licensing are clear: open licensing increases the chances that good ideas will get a hearing, that others will be able to do something with them, and ultimately that they will have their greatest impact.

The Hewlett Foundation makes information related to our grantmaking available under an open license so that others may learn from our experience. Beginning in 2014, we have extended our commitment to open licensing to include, under certain circumstances, materials created with our grant dollars in order to help ensure that our grantees’ work will reach the widest possible audience. The Hewlett Foundation generally requires grantees that receive project-based grants—those made for a specific purpose— to openly license final materials created with those grant dollars, such as white papers, reports, and videos, under the current version of the [Creative Commons Attribution license](#). This requirement does not apply to grants made for general operating support of an organization or a program of a nonprofit organization (a research center at a university, for example). We believe that such a requirement is incompatible with the nature of general operating support grants, though of course we hope that the positive experience of openly licensing works made with project-based grants will encourage our grantees to apply open licenses to all of their work.

The Attribution license is the most open license offered by Creative Commons. It gives others permission, free of charge and in advance, to acquire and make available works licensed under it, as well as to incorporate them into new ones—to “remix, transform

and build upon” the work, in Creative Commons’ phrase—even to sell the work, so long as they credit the original author for his or her contribution.

When our default open license does not make sense for a particular project-based grant—when the work in question contains sensitive information, or when revenue generated by its sale is critical to an organization’s financial well-being, for example—we work with the grantee to determine the most appropriate licensing. As with all of our efforts related to openness and transparency, we try to approach open licensing with thoughtfulness and care; no grantee should suffer harm because of our commitment to open licensing.

Open licensing, of the Hewlett Foundation’s own work and work created with our grant dollars, gives us a better chance of achieving our greatest possible impact. It allows others to more easily find, use, respond to, and incorporate into their own work ideas that we believe help people “build measurably better lives.” It is a way of ensuring that our resources go further and a way for us to increase our contribution to the common good.

Frequently Asked Questions

What is an open license?

In general, an open license permits others to use copyrighted works made with grant funding (such as reports, white papers, or videos), not only by viewing them and making copies, but also by incorporating all or parts of them in other works, changing them, and even publishing and selling them—as long as the new user attributes the creator and the work in a reasonable manner.

The Hewlett Foundation plans to use the open licenses created by Creative Commons (a grantee of the Foundation) for non-software work products. For more information on open licensing, please see <https://creativecommons.org/>. For information on open licensing software, please see <http://opensource.org/licenses>.

What does this mean for my program?

Grant agreement letters for project grants (excluding videoconference grants and organizational effectiveness grants) – both single-funder and multi-funder – will include an open licensing provision. This provision provides that the grantees own the end

work products produced under their grant, but agree to license them under a creative commons attribution only (CC BY) license. Grantees will also be required to make the work product publically available (e.g., post it on their website). This change will not impact general operating support or program grants.

The Hewlett Foundation will modify our DCA contracts (i.e., contracts paid for predominantly with grant funds) so that materials created under the contract can be openly licensed.

Legal and Communications will provide sample language to allow you to modify your proposal templates and custom reporting requirements to discuss the open licensing requirement. Additionally, Legal will revise our standard reporting requirements to ask recipients of project grants how they openly licensed and disseminated the work products (e.g., a public website, a grantee meeting, etc.). The closing report template in the Toolbox will also be revised to help capture key work products and website links to where the work products can be found.

What is a Work Product?

Work products include things like white papers, research reports, software, web sites, data sets, photographs, and videos.

What if an open license does not make sense (either for programmatic reasons or because the grantee objects for a good reason)?

Program officers can decide to opt out of open licensing on a case-by-case basis. To do this, they will make a note in the Toolbox explaining the rationale for the opt-out. Grants Management will let the Legal department know to change the grant agreement letter.

What if I would like to require open licensing, but the grant is not in scope for the open licensing project (i.e., the grant is a program grant)?

Program officers may opt-in and request open licensing for grants. To opt-in, make a note in the Toolbox that you would like open licensing language in your grant agreement letter and provide a short explanation for the opt-in. Your grants officer and Legal are happy to work with you on this.

Will program staff be required to collect copies of Work products?

