

The CE Shop Inc. Affiliate Agreement

This Affiliate Program Agreement ("Agreement") is entered into and becomes effective at the time of acceptance/submission between **THE CE SHOP, Inc.** ("CES"), and University of North Dakota Office of Extended Learning ("AFFILIATE") as provided below. CES and Affiliate will be referred to collectively as "Parties" and individually as a "Party." WHEREAS, CES develops and delivers online education courses. WHEREAS, AFFILIATE agrees to market and promote the CES online courses and products developed by CES in various markets as delivered by CES. NOW, THEREFORE, AFFILIATE and CES hereby agree as follows:

1. **TERM.** This Agreement shall commence on the start date provided below and shall continue unless either party provides the other party with a thirty (30) day prior written notice of termination.
2. **MARKETING RIGHTS, LIMITATIONS and OBLIGATIONS.**
 - a) **Marketing Rights.** CES hereby grants the AFFILIATE a non-exclusive, non-transferable license to market CES online courses and products through the AFFILIATE Program. AFFILIATE is also granted the right to conduct off-line marketing of CES online courses and products.
 - b) **Limitations.** This Agreement shall be limited to the Universal Resource Locator (URL) available via AFFILIATE's and CES Website(s) and shall not include rights to the source code of the website or courses or the contents contained therein, which is exclusively owned by CES. Additional URL's will be agreed upon by both parties and AFFILIATE shall submit such request(s) in writing.
 - c) **Obligations.**
 - a. **AFFILIATE RESPONSIBILITIES:**
 - i. AFFILIATE will create a link on your website to your student landing page on CES website(s).
 - ii. AFFILIATE will actively market the related CES distance education products per the marketing methodologies and timing per the items checked on the attached Exhibit A.
3. **REVENUE SHARE.** CES agrees to pay AFFILIATE a revenue share of the gross revenue generated through the AFFILIATE's URL as follows:
 - a) For CES owned and state approved courses only, CES shall pay Twenty percent (20%) of gross revenues. For non-CES owned courses only, AFFILIATE shall be paid that share of the gross revenue provided for in the contract between CES and the content owner. Revenue Share payments will be made on a calendar quarter basis, with the payment being made within thirty (30) days of the end of a calendar quarter.
 - b) Due to money-back guarantee policies offered by CES, CES shall pay AFFILIATE commissions on paid for courses only. Further, CES shall be entitled to deduct any refunds from said commissions. Accordingly, refunds processed after revenue share payments have been made will be credited against future revenue payments.
 - c) CES will perform those items checked on the Exhibit A.
4. **INTELLECTUAL PROPERTY, CONFIDENTIALITY and OWNERSHIP.** AFFILIATE recognizes that the CES websites, including the domain name, the source code, and the functionality, as well as the on-line education courses (collectively the IP), are the exclusive property of CES, and all enhancements or improvements to the IP shall vest with CES. All applicable copyrights, trade secrets, patent and other intellectual and proprietary rights in the website and all other items mentioned hereunder are and remain in CES. It is expressly understood that no title to or ownership of the website, the content provided on the website, or the online courses or products, or any part thereof, is hereby transferred to AFFILIATE. AFFILIATE agrees not to make use of the source code, use a similar domain name, the CES Website, or the courses or products developed by CES, for his own benefit or for the benefit of any third parties, apart from the benefit of CES.
5. **UNAUTHORIZED USE and LEGAL COMPLIANCE.** AFFILIATE warrants that all use of the website shall be for the legitimate and legal purposes of the AFFILIATE and its subscribers. AFFILIATE shall indemnify and hold CES harmless from any claim, loss, cost, fine or expense, including reasonable attorneys' fees, arising out of AFFILIATE breach of any provision of this Agreement.
6. **INDEMNITY.** CES does hereby indemnify and hold Affiliate harmless from and against any and all claims, causes, demands, losses, liabilities, costs, damages, expenses and fees, including without limitation, court costs and reasonable attorneys' fees incurred, related to or arising in any manner from or out of the performance or failure of performance by CES of any of its duties under this Agreement. Affiliate does hereby indemnify and hold CES harmless against any and all claims, causes, demands, losses, liabilities, costs, damages, expenses and fees including without limitation, court costs and reasonable attorneys' fees, incurred, related to or arising in any manner from and out of the performance or failure of performance by Affiliate of any of its duties under this Agreement. The mutual indemnifications made and given in this section shall survive the expiration of this Agreement for a period of two (2) years.
7. **LIMITATION OF LIABILITY.** In no event shall CES be liable for any loss of profit, punitive, special, incidental, consequential or other indirect damages under a cause of action arising out of or relating to this agreement, including, without limitation, claims arising from malfunction or defects in the website or non-delivery/non-accessibility of the services, even if CES has been advised of the possibility of such damages. In no event shall CES's total liability for any claims arising out of this agreement exceed the amount paid to CES by students attributable to AFFILIATE within one year of the written notice of the claim. In no event shall Affiliate's total liability for any claims arising out of this agreement exceed the amount paid to CES by students attributable to AFFILIATE within one year of the notice of the claim. No claim may be brought by AFFILIATE under this agreement more than one (1) year after accrual of such claim.

