

# Subscription Service Agreement

## THE PARTIES

The Parties to this Subscription Service Agreement are:

**Company:** **Continuing Education Network, Inc.**

P.O. Box 1516  
Martinez, CA 94553  
925.229.5440 – Phone  
925.229.5442 – Fax  
terry@learningexpressce.com

**Contact:** Terry Baker, Pharm.D.

**Subscriber:** **The University of Florida Board of Trustees (“University”), for the benefit of the Division of Continuing Pharmacy Education, College of Pharmacy, University of Florida**

P.O. Box 113195  
Gainesville, FL 32611-3195  
352.273.6275 – Phone  
352.273.6460 – FAX

**Contact:** Arthur E. Wharton, Director of Continuing Education  
wharton@cop.ufl.edu

## THE PRODUCT

Learning Express® (“Product”) – See Addendum, *Subscription Service Description*

## TERM AND RATE

Subscriber will have full use of Product for one year at the annual subscription rate of \$8,388.00.

Payment is due within 45 days after Product is available for use.

If the number of CE hours awarded during the paid subscription period exceeds 6,300, an additional fee of \$0.70 per hour (the actual number of hours awarded minus 6,300) will be charged at the end of the subscription period.

## ADDITIONAL SERVICES AND RATE

Payment Gateway Integration: \$975.00

Payment is due within 45 days after Product is available for use.

## DURATION

Product may be used by subscriber for a continuous 12 month period commencing on \_\_\_\_\_. Upon payment by Subscriber, in its sole discretion, of the annual subscription rate specified by the Company 2 months prior to subscription expiration, this Agreement shall automatically renew for additional 12-month periods on the annual Agreement anniversary date. Upon termination of the agreement and/or upon written request by Subscriber, the Company shall delete all data received from Subscriber in connection with this Agreement.

**Learning express**

Continuing Education Network, Inc.

PO Box 1516 Martinez, CA 94553 • www.learningexpressce.com

1. **Agreement.** Subject to the terms and conditions of this Agreement, Company hereby grants to Subscriber (and its successors and assigns as permitted herein) a non-licensable, non-exclusive, non-transferable, royalty-free, worldwide, enterprise-wide right to use of the **Product**. Copying of the Product is prohibited.

2. **Copyright Ownership and Permitted Use.** Unless otherwise stated, the materials available at the Product websites are the property of the Company and are protected under U.S. and international copyright laws and conventions. Subscriber shall not, under any circumstances, place any Property provided by the Company on any network, Internet, intranet, or any other media device potentially allowing use by another organization, without obtaining prior written approval from the Company.

3. **Restrictions on Use. Proprietary Rights.** Subscriber acknowledges that the Product, its structure, organization and Source Code, and the Documentation are the property and Company asserts constitute valuable trade secrets of the Company and its suppliers. Subscriber agrees not to: (a) decompile or disassemble the Product (a web application), separate the Product into its component parts, or in any way attempt to reconstruct or discover any source code or algorithms of the Product by any means whatsoever; (b) remove any product identification, trademark, copyright, confidentiality, proprietary or other notice contained on or within the Product; (c) modify or create any derivative works from the Product or any part thereof, except to the extent that the Product provides for user-modifiable components; (d) except as otherwise permitted herein, sell, license, lease, rent, loan, assign, convey or otherwise transfer the Product or any component thereof; (e) otherwise copy or use the Product for any purpose or in any manner not expressly permitted in this Agreement; or (f) knowingly permit or encourage any third party to do any of the foregoing. All rights in and to the Product and Documentation not expressly granted to Subscriber in this Agreement are reserved by the Company and its suppliers.

4. **Modifications of Terms and Conditions.** The Company reserves the right to modify the terms and conditions for use of the Product at any time. Any such modification will be posted on the Product website (<http://www.learningexpressce.com>), and the continued use of the Product after any such posting shall constitute acceptance of the terms and conditions as modified. If Subscriber does not wish to be bound by any such modification and so notifies us, we will refund any unearned fees Subscriber has paid.