No, program staff are not required to collect a copy of work products. However, if program staff are collecting a work product for other purposes (e.g., it is useful for programmatic purposes), the work product can be uploaded to the Toolbox. If there are work products you feel would be useful to share with a wider audience, Communications can help you plan how to disseminate them.

Will program staff be required to enforce the open licensing terms?

At this time, we are not planning on requiring staff to actively enforce open licensing by checking to see that work products are openly licensed and made publicly available. However, grantees will be asked to describe how they fulfilled their open licensing obligations as part of their reports requirements (e.g., by providing the website where the work product can be found or by archiving a copy of the final work product at www.issueLab.org).

What support will be offered for grantees?

Program staff will play a frontline role in communicating with grantees about open licensing. Communications has prepared a series of emails that program staff can send to grantees to explain open licensing. Additionally, the Legal team is available to help explain open licensing requirements and options to grantees.

Decision Tree

To determine if open licensing requirements apply to a grant, consider the following questions:

1. *Is the grant a project grant?*
 - a. If yes, continue.
 - b. If no, consider whether you would like to opt-in and request open licensing for grants. To opt-in, make a note in the Toolbox explaining the rationale for the opt-in and inform your grants officer that you would like open licensing to apply. If you do not want to opt-in, stop.

2. *Will the grantee create a work product?*
 - a. If yes, continue. Examples of work products include white papers, research reports, software, web sites, data sets, photographs, and videos. If the work product includes data sets, please consult with Legal about the best open licensing option.

- b. If no, stop. Make note in the Toolbox and inform your grants officer that the grantee will not create a work product in connection with this grant.
3. *Is open licensing appropriate for the grantee work product?*
 - a. Consider whether open licensing is appropriate for the work product. For example, would it be beneficial if third parties can distribute, modify, reuse, and build upon the work? If yes, continue.
 - b. If no, stop. Make note in the Toolbox and inform your grants officer that open licensing is not appropriate for the grantee work product. Provide an explanation why open licensing is not appropriate (e.g., the work product contains a large amount of confidential or proprietary information, or revenue generated by sale of a work product is critical to the grantee's financial well-being).
4. *Can we use a CC BY license?*
 - a. If yes, continue. The CC BY Attribution license is the Hewlett Foundation's preferred open license (for work products other than software).
 - b. For software work products, determine which open source license is appropriate in consultation with Legal. If a non-software work product contains sensitive subject matter or if the author needs to retain the ability to commercialize the work product, determine which creative commons license is appropriate (e.g., CC BY-ND or CC BY-NC). Inform your grants officer which license type should apply and provide an explanation for your choice. (Contact Legal if you need assistance.)
5. *Will the grantee agree to a CC BY open license?*
 - a. If yes, no additional action is needed. Grant agreement letters for project grants include a provision requiring grantees to license work products under a CC BY license and to make work products publically available (e.g., on a website).
 - b. If no, work with the grantee (and Legal, if necessary) to determine what license type is appropriate (e.g., CC BY-ND or CC BY-NC). Inform your grants officer which license type should apply and provide an explanation for the choice.

Creative Commons License Types

<https://creativecommons.org/licenses/>

CC License	Description	When to Use	Examples
	<p>Attribution (CC BY)</p> <p>Allows others to distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation.</p>	<p>When you want maximum dissemination and use of work product.</p> <p><i>*Preferred choice of the Hewlett Foundation because it allows for broadest use by third parties.</i></p>	<p>White paper; policy memo; open educational resources.</p>
	<p>Attribution-NonDerivatives (CC BY-ND)</p> <p>Allows others to redistribute your work, commercially and non-commercially, as long as the content is not adapted, and they credit you for the original creation.</p>	<p>When particular domain expertise is required or when the subject matter of a work product is sensitive or has political implications.</p>	<p>Health study; government-related materials.</p>
	<p>Attribution-NonCommercial (CC BY-NC)</p> <p>Allows others to remix, tweak, and build upon your work solely for non-commercial purposes, as long as they credit you for the original creation.</p>	<p>When the author needs to retain the ability to sell/commercialize the work product.</p>	<p>Creative works used to produce income.</p>
	<p>Attribution-ShareAlike (CC BY-SA)</p> <p>Allows others to remix, tweak, and build upon your work, as long as they credit you for the original creation, and as long as any derivative works they create are also licensed under a CC BY-SA license.</p>	<p>When you want to require that third parties who contribute to or borrow elements from a work product make their work sharable and editable under a CC BY-SA license, as where the work is designed to be an iterative, collaborative project.</p>	<p>Wikipedia-based project that seeks larger distribution via distribution on Wikipedia or Wikimedia Commons.</p>

