

SUBSCRIPTION AGREEMENT

This Subscription Agreement (the "Agreement") between Educating Nurses LLC, a California limited liability company, (the "Company"), and (the "Customer")

Name of Institutional Subscriber

with principal offices at _____

Address

for the purpose of providing Customer and its End Users with access to specified streaming video titles through a limited license, and other services and related materials developed by Licensor (collectively referred to as the "Subscription").

1. Definitions.

A. "Company Content" means the digital video content and other audio and written materials, which may be amended from time to time as determined by the Company.

B. "End User" means a faculty member of Customer who is authorized to use the Subscription under the terms and conditions of this Agreement.

C. "Intellectual Property" means the Company's (i) Company Content, material, designs, methods and information; (ii) copyrights, trade secrets, know-how, software code, processes, trademarks, license rights, or any other intellectual property; and (iii) improvements, enhancements or modifications to, and new versions of, the items in (i) and (ii).

D. "Internet Server" means the server(s) on which Company hosts its Internet Site.

E. "Internet Site" means the Internet site(s) which the Company has approved for the display, broadcast, and transmission by Customer of the Company Content.

F. "Key" means a code supplied by the Company to Customer via e-mail after paying for the Company Content to permit Customer to access and download the Company Content.

G. "License" means the permission granted to Customer under this Agreement to transmit the Company Content to Customer and End Users.

H. “Technical Support” means those technical support services provided by the Company with regard to the Company Content, as described in Exhibit A.

2. Limited License.

A. License. The Company hereby grants Customer the non-exclusive, non-transferable, revocable, limited right during the term of this Agreement, subject to the restrictions described below, to (i) receive the Company Content for display via streaming video and other digital material made available by the Company to End Users who have, prior to access, entered into a terms of use agreement that is at least as restrictive as this Agreement. All rights not expressly granted are reserved. Access by End Users shall be password-protected pursuant to the Company’s then-current password procedures and Customer is solely responsible for (i) maintaining the confidentiality of any password, (ii) any result related to a password’s loss or unauthorized use, and (iii) immediately notifying the Company of any unauthorized use any other breach of security.

B. Customer’s Web Pages or Other Content Containing Company Material. Customer acknowledges that the Company has a reasonable interest in how the Company’s trademarks or video titles, or references to the Company are placed and displayed on the pages of any Internet site, promotional materials, or other content related to Customer, and such placement and display, including without limitation with regard to links and other parties’ content on such page, shall be subject to the prior written approval of the Company.

C. Method of Broadcast. The Company Content will be offered and broadcast to End Users via the Internet Site(s) in their original form, unedited and unmodified, such manner so that (i) the Company Content cannot be downloaded, stored and/or redistributed by the End User, (ii) only passive viewing and listening of the Company Content by the End User is possible, (iii) End Users cannot alter or manipulate the order, outcome or content of the Company Content in any manner, (iv) it is broadcast in compliance with all current or future industry standards (including but not limited to those regarding distribution and encryption); (v) no images or text are superimposed on the Company Content as it is displayed to End Users, and (vi) nothing impairs the readability of any credits or other title screens.

3. Restrictions. Customer and its End Users shall not (a) make or distribute copies of the Company Content, or electronically transfer the Company Content from one computer to another or over a network; decompile, reverse engineer, disassemble, or otherwise reduce the Company Content to a human-perceivable form; modify or transfer the Company Content or any part thereof; or export or re-export, directly or indirectly, the Company Content into any country prohibited by the United States Export Administration Act and its regulations; or (b) use the Company Content to: (i) create derivative works based in whole or part on the Company Content; (ii) infringe or violate the intellectual property, privacy, publicity, or other rights of third parties (including without limitation the rights of any third parties in any sound recordings, musical

compositions, photographs, artwork, literary creations, or other copyrightable works of any kind); or (iii) engage in any defamatory or slanderous conduct. All use of the Company Content shall be on the Internet Site only and not for any other purpose.

4. Ownership. The License gives Customer limited rights to use the Company Content as specified in this Agreement. Except for such limited License, the Company and its suppliers expressly reserve all rights now known or hereafter known in and to the Company Content. All rights, title and interest in and to the Intellectual Property and the Company Content (as provided by the Company and as digitized or otherwise encoded, converted, or formatted by or on behalf of Customer for displaying, broadcasting, or archiving on the Internet Site as permitted hereunder) in all media now known or hereafter developed, are owned and retained solely and exclusively by the Company. Customer agrees to maintain all copyright notices appearing on the Company Content and to not remove or alter such notices or add any notice to Company Content.

5. Indemnification. Customer agrees to defend, indemnify, and hold harmless Company and its officers, owners, employees, agents, and suppliers from and against any and all third party claims, liabilities, demands, costs, and expenses (including attorneys' and costs) in connection with (a) any breach or alleged breach by Customer of this Agreement; (b) Customer's use and operation of the Internet Servers and Internet Sites; (c) any claims brought by End Users; and (d) the acts or omissions of End Users.

