

Terms Of Use

RECITALS

WHEREAS, the AHA is a nonprofit organization dedicated to fighting heart disease and stroke and sets guidelines for emergency cardiovascular care ("ECC") and ECC training;

WHEREAS, Training Center would like to provide, and manage the provision by others of, ECC training under the guidelines and curriculum of the AHA;

NOW THEREFORE, in consideration of the mutual promises set out herein, the parties hereby agree as follows:

1. DEFINITIONS

The words "us", "we" and "our" refer to the American Heart Association, Inc.

"AHA Materials" means all ECC materials published or distributed by the AHA, including, but not limited to, textbooks, instructor's manuals, exams, answer keys, online courses, toolkits, newsletters, and eCards.

"Change of Control" means (i) the sale of all or substantially all of the assets of Training Center; (ii) a sale resulting in more than 50% of the shares, membership, or other form of ownership of the Training Center being held by an unaffiliated third party; or (iii) a merger, consolidation, recapitalization or reorganization of the Company with or into an unaffiliated third party.

"eCards" means those electronic records which Training Centers may distribute to, or provide access to, students pursuant to Program Guidelines to indicate that the student participated in or successfully completed a Course.

"ECC" means Emergency Cardiovascular Care.

"Geographic Territory" means United States of America, excluding its Territories.

"eCards tool" is the tool used to manage eCards, student data, and survey processes and information.

"PAM" means Program Administration Manual.

"Roster" means a list of students that attended a specific Course, and includes the information required under the PAM.

"Training Sites" means persons or organizations engaged or authorized by a Training Center to teach Courses through the use of qualified Instructors, and for whose Instructors a Training Center will process Rosters.

"Instructors" means persons who meet the requirements for Instructors under the PAM, and who are engaged or authorized by Training Centers to teach Courses.

"Program Guidelines" means the current Guidelines for *Cardiopulmonary Resuscitation and Emergency Cardiovascular Care*, and the *Program Administration Manual: Guidelines for Program Administration and Training*, as they may be amended and/or supplemented by the AHA from time to time. The Program Guidelines are incorporated herein by reference as if fully set forth at length and are available upon approval as a Training Center.

"Training Center" or "Training Centers" means an entity formally approved by the AHA to carry out the activities of a Training Center, as described herein and in the Program Guidelines.

2. RESPONSIBILITIES OF TRAINING CENTER

2.1 Conduct Courses: The Training Center may conduct courses and authorize Instructors and/or Training Sites to conduct courses only within the Geographic Territory. The Training Center must ensure that all Courses taught by the Training Center, its Training Sites, and/or Instructors conform to the requirements of the Program Guidelines and the curriculum set out in the applicable AHA Instructor's Manuals. This Agreement is non-exclusive. The AHA may enter into Training Center Agreements with other parties within the Geographic Territory.

2.2 Program Guidelines: The Training Center must comply with the requirements of the Program Guidelines including, but not limited to promptly notifying, forwarding, or otherwise communicating to its Training Sites and Instructors all correspondence from the AHA regarding changes to science or curricula and issuing eCards within twenty (20) business days following receipt of completed roster and Course documents from Instructors.

2.3 Rosters and eCards: The Training Center must safeguard eCards from unauthorized distribution, including but not limited to complying with the following requirements:

2.3.1 The Training Center is required to use the eCards tool to issue eCards to students. eCards provides the Training Center with performance feedback on all instructors for the purpose of quality oversight. It also provides the AHA with performance data for instructors and the Training Center.

2.3.2 Before distributing eCards to students, Instructors or Training Sites, the Training Center must ensure that all cards issued by the Training Center, its Training Sites and Instructors contain only the names of students who have successfully completed a Course, as shown by a valid Roster.

2.3.3 The Training Center may only distribute eCards to persons who are students of the Training Center, to Training Sites that have been authorized by the Training Center to provide training, and/or to Instructors who are aligned with the Training Center and who have met the requirements for receipt of eCards in accordance with Program Guidelines.

2.3.4 Only the approved Training Center Coordinator or an employee of the Training Center acting under the direct supervision of the Training Center Coordinator may receive eCards. The Training Center will be solely responsible for the control and security of eCard issuance. This responsibility may not be assigned or transferred to any other organization or individual, including Training Sites or Instructors. The Training Center must ensure that only the appropriate type of eCard, as set out in the Program Guidelines, is issued to each student.

2.3.5 The Training Center may not substitute any other organization's card for the appropriate AHA eCard, or issue any eCard not currently authorized for an AHA Course, or use non-AHA course materials in lieu of AHA materials to teach an AHA Course.