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(Note: Contact Legal if you would like to discuss alternative license types. Other options include Attribution-NonCommercial-NoDerivatives (CC BY-NC-ND) and Attribution-NonCommercial-ShareAlike (CC BY-NC-SA).)

Marking Openly Licensed Documents

Content Type	Where to Place CC License Information	What To Include (Requirements)
Online Text/Webpage	Webpage footer	<p>Minimum requirement: The name and full URL (hyperlink) to the applicable license; a copyright notice stating the author(s), date and copyright.</p> <p><i>This work is licensed under CC-BY version 4.0 https://creativecommons.org/licenses/by/4.0/ © 2014, [Name of Author(s)]. Some Rights Reserved.</i></p> <p>If your content incorporates third party works, specify which elements are not CC licensed, and include proper attribution for all third party works.</p> <p>Optional: a CC license icon that includes a CC logo linked to the appropriate CC license deed. Best practice is to use the CC license chooser to generate a machine-readable CC license.</p> 
Online Image or Audio	Immediately below or next to the content. Recite at the beginning or end of the original audio file/broadcast audio reciting the type of CC license used	
Online Video or Presentation	Immediately below or next to the content and include a copyright screen/page	
Link to Document, Image, Video or other content	Immediately below or next to the link	
Collection of Documents for Download (<i>example: a zip file</i>)	Immediately below or next to the download link and include a text file with the CC license in the download; where appropriate, place CC mark in content. Include a text file called LICENSE.txt in the zip file that identifies license terms for the included works, particularly where not directly marked (as with images).	

Offline Text/Document	Cover page or include a copyright page	
Offline Image	Immediately below or near the image, if included in another work. In a separate text file if distributed standalone (or create a zip file, see above)	
Offline Video	Title screen or include a copyright screen	
Offline Presentation	Title page or include a copyright page	
Offline Audio	Recite at the beginning or end of the original audio file/broadcast audio reciting the type of CC license used.	<p>Minimum requirement: “This work is licensed under [License Name], a copy of which is available online at [URL]...”</p> <p>Optional: Recite the name of the author(s), date and copyright.</p>

Tips

- For online content, use the Creative Commons license chooser which can be found at <https://creativecommons.org/choose/>
 - Copy and paste the HTML code into your webpage or website
 - Benefits: The code: makes it easier for others to provide you proper attribution; increases the chance your work will be found in online searches; and provides editable text to suit your needs. For instance, if your content is composed of the work of third parties, you can specify which parts of your content are under a CC license and which parts are offered under other terms. For online and offline content, Creative Commons icons can be found at <https://creativecommons.org/about/downloads>
- If you are marking work that contains content already licensed under a Creative Commons license, follow the example below:
 - The photo X is © 2009 Jane Park, used under a Creative Commons Attribution-Noncommercial license: <https://creativecommons.org/licenses/by-nc/4.0/>

Examples

<p>Copyright page for a presentation or video</p>  <p>Except where otherwise noted, this work is licensed under http://creativecommons.org/licenses/by/3.0/</p>	<p>Icon and text for a webpage or document</p>  <p>Copyright © Individual authors, 2014. The publication entitled ICT Leadership in Higher education: Selected Readings is made available under a Creative Commons Attribution-ShareAlike 4.0 License (international): https://creativecommons.org/licenses/by-sa/4.0/ by CEMCA with permission of the authors.</p>
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Sample Language - Grantee Communications

Communication introducing grantees to open licensing requirements

Dear [NAME],

I'm writing to inform you of a change in how grantees will be required to license materials created with Hewlett Foundation funding. As you might know, the Foundation has long supported open licensing because of our belief in the importance of sharing information broadly in order to achieve real change on the issues we care about.