8. Non-Disclosure.

- a. The Parties hereto acknowledge that, in the course of performing their obligations under this Agreement, certain Confidential Information of the Parties may be disclosed to it, and agrees that they will not, except as otherwise specifically contemplated by this Agreement, disclose to any person or entity or use for its own benefit any such Confidential Information. "Confidential Information" means all information concerning or related to the business, operations, financial condition or prospects of the Parties, regardless of the form in which such information appears and whether or not such information has been reduced to tangible form, and specifically includes: (i) all information regarding the officers, directors, employees, equity holders, Content Providers, suppliers, distributors, sales representatives and Licensees of the Parties, in each case whether present or prospective; (ii) all inventions, discoveries, trade secrets, processes, techniques, methods, formulae, ideas and know-how of the Parties; and (iii) all financial statements, audit reports, budgets and business plans or forecasts of the Parties. Confidential Information does not include information which is or becomes generally known to the public through sources other than the Parties, or information which the Parties lawfully obtain from a source other than the Parties, so long as such source has no obligation of confidentiality to the Parties, or any information needed to provide said services as are required by the parties pursuant to this Agreement.
- b. Each party acknowledges that the other would be irreparably damaged if either does not perform any of the provisions of this Section in accordance with the specific terms. Accordingly, each party is entitled to an injunction or injunctions to prevent breaches of this Section by the other party, and has the right to specifically enforce this Section against the other party in addition to any other remedy to which it may be entitled at law or in equity. If any court determines that the restraints provided in this Section are too broad as to time or subject matter, these may be reduced to whatever extent the court deems reasonable and appropriate, and the covenants contained in this Section will be enforced as to such reduced time or subject matter. The obligations of each of the parties under this Section will survive any termination of this Agreement for a period of two (2) years but shall end as provided herein.

9. **ASSIGNMENT.** Neither party can assign this Agreement, except in the connection with any merger, acquisition, or other corporate reorganization, without the written consent of the other party.

10. **JURISDICTION and VENUE.** This Agreement shall be governed and interpreted according to the laws of Colorado, and venue shall be maintained in a court of competent jurisdiction in Arapahoe County, CO without reference to its conflicts of laws thereof.

11. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12. **WAIVER.** The failure by any party to exercise any right or remedy provided for herein will not be deemed a waiver of any right or remedy hereunder.

13. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified by the Affiliate except by an instrument in writing signed by the parties. Except for the term provided in paragraph 1 above and the revenue share provided in paragraph 3 above, CES may amend and modify this Agreement by placing a new Agreement in the designated area of the CES websites. In the event that Affiliate does not agree with the amendments and/or modifications made to the agreement as provided on the CES websites, Affiliate shall have thirty days in which to terminate the agreement by providing written notice of the same to CES.