5. **Modifications and Availability.** The Company will make reasonable efforts to keep the Product available 24 hours a day, seven days a week. However, owing to technical failures, routine maintenance, or other foreseen or unforeseen circumstances, availability may be limited, and the Company will not be responsible for the non-availability of the Product. The Company reserves the right to modify, suspend, or discontinue all or any part of the Product at any time. If such change in product is unacceptable to Subscriber and Subscriber so notifies us we will refund any unearned fees Subscriber has paid.

6. **Disclaimer of Warranties and Limitation of Liability.** MATERIALS PUBLISHED ON PRODUCT SITES ARE THE RESULT OF RESEARCH AND/OR CONTRIBUTION BY INDEPENDENT INDIVIDUALS. THE COMPANY IS NOT RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION, DATA OR CONCLUSIONS REPORTED IN SUCH MATERIALS.

EXCEPT FOR THE LIMITED REPRESENTATIONS, WARRANTIES, AND COVENANTS EXPRESSLY STATED HEREIN, THE PRODUCT, DOCUMENTATION AND MAINTENANCE, AS WELL AS ALL SERVICES, ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS AND THE COMPANY AND ITS SUPPLIERS HEREBY EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THE LIMITED REPRESENTATIONS, WARRANTIES AND COVENANTS EXPRESSLY STATED HEREIN, THE COMPANY AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT THE PRODUCT, DOCUMENTATION OR MAINTENANCE WILL BE FREE FROM BUGS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR MAKE ANY OTHER REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE PRODUCT OR DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SUBSCRIBER ACKNOWLEDGES THAT THE COMPANY IS NOT RESPONSIBLE FOR AND WILL HAVE NO LIABILITY FOR HARDWARE, SOURCE CODE, PRODUCT OR OTHER ITEMS OR ANY SERVICES PROVIDED BY ANY PERSON OR ENTITY OTHER THAN THE COMPANY OR ITS EMPLOYEES, AGENTS OR CONTRACTORS OR FOR NETWORK FAILURE. SUBSCRIBER FURTHER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT.

NEITHER PARTY HERETO NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OF USE OR GOODWILL, INTERRUPTION OF BUSINESS, LOSS OR INACCURACY OF BUSINESS INFORMATION, LOST PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEM-

PLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE AMOUNT OF SUBSCRIPTION FEES RECEIVED BY THE COMPANY UNDER THIS AGREEMENT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION IS AN ESSENTIAL ELEMENT OF THE AGREEMENT AND THAT IN ITS ABSENCE, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

**7. Confidentiality.** In the course of performing this Agreement, the parties may disclose to each other Confidential Information. "Confidential Information" shall mean any and all non-public technical and non-technical information provided by either party to the other, including but not limited to (i) patent and patent applications; (ii) trade secrets; and (iii) proprietary information including, but not limited to, ideas, works of authorship, models, inventions, know-how, processes, algorithms, programs, code, documents, and formulae related to the current, future and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales, merchandising, marketing plans and information the disclosing party provides regarding third parties. All Confidential Information shall remain the sole property of the disclosing party, and the receiving party shall have no interest in or rights with respect thereto except as expressly set forth in this Agreement. Each party agrees: (i) not to use any Confidential Information of the other party for any purpose except in the performance of its obligations under this Agreement or as otherwise expressly permitted hereunder; (ii) to disclose such Confidential Information only to employees (or third party subcontractors permitted under this Agreement) who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than that set forth herein; (iii) to protect such Confidential Information from unauthorized use, access or disclosure in the same manner that it protects its own similar Confidential Information, but in no event with less care than a reasonably prudent business would exercise and (iv) to promptly notify the other party of any actual or potential unauthorized access to or use of Confidential Information. The foregoing restrictions on disclosure shall not apply with respect to any information which: (a) was or becomes generally known or publicly available through no act or failure to act on the part of the receiving party; (b) is known by the receiving party without restrictions on disclosure at the time of receiving such information as evidenced by its records; (c) is rightfully furnished to the receiving party without restrictions on disclosure by a third party without a breach of such third party's obligations of confidentiality; or (d) is required by law to be disclosed by the receiving party, provided that the receiving party: (1) gives the disclosing party prompt written notice of such requirement prior to such disclosure; (2) provides assistance in obtaining an order protecting Confidential Information from disclosure; and (3) discloses information only to the extent required by law. Subscriber further agrees not to disclose to any third party any performance information (including, without limitation, benchmarks) relating to the Product except as otherwise expressly contemplated herein. This Section will survive any termination of the Agreement for a period of three (3) years with respect to non-technical information and 10 years with respect to technical information, including the Product, the Documentation and any code.