This commitment to openness has been reflected in our recommendation to grantees that materials created with funds from the [Program] be licensed under the Creative Commons Attribution license. **Beginning with grants made in [MONTH YEAR], we are now requiring [PROGRAM] grantees to license non-software copyrightable work under the most recent version of that license ([CC BY 4.0](https://creativecommons.org/licenses/by-sa/4.0/)),** by which you grant others the right to share or adapt your work for any purpose, even commercially, provided they attribute your work in the manner you specify. More details on this change are available in the Proposal Template you have received.

This change applies only to grants with specific products associated with them, not grants made for general operating support or grants made to support delivery of services, for example.

If you have questions about whether this change affects the grant you have applied for, or wish to discuss the implications for your organization, please do not hesitate to contact me. This change is part of our continued effort at the Hewlett Foundation to support openness and transparency, and we are interested in your thoughts.

Sincerely,

[NAME] Program Officer

Communication reminding grantees of open licensing obligations

Dear [NAME],

Now that the grant to your organization has been recommended to our board for approval on the [MONTH] docket, I wanted to follow up on our discussion about the licensing of the [REPORT, ETC.] that will be created with those grant funds.

As we discussed, [PROGRAM NAME] grantees are now required to **license non-software copyrightable work created with Hewlett Foundation funds under the most recent version of the [Creative Commons Attribution license \(CC BY 4.0\)](#)**, by which you grant others the right to share or adapt your work for any purpose, even commercially, provided they attribute your work in the manner you specify.

We believe that this type of licensing helps ensure your work reaches the widest possible audience by giving permission in advance for others to republish it. More importantly, it helps advance knowledge because it allows others to build on your work—remixing it into new forms (while still acknowledging your role in creating the underlying content).

These benefits aren't just theoretical. An open license on the [PhET science simulations](#) created at the University of Colorado has allowed others to translate them into more than 40 languages and reach thousands of students around the world. The [Teacher Education in Sub-Saharan Africa \(TESSA\)](#) project has also achieved broader distribution with an open license that allows for translation, and for the Nigerian Teachers Institute to print thousands of copies of their materials for teachers in training.

This [video](#) provides more examples of the benefits this kind of licensing provides in practice.

This type of license means that others will be able to share your work, include it in compilations, or build on it to create new works without seeking your permission or paying a licensing fee to you, though they will have to credit your organization for any parts of these new works for which you are responsible. They might incorporate your research as part of a broader analysis of similar data, for example, or include a section of your report in a compilation of materials on a similar theme.

This licensing will be referenced in the grant agreement letter you receive from us once the grant is approved. If you have any questions about what adopting a Creative Commons license means for the work you'll create with this grant, please don't hesitate to contact me. I would be happy to discuss it with you.

Sincerely,

[NAME] Program Officer

PS. One question that has come up for grantees during this process is how you actually identify your work as Creative Commons-licensed. A full [how-to](#) with descriptions of the different Creative Commons licenses is available, but essentially you place the appropriate [Creative Commons license](#) on the title page of your work in addition to the traditional © and information.

Sample Language – Grant Proposal Template

Open Licensing of Grant Work Products (for project grants only)

To ensure that [Program Name] Program grants have as broad an impact as possible, the Program requires grantees to license non-software copyrightable work product created with grant funds under the most recent version of the Creative Commons Attribution license (CC BY), unless the grant qualifies for, and the Program gives the Grantee, a specific exception, which may include use of a different Creative Commons license. Additionally, Grantees must make work product available to the public in a readily accessible format (e.g., on Grantee's public website or using www.issuelab.org).

Work products include final content created using grant funds, such as white papers, research reports, scholarly articles, data sets, simulations, open educational resources, and videos. Publication under CC BY maximizes the public benefit of work products by allowing others to copy, distribute, adapt, and republish the work, provided they attribute it in the manner specified by Grantee. Full legal text of the license terms and conditions is available at <https://creativecommons.org/licenses/by/4.0/legalcode>; a summary may be found at <https://creativecommons.org/licenses/by/4.0/>.

Grantees using grant funds to develop software are required to license the software under an open source license, unless an exception is granted by the Program. Please identify which Open Source Initiative-approved license will be used, or describe why an exception should apply. Information about open source licenses is available at <http://opensource.org/licenses/>.