2.3.6 The Training Center must maintain Rosters and records for all Courses conducted by the Training Center and/or its Training Sites and Instructors for at least three (3) years after the date the Course was conducted.

2.3.7 The Training Center must maintain an up-to-date list of all of its Training Sites and Instructors, and their contact and address information, and provide it to the AHA upon request.

2.3.8 The Training Center must submit statistical data and/or reports to the AHA as required under the Program Guidelines.

2.4 Training Center Coordinators: The Training Center must designate a primary contact ("TC Coordinator") between the Training Center and the AHA, who will handle all administration of ECC training, including, but not limited to, customer service, Course scheduling, card issuance, and records maintenance and retention. The Training Center must ensure that new TC Coordinators attend an orientation with AHA within twenty (20) business days following his/her designation as a TC Coordinator.

2.5 AHA Materials

2.5.1. The Training Center may purchase AHA Materials subject to applicable policies regarding payment terms, prices, shipping, and handling. The Training Center may sell AHA ECC textbooks, Instructor's Manuals, and online course access to students, Instructors, and other third parties, subject to any applicable restrictions on their distribution.

2.5.2. eCards may be distributed only as permitted under this Agreement. eCards may only be purchased through the use of a security code provided by the AHA. The AHA reserves the right to suspend or cancel a security code at its discretion.

2.5.3. The Training Center may not sell or distribute Course exams and/or answer keys or disclose them to any third party (other than Training Sites and/or Instructors for their use in providing Courses). AHA Course exams and/or answer keys may be used only for provision of Courses under this Agreement. The Training Center may duplicate, in whole, AHA Course exams, and authorize Training Sites and Instructors to duplicate, in whole, AHA Course exams to be used only for the provision of Courses under this Agreement. The Training Center must ensure that Training Sites and Instructors do not engage in unauthorized copying, re-selling or distribution of AHA Course exams and answer keys.

2.6 Course Monitoring and Reviews: The AHA may monitor and/or review the Training Center's and its Training Sites' performance and compliance with Program Guidelines and AHA curriculum at least once each year per approved discipline through a review of Course records, site reviews, and course audits. The Training Center must provide the AHA with access, as needed, to all records necessary to carry out this monitoring and review, including but not limited to records of Training Sites and Instructors. This shall be in addition to the monitoring of Instructors as a part of their review. The AHA reserves the right to conduct additional course monitoring and reviews at its discretion.

2.7. Costs and Fees: All costs of providing Courses and fees charged to students shall be the responsibility of the Training Center. The AHA shall not have any responsibility for any costs incurred, or fees charged, by the Training Center or Training Sites. There is no fee charged for the right to be a Training Center under this

Agreement.

2.8. Insurance: For the duration of its term as a Training Center, a Training Center must obtain and maintain at its expense general liability insurance with a limit equal to or greater than \$1,000,000, and a deductible or "retention" no greater than \$25,000. This policy shall not be modified or canceled except after thirty (30) days prior written notice to the AHA. The Training Center must provide the AHA with a certificate of insurance evidencing this coverage with its application and upon any renewals of its Training Center status. For self-insured entities, evidence of similar coverage through reserves or other means must be provided. Additionally, if the Training Center is a governmental entity that, by law is not permitted to indemnify the AHA, then the insurance requirement shall not apply.

2.9. AHA Reputation: The Training Center shall conduct its business with the highest ethical standards and in a manner so as not to reflect poorly on, or in any way injure or damage, the reputation of the AHA. The Training Center will ensure that its employees, its Training Sites, and/or Instructors fully comply with the terms of this Agreement and meet the expectations of the AHA.

2.10. Termination of Training Center Status: All procedures listed in the Program Guidelines regarding the retention or handling of unused eCards, completed rosters, completed monitoring forms and other records must be followed upon termination or expiration, with or without cause. Notwithstanding the foregoing, the Training Center shall deliver all such records to the AHA upon request.

3. RELATIONSHIP OF THE PARTIES

The parties acknowledge and agree that the relationship created by this Agreement is that of independent contractors, each is an independent business entity and, as such, neither party may represent itself as an employee, agent, or representative of the other; nor may it incur any obligations on behalf of the other party; nor are the parties joint venturers or partners; nor does the relationship created under this Agreement constitute a franchise. The Training Center is solely responsible for carrying out its responsibilities under this Agreement. The Training Center is solely responsible for its Training Sites' and its Instructors' performance under this Agreement and for its contractual relationship with them. The Training Center's employees and/or employees of Training Sites and Instructors are not, and shall not be considered employees of the AHA. Without limiting the foregoing, it is acknowledged and agreed that the AHA shall have no responsibility for any of the Training Center's activities or activities of Training Sites or Instructors, including, but not limited to, conduct of courses, employment, supervision and training of Instructors and other employees or agents, scheduling of Courses, its obligation to provide Courses to third parties, its obligations to pay for AHA Materials or other supplies or services provided by third parties or any other obligations incurred in the course of business.