6. Limited Warranty. If the Company Content fails to function during the term of the Subscription, Customer agrees to promptly describe the failure to the Company's technical support center in sufficient detail so that the matter may be investigated. The Company shall use commercially reasonable efforts to investigate and attempt to resolve the matter as described under "Technical Support Services" in Exhibit A. If the failure persists after fifteen (15) days after the initial notification from Customer, the sole and exclusive remedy of Customer and any End User is to cease using the Company Content and terminate this Agreement.

7. Technical Support Services. The Company shall use commercially reasonable efforts to, by phone or email communication, address questions regarding billing, renewal, passwords, and minor, non-technical difficulties in accessing the Company Content. For other matters, the Company reserves the right to refer the Customer or an End User to a third party technical resource for assistance at the Customer's/End User's sole expense.

8. Disclaimer of Warranties. OTHER THAN THE LIMITED WARRANTY CONTAINED IN SECTION 6 OF THIS AGREEMENT, THE COMPANY CONTENT AND TECHNICAL SUPPORT IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY KIND FROM THE COMPANY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, NON-INFRINGEMENT, ACCURACY OR COMPLETENESS, AND THE RESULTS OBTAINED THEREBY. THE INFORMATION CONTAINED

IN THE COMPANY CONTENT MAY NOT BE SUITABLE FOR EVERY SITUATION. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THIS EXCLUSION MAY NOT APPLY.

9. Limitation of Liability. NEITHER THE COMPANY NOR ITS AFFILIATES OR SUPPLIERS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSS (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF COMPANY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE COMPANY EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY CUSTOMER IN THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, AND IF SUCH LIABILITY RESULTS FROM CUSTOMER'S USE OF A PARTICULAR PORTION OR VIDEO TITLE OF THE SUBSCRIPTION, SUCH LIABILITY SHALL BE LIMITED TO THE PRO RATA PORTION OF THE FEES ATTRIBUTABLE TO THE DEFICIENT PORTION OF THE SUBSCRIPTION GIVING RISE TO THE LIABILITY. The warranty disclaimer, exclusive remedies, and limitation of liability set forth in this Agreement are fundamental elements of the basis of the bargain between the Company and Customer, and Customer agrees that Company would not be able to provide the Company Content on an economic basis without such limitations.

10. Billing and Payment.

A. General. Unless otherwise agreed in writing by the Company and Customer, the fee for the Subscription shall be paid every twelve (12) months. The fee is due and payable in full prior to the commencement or renewal of the Subscription. Customer shall be solely responsible for all taxes or governmental charges, however characterized, excluding income taxes payable on the Company's income from this Agreement. The invoice shall separately state the amounts of any services, taxes or other governmental charges that the Company is collecting from Customer. The Company will invoice Customer at the time the order form is received from Customer and approximately one (1) month in advance of the start of any renewal or subsequent billing period. All amounts invoiced hereunder shall be due within thirty (30) days of the date of the invoice. All fees under this Agreement are irrevocable and nonrefundable.

B. Payment by Credit Card. If Customer provides credit card information to the Company for payment of the Subscription, Customer authorizes the Company to bill such credit card at the time that Customer orders any Subscription set forth in the particular purchase order. Customer's right to the Subscription is subject to any expenditure limits established by Customer's credit card issuer. If payment cannot be charged to Customer's credit card for any reason, the Company may either suspend or terminate Customer's access and account, thereby terminating this Agreement and all obligations of the Company hereunder. If Customer has reason to believe that Customer's account is no longer secure (for example, in the event of a loss, theft or unauthorized

disclosure or use of Customer's password, or any credit card number), Customer agrees to immediately notify the Company of the problem to avoid possible liability for any unauthorized charges to Customer's account. Customer is solely responsible for notifying the Company if Customer's credit card has changed or has expired and to make appropriate changes.

11. Confidential Information.

A. Definition and Restricted Use. "Confidential Information" includes the terms of this Agreement, Intellectual Property, and any business or technical information regarding the Company Content. "Confidential Information" may further include information regarding the business, finances, and technology of a party to this Agreement which such party discloses (such party being a "Discloser") to the other party (the "Recipient") during the term of this Agreement and that (i) with respect to tangible materials, Discloser designates as "Confidential" or "Proprietary" with a stamp or other marking or (ii) with respect to visual and oral information, Discloser identifies as confidential or proprietary prior to or at the time of disclosure to Recipient, and within thirty (30) days of any such visual or oral disclosure or observation, documents such information in a writing delivered to Recipient. Recipient agrees to maintain the confidentiality of Confidential Information and shall not disclose to others, in the absence of Discloser's prior written consent, any Confidential Information. Any Recipient shall use Confidential Information only for the purposes described in this Agreement. Recipient may disclose Confidential Information only to its employees or subcontractors who have a need to know and who are obligated in writing to maintain its confidentiality by methods that are at least as protective as those methods Recipient uses to safeguard its own Confidential Information, but in no case less than reasonable care. Notwithstanding the foregoing, for purposes of this Agreement all information that is not specific to a particular End User that is related to Customer's or End Users' use of the Subscription and Company Content (i) produced or assembled by the Company in the course of the Subscription or (ii) incorporated into the Company's databases (except to the extent such incorporated information is Customer's Confidential Information) shall be deemed to be the Company's Confidential Information.