(Note: This provision does not apply to grants for general operating support.)

Sample Language – Grant Reporting Requirements

Open Licensing of Grant Work Products (for project grants only): If you received a grant for a specific project and agreed in your grant agreement letter to openly license work products created using grant funds, final narrative reports should describe how your organization fulfilled the applicable open licensing requirements. For example, describe how your organization made the work products available to the public in a readily accessible format. If applicable, provide the URL for the location of the work product (such as your public website address or www.issuelab.org). Work products are final content created using grant funds, including white papers, research reports, scholarly articles, data sets, simulations, open educational resources, and videos.

(Note: This provision does not apply to grants for general operating support.)

Sample Language - Grant Agreement Letter

Intellectual Property. Grantee will retain all rights, including intellectual property rights, in and to final works resulting from projects supported by Foundation grant funds (the “Work Product”), and nothing in this Agreement will be deemed or interpreted to transfer ownership of any such rights to the Foundation. Nevertheless, to ensure that Foundation’s grants have as broad an impact as possible, the Foundation requires grantees to license Work Product through an open license. Accordingly, Grantee agrees to make Work Product available to the public in a readily accessible format (e.g., on Grantee’s public website or using www.issuelab.org) under the most recent version of the Creative Commons Attribution license (CC BY). In addition, the Foundation acknowledges that Grantee retains the right to also make the Work Product available under separate license terms, in its discretion.

Full legal text of the above referenced license is available at the following URL and Grantee should take the time to read and understand the license terms and conditions:

- <https://creativecommons.org/licenses/by/4.0/legalcode> (a summary may be found at <https://creativecommons.org/licenses/by/4.0/>)

The Foundation respects the intellectual property rights of others. Accordingly, the Foundation requires, and Grantee represents and warrants to the Foundation, that the Work Product produced hereunder are the original work of Grantee, or that Grantee has obtained sufficient rights, licenses, and permissions to distribute and license Work Product under CC BY, except and solely with respect to any particular item in the Work Product that is expressly identified in writing as owned by a third party not licensed under CC BY.

Sample Language – Direct Charitable Activities (DCA) Contract

Consultant owns IP; open license for Foundation

L. Intellectual Property.

1. Consultant Owns Work Product. Consultant will retain, its entire right, title and interest in and to all original work product created as part of the Work hereunder (including, without limitation, reports, compilations of data and other materials) (together, “Work Product”), including the copyright in the case of copyrightable works, and nothing in this Agreement will be deemed or interpreted to transfer ownership of any such rights to the Foundation. Consultant shall promptly and fully disclose, and provide the Foundation copies of, all such Work Product, and Consultant hereby grants the Foundation the right to utilize Work Product under the most recent version of the Creative Commons Attribution license (CC BY) (*note: Software is not covered by CC licenses; must replace with open source license*), including the right to distribute copies of the Work Product to the public (e.g. on a public website) under CC BY). The disclosures required to be made and copies required to be delivered under this provision shall be delivered to the Foundation as specified in the SOW and in an open, editable format, but, in all events, no later than the date on which this Agreement terminates. If Consultant engages subcontractors to complete the Work, in order to be able to grant the license to the Work Product described above, Consultant shall obtain full ownership of, or sufficient rights to license the copyrights in any Work Product created by such subcontractors as provided above. The Foundation acknowledges that Consultant retains the right to also make the Work Product available under separate license terms, in its discretion. The obligations of this Paragraph shall survive any termination of this Agreement. Full legal text of the above referenced Creative Commons Attribution license is available at the following URL and Consultant should take the time to read and understand the license terms and conditions:

<https://creativecommons.org/licenses/by/4.0/legalcode> (a summary may be found at <https://creativecommons.org/licenses/by/4.0/>).

2. Credit for Authorship. The CC BY license requires giving attribution of authorship in the applicable licensed material. Accordingly, Consultant agrees to provide the Foundation with a reasonable form of attribution notice.