14. **NOTICES.** All notices required or permitted to be given by one party to the other under this Agreement will be sufficient if sent by certified mail, return receipt requested, air express courier or facsimile to the parties at the following addresses or to such address as designated by a party in writing: The CE Shop, Inc. 5670 Greenwood Plaza Blvd., Suite 420, Greenwood Village, CO 80111 phone _____ fax, Affiliate: _____ If a notice is given by certified or registered mail, it will be deemed received by the other party on the third business day following the date on which it is deposited for mailing. If a notice is given by either party by air express courier, it will be deemed received by the other party on the next business day following the date on which it is provided to the air express courier for next day delivery. If a notice is given by facsimile, it will be deemed received by the other party after confirmation of receipt generated by sender's facsimile equipment.

Affiliate: UND, Office of Extended Learning Tax ID: 45-6002491

Contact Name: Lynette Krenelka Date: 7/25/18

Authorized Signature: *Lynette Krenelka*
Contact Name: Debbie Storrs Date: 7/31/18

Authorized Signature: *Debbie Storrs*

ADDENDUM

The following terms and conditions are incorporated into the CE Shop Inc. Affiliate Program Agreement ("Agreement") between The CE Shop, Inc. ("CES") and the University of North Dakota ("AFFILIATE"):

NOW THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES HERETO:

1. Paragraph 1 is deleted and replaced with the following:

This Agreement shall commence on the start date provided below, will be reviewed annually, and shall be valid for 2 years, unless either party provides the other party with a thirty (30) day prior written notice of termination. If notice is given and partnership is to dissolve, students enrolled in any course will be allowed to complete even upon termination of course or partnership, unless course has been terminated due to Arello or ND RE Commission certification expiration.

2. The second sentence of paragraph 5 is deleted and replaced with the following:

Each party shall be responsible for its own acts and omissions in connection herewith. The tort liability of AFFILIATE shall be determined solely in accordance with Chapter 32-12.2 of the North Dakota Century Code, and subject to the conditions and limitations set forth therein.

3. The second and third sentences of paragraph 6 are deleted and replaced with the following:

Each party shall be responsible for its own acts and omissions in connection herewith. The tort liability of AFFILIATE shall be determined solely in accordance with Chapter 32-12.2 of the North Dakota Century Code, and subject to the conditions and limitations set forth therein.

4. The following is inserted at the end of paragraph 7:

The foregoing limitations of liability shall be valid only to the extent permitted under North Dakota law.

5. The following is inserted at the end of paragraph 8(a):

Confidential Information also does not include information that fails to qualify for at least one exception to North Dakota's open records laws.

6. In the second sentence of paragraph 8(b), the word "seek" is inserted between "is entitled to" and "an injunction or."

7. In paragraph 10, the word "Colorado" is deleted and replaced with "North Dakota," and the words "a court of competent jurisdiction in Arapahoe County, CO" are deleted and replaced with "the Northeast Central Judicial District Court of North Dakota."

8. The following is inserted at the end of paragraph 14:

"Notice" herein shall not include notice of claims for money damages against AFFILIATE or the State of North Dakota, which shall instead be governed by applicable North Dakota statutes.

Except as herein amended, the Agreement shall remain in full force and effect.

The CE Shop, Inc.

University of North Dakota

By: *Daniel Hanis*
(Authorized Signature)

By: *T. Di Lorenzo by Debbie Allen*
(Authorized Signature)

Title: *SALES MANAGER*

Title: Vice President for Academic Affairs and Provost, University of North Dakota

By: *WA*
(Authorized Signature)

Date: *7/31/18*

Title: *CO-CEO / President*

By: *Ernesto Krenelle*
(Authorized Signature)

Date: *7/6/2018*

Title: Director, Office of Extended Learning, University of North Dakota

Date: *7/25/18*