B. Exclusions. Confidential Information does not include information which Recipient can establish with documentary evidence: (i) was publicly known and available in the public domain prior to disclosure; (ii) after disclosure, becomes publicly known and available in the public domain through no action or inaction of Recipient, and then only after such later date; (iii) was in Recipient's possession before disclosure without restriction on use or disclosure; (iv) is disclosed to Recipient without restriction on disclosure by a third party who had the lawful right to disclose such information; or (v) is subsequently developed independently by Recipient without violating this Agreement without use of, or reference to, the Confidential Information.

C. Aggregate Data. Nothing in this Agreement prevents the Company from publishing and otherwise using aggregate or anonymous data regarding the Subscription and Company Content provided to Customer and End Users, including without limitation statistics regarding the number and type of ordered video titles or other products and services, provided that the Company shall not use Customer's name with reference to such data without Customer's prior written approval, which shall not be unreasonably withheld.

12. Term and Termination.

A. Initial Term and Renewals. The term of the Subscription shall commence upon the date set forth in the order form, and shall continue for a period of twelve (12) months (the "Initial Term"). The Subscription may be renewed for one or more subsequent twelve (12)-month periods (each a "Renewal Term") upon Customer providing the Company a new written order form at least [30-90] days prior to the end of the then-current Subscription term. Except as otherwise provided in the order form, renewal charges will be equal to the then-current fees generally offered by the Company and renewals will be subject to policies and terms in effect at the time of renewal.

B. Early Termination by Either Party. Either party may terminate this Agreement and an unpaid order form immediately if the other party ceases doing business in the normal course or becomes the subject of a bankruptcy proceeding.

C. Early Termination for Material Breach. In the event of any breach of this Agreement by either party, the non-breaching party shall have the right to terminate the Agreement if such breach has not been cured within thirty (30) days after written notice from the non-breaching party specifying the breach in detail; provided, however, that if the Company is the non-breaching party, the Company may immediately suspend Customer's access to or use of the Subscription during such cure period.

D. Effect of Termination. Upon any termination or expiration of this Agreement, the License shall immediately terminate and Customer shall promptly remove and return all Confidential Information and copies of the Company Content from the Internet Site, the Internet Server or otherwise in Customer's possession or control.

E. Survival After Termination. The following Sections shall survive any termination of this Agreement: Sections 1, 3, 4, 5, 7, 8, 10, 11D, 12, and 13.

13. Notices. Any notices shall be given at the address specified in this Agreement or at such other address specified in writing. Notice is deemed given upon personal delivery or by nationally-recognized delivery service (such as Federal Express) to the appropriate address, or if sent by certified or registered mail, three (3) days after the mailing date.

14. General Provisions.

A. Governing Law. This Agreement is governed by California law (excluding its conflict-of-laws rules and, if applicable, the United Nations Convention on Contracts for International Sale of Goods), with exclusive jurisdiction in Alameda County, California and the prevailing party entitled to reasonable attorneys' fees and costs.

B. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable in any way, it shall not affect the rest of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never existed. If any provision is so held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable.

C. Successors and Assigns. Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Customer without the prior written consent of the Company. Subject to the foregoing, this Agreement will be binding upon the parties' successors and assigns.

D. Waiver. No waiver by a party of any right under this Agreement shall be a waiver of any preceding or succeeding right, or of any other right.

E. Entire Agreement. This Agreement is the exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions or agreements between the parties. No amendment or waiver will be effective unless in writing and signed by the party to be charged.

F. Compliance with Law. Each party shall comply with laws and regulations applicable to the performance of this Agreement.

G. Force Majeure. Neither party shall be deemed liable or in breach due to any delay (other than the obligation to make a payment) resulting from any act, omission or condition beyond such party's reasonable control, including without limitation acts of God, strikes, lockouts, riots, acts of war and/or terrorism, governmental regulations, fire, telecommunications failure, power failure, earthquakes, floods or other natural disaster.

H. Publicity. The Company may list Customer as a subscriber on Company's web site and in its promotional materials, unless Customer requests in writing to opt out prior to such listing. Any press release, public announcement or other more detailed disclosure pertaining to this Agreement or the association of the parties with respect to the subject of this Agreement shall be subject to the prior written approval of both parties, and such approval shall not be unreasonably withheld.

I. Counterparts. This Agreement may be executed in counterparts and by electronic means, each of which shall be deemed an original and together will constitute one and the same instrument.

[This space intentionally left blank.]

Accepted and Agreed To:

CUSTOMER

By: _____
[Name][Title]

COMPANY

EDUCATING NURSES LLC, a California limited liability company

By: _____
PATRICIA BENNER, President and Manager