3. Pre-Existing Intellectual Property of the Consultant. The Foundation acknowledges that the Consultant may use its pre-existing intellectual property (including, without limitation, documents, images, and other copyrightable materials) (“Pre-Existing Works”) as it creates the Work Product hereunder, and nothing in this Agreement is intended to transfer ownership of copyrights in Consultant’s Pre-Existing Works to the Foundation, provided, however, that to the extent such Pre- Existing Works are incorporated into the Work Product,

Consultant hereby grants the Foundation the right to utilize such Pre-Existing Works under CC BY, as set forth in Section L.1 above.

4. Third Party Licenses and Materials. The Foundation respects the intellectual property rights of others. Accordingly, the Foundation requires, and Consultant represents and warrants to the Foundation, that the Work Product produced hereunder are the original work of Consultant, or that Consultant has obtained sufficient rights, licenses, and permissions to distribute and license Work Product under CC BY, except and solely with respect to any particular item in the Work Product that is expressly identified in writing as owned by a third party not licensed under CC BY.

Foundation Owns IP and may open license

L. Intellectual Property.

1. Foundation Owns Work Product. Consultant agrees to assign, and does hereby irrevocably assign to the Foundation and its successors, without further consideration, its entire right, title and interest in and to all original work product created as part of the Work hereunder (including, without limitation, reports, compilations of data and other copyrightable materials) (together, “Work Product”), including the copyright in the case of copyrightable works. Consultant shall promptly and fully disclose, and provide the Foundation copies of, all such Work Product in an open, editable format. The disclosures required to be made and copies required to be delivered under this Paragraph shall be delivered to the Foundation as specified in the SOW but, in all events, no later than the date on which this Agreement terminates. If Consultant engages subcontractors to complete the Work, in order to be able to grant the licenses to the Work Product granted to the Foundation herein, Consultant shall obtain full ownership of intellectual property rights in any Work Product created by such subcontractors sufficient to enable the transfer of rights provided herein. Consultant understands and agrees that the Foundation may make such use of the Work Product as it wishes in its sole discretion, including the making of derivative works and permitting others to use it, or may decline to use it in any way, subject to the terms of the applicable license. The obligations of this Paragraph shall survive any termination of this Agreement.
2. License to Consultant. Notwithstanding Section L.1 above, the Foundation agrees and acknowledges that Consultant may retain copies of all Work

Product, and hereby grants Consultant the a license to utilize such Work Product as follows: (1) non-software Work Product is licensed under the most recent version of the Creative Commons Attribution license (CC BY) (*note: Software is not covered by CC licenses; must replace with open source license*). Full legal text of the above referenced licenses are available at the following URLs and Consultant should take the time to read and understand the rights granted here under: <https://creativecommons.org/licenses/by/4.0/legalcode> (a summary may be found at <https://creativecommons.org/licenses/by/4.0/>).

3. Credit for Authorship. Consultant understands that the CC BY license requires giving attribution of authorship in the licensed material. Consultant shall attribute the ownership of the Work Product to the Foundation in any manner provided by the Foundation, or if no specific notice is provided, in a reasonable manner, and the Foundation agrees and authorizes Consultant to identify and attribute itself as the original author (but not the copyright holder) of such Work Product.
4. Pre-Existing Intellectual Property of the Consultant. The Foundation acknowledges that the Consultant may use its pre-existing intellectual property (including, without limitation, documents, images, and other copyrightable works) (“Pre-Existing Works”) as it creates the Work Product hereunder, and nothing in this Agreement is intended to transfer ownership of copyrights in Consultant’s Pre-Existing Works to the Foundation, provided, however, that to the extent such Pre- Existing Works are incorporated into the Work Product, Consultant hereby grants to the Foundation a non-exclusive, irrevocable, perpetual, sublicensable royalty-free license to use, reproduce, distribute, modify, publicly perform, publicly display, transmit, and otherwise exploit such Pre-Existing Works in any manner and without restriction.
5. Third Party Licenses and Materials. The Foundation respects the intellectual property rights of others. Accordingly, the Foundation requires, and Consultant represents and warrants to the Foundation, that the Work Product produced hereunder are the original work of Consultant, or that Consultant has obtained sufficient rights, licenses, and permissions to distribute and license Work Product under the terms set forth in Section L.1 above, except and solely with respect to any particular item in the Work Product that is expressly identified in writing as owned by a third party not cleared for such use.