4. CONFLICT OF INTEREST

It is acknowledged that the AHA's conflict of interest policy prohibits AHA volunteers from acting and being involved in any decision-making process on behalf of the AHA when the volunteer has any interest (whether financial, personal, or professional) in the activity. This policy may result in the disqualification of the Training Center's employees from acting as AHA volunteers in the ECC program. The Training Center will not knowingly permit its employees or agents to take any actions that violate the AHA's conflict of interest policy.

5. OPERATION OF WEB SITE

This Web Site is operated and maintained by the American Heart Association, Inc. ("AHA") and its vendors and licensees. The Web Site may contain references or links to other web sites, web pages, materials, information and resources ("Third Party Sites"). We are not responsible for and have no control over the accessibility via the Internet of any Third Party Sites. Furthermore, it is understood and acknowledged that we do not endorse nor are we otherwise responsible for or associated with any Third Party Sites. The Training Center should not assume or rely upon any information or content as having originated with or been approved by us or even that we are aware of the specific content, information, features or capabilities available in connection with such Third Party Sites. We are not responsible or liable, in any manner whatsoever, for, in connection with, or as a consequence of use of any Third Party Site, even if we are advised of the possibility that damages may result.

6. PROPRIETARY RIGHTS

6.1. AHA and/or its licensors, owns all right, title, and interest in all data, (including data gathered through the Web Site), content, information, software (including but not limited to all source and object code) technology, writings, instructions, photographs, diagrams, models, methodology, trademarks, images, text, and all other concepts and documentation in the Web Site, AHA Materials, Courses, Course Marketing Materials, eCards, together with all modifications, revisions, changes, copies, partial copies, translations, compilations, partial copies with modifications and derivative works which shall constitute the "AHA Property." The AHA Property is protected by U.S. law and international laws and treaties. All Intellectual Property Rights and all other property rights of any nature in the AHA Property are, shall be and shall remain in AHA. AHA shall have all authorship rights in the AHA Property. The AHA Property is and shall remain the sole and exclusive property of AHA, with AHA having the right to obtain and to hold in its own name, patents, copyright registrations, trademark or service mark registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. A Training Center may not modify, rent, lease, loan, sell, distribute or create derivative works based on the AHA Property. As used in this Agreement, "Intellectual Property Rights" means with respect to any data, device, or other asset of any kind, the copyright, patent, trade secret, moral, termination, authorship and/or other proprietary rights relating to any such data, device, object code, source code or other asset including, without limitation, all rights necessary for the worldwide development, manufacture, modification, enhancement, sale, licensing, use, reproduction, distribution, publication, performance, and/or display of such data, device, object code, source code or other asset.

6.2. Other than as provided in this Agreement, the Training Center shall have no right to use, and shall not use without AHA's written permission, the characters, artwork, design, trade names, trademarks or service marks of AHA on any website, advertising, publicity, public announcement, press release or promotion, on in any manner tending to imply an endorsement by AHA of the Training Center. If such use is permitted by AHA in writing, the Training Center agrees to maintain all copyright, trademark, service mark or other proprietary notices of AHA and otherwise shall comply with AHA's quality control restrictions, and further any such use shall inure to the benefit of the AHA.

6.3. A breach of this Section 6, Proprietary Rights will give rise to irreparable injury to AHA, inadequately compensable in damages. Accordingly, AHA may seek injunctive relief.

6.4. Without limiting the foregoing, it is acknowledged and agreed that:

6.4.1. Copyright in AHA Materials is owned by the AHA. AHA Materials may not be copied, in whole or in part, whether in print, electronically, on the World Wide Web ("Web") or in any other format, and may not be adapted without the prior express written consent of the AHA.

6.4.2. The name "American Heart Association," the heart-and-torch logo, "Learn and Live" and "Life is Why" are trademarks of the American Heart Association, Inc. The Training Center may not use them or display them in any fashion whatsoever, except as may be expressly set out in the Program Guidelines, and subject to the AHA's prior review and written approval.

6.5. The Training Center acknowledges and agrees that all Instructor information is proprietary to the AHA. Instructor information includes but is not limited to the date(s) on which Instructor took the Instructor Course(s) or Renewal Course(s), course location, monitoring reports, teaching history, and contact information for Instructor, including address, phone and email address. Instructor information must be delivered to the AHA upon request.

7. INDEMNIFICATION