**8. Limitations of Florida Law.** Company understands and agrees that its assertion that any item is confidential or a trade secret does not, in and of itself, render such material exempt from the Florida Public Records Law, Chapter 119 of the Florida Statutes, and that University's liability to prevent disclosure of confidential and trade secret information may be subject to determination by a Florida court that such materials qualify for trade secret protection under Florida law. In the event a third party makes a public records request for the Confidential Information or other materials deemed by Company to be confidential or a trade secret, University may submit the materials to the court for inspection in camera as set forth in Section 119.07(1)(e) Florida Statutes. Company further understands that University may be required to disclose such information if directed by a court of competent jurisdiction.

**9. Public Records Request.** Notwithstanding any provision herein to the contrary, in the event of a public records request, University shall provide Company with notice of the request in order to allow Company to seek protection of its information from disclosure. University's disclosure pursuant to such a public records request shall not be deemed a breach of this Agreement.

**10. Each Party's Responsibility.** Each party to this agreement agrees to be fully responsible for its acts (including negligence) or omissions, or its agent's acts (including negligence) or omissions, when acting within the scope of employment or agency, and agrees to be liable for any damage resulting from said acts or omissions, including but not limited to infringement of copyrights or misappropriation of intellectual property, personal injury or tangible personal property (excluding data)

damages. Subject to limitations as set forth in Section 47 of this Agreement, nothing in the Agreement is intended to serve as a waiver of sovereign immunity by The University of Florida Board of Trustees, the University of Florida and/or the Florida Board of Governors. Nothing in the Agreement shall be construed as consent by a state agency, public body corporate, or political subdivision of the State of Florida to be sued in any matter arising out of any contract by any party or parties.

**11. Endorsements.** Descriptions of, references to, or links to other products, publications, or services does not imply endorsement of any kind by the Company.

**12. General.** This Agreement, including all addendums, attachments, exhibits and schedules, contains the entire agreement of the parties hereto and no prior representations, inducements or agreements, whether oral or otherwise, between the parties or embodied herein by reference shall be of any force or effect. No amendment to this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each party.

Any conflict between the terms of this Agreement and any purchase order, or other terms shall be resolved in favor of the terms expressed in this Agreement, unless otherwise agreed.

No failure or delay by the parties in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future exercise of such right or remedy by either party.

**13. Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable or invalid, that provision shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions shall remain in full force and effect.

**14. Choice of Law and Forum.** The use of the Product, this agreement, and all actions contemplated by this agreement shall be governed by the laws of the United States of America and the State of Florida as if this agreement was wholly entered into and wholly performed within the State of Florida. The exclusive jurisdiction for any claim or action arising from or relating to this agreement or the use of the Product shall be with the state or federal courts located in the State of Florida, USA.

**15. Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to Subscriber: Division of Continuing Pharmacy Education  
University of Florida College of Pharmacy  
Attn: Arthur E. Wharton  
P.O. Box 113195  
Gainesville, FL 32611-3195  
352.273.6460 – FAX  
wharton@cop.ufl.edu

Copy to: William R. Riffie, Ph.D.  
Dean, College of Pharmacy  
University of Florida  
PO Box 100484  
Gainesville FL 32610

If to Company: Continuing Education Network, Inc.  
Attn: Terry Baker, Pharm.D., President  
P.O Box 1516  
Martinez, CA 94553  
Email: Terry@learningexpressce.com

or such other person or address as may be given in writing by either party to the other in accordance with this Section.

16. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of University beyond any statutory limited waiver of immunity or limits of liability, which has been or which may be adopted by the Florida Legislature, regardless of the nature of any claim which may arise, including but not limited to a claim sounding in tort, equity or contract. In no event shall University be liable for any claim or claims for breach of contract, including without limitation the wrongful disclosure of confidential or trade secret information for an amount which exceeds, individually and collectively, the then current statutory limits of liability for tort claims. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against University which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

17. **Proprietary Use.** Company shall not use the name, logo, or likeness of University of Florida, or any of University of Florida's staff, in any signage, advertising, or promotional material ("Proprietary Use"), without the prior written consent of University of Florida. All requests for Proprietary Use must be presented to the Chief Communications Officer and Associate Vice President for Health Affairs, Health Science Center Office of News and Communications, P. O. Box 100253, University of Florida, Gainesville, FL 32610-0253, telephone (352) 273-5810, fax (352) 392-9220. Each request for Proprietary Use may be granted or withheld in the sole discretion of University of Florida. In the event consent has not been granted within 30 days of the request's receipt, the request is considered to be denied.

## **Addendum**

### **Subscription Service Description**

#### **Subscription Service**

Full use of Product, an online system for managing live and distance continuing education (CE) delivered via the Company cloud. Such use includes a CE web site and an Admin website with tools that allow Subscriber to: 1) customize Subscriber's CE website, 2) process CE (testing, evaluation, credit generation), 3) accept online registration and payment for live CE activities, 4) accept online payment for and deliver distance CE programs, 5) send broadcast emails to registered users, 5) survey registered users, 6) securely store the data Subscriber collects, 7) generate reports, 8) download Subscriber's data to Microsoft Excel, and more. Product will auto-report CE credit to CPE Monitor. All registrants on Subscriber's site will have personal accounts, where their complete CE transcripts may be stored.

#### **Site Access**

Subscriber will be provided with a client ID and password for access to Subscriber's Admin website at <http://www.learningexpressce.com> appAdmin. The URL for Subscriber's CE website will also be provided. Subscriber's web master can link Subscriber's primary website to Subscriber's Product CE website using the CE website URL. There is no other installation or maintenance required; all components of Product reside and are updated at our data center.

#### **Subscriber's Data**

All data entered on Subscriber's Product websites by Subscriber or Subscriber's potential or actual CE participants and customers is the property of Subscriber. All electronic data transmissions enacted by a logged in user take place via secure means (SSL) and access to Subscriber's data is password protected. Should Subscriber choose to terminate this agreement, Subscriber may download Subscriber's data to Microsoft Excel. Company will have access to Subscriber's data for the sole purpose of maintaining Subscriber's Product websites. Company will not use Subscriber's data for any other purpose and will not make Subscriber's data available to any outside party.

#### **Payment to Subscriber**

All funds collected on Subscriber's Product website will be routed to Subscriber's merchant services provider/account. There is no fee for credit card processing.

#### **Product Information**

See the Product Specifications sheet for a full list of product features and requirements for use. While Company believes the product is fully functional and without defects, defects may be identified. Company will make every reasonable effort to correct any identified defect as soon as possible.

#### **Disc Space**

The maximum disc space for non-video elements (websites, data, and files) is 1 GB. The maximum disc space for video files is 3 GB. If more disc space is desired, it is available at the rate of \$100 per 1 GB (non-video elements) plus 3 GB (video files).

#### **Training and Documentation**

Company encourages Subscriber to participate in one or two, 1 hour online sessions to train up to 5 individuals on use of Product. Two additional training sessions will be provided at no charge, upon request. An online Instruction Manual covering the use of every feature of Product will be provided.

#### **Technical Support**

Technical support is available by email or phone Monday through Friday, 8:30 am - 4:30 pm Pacific time. Technical support is available 24 hours per day, 7 days per week for urgent problems that prevent potential customers from using Subscriber's Product CE website.



By signing below, Subscriber agrees, accepts, and intends to be bound by this subscription service agreement.

Karen C. Frank

The University of Florida Board of Trustees,  
for the benefit of the Division of Continuing Pharmacy Education,  
College of Pharmacy, University of Florida  
By University of Florida Purchasing

10/16/12

Date

Terry M. Baker

Terry Baker, Pharm.D.  
Continuing Education Network, Inc.

9/27/12

Date

**Payment Preference:**

- ☐ Check  
☐ Direct Deposit

**Address for Payment by Check:**

\_\_\_\_\_  
**Facility**

\_\_\_\_\_  
**Attention**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, Zip**

**For more information, please contact:**

Terry Baker, Pharm.D.  
P.O. Box 1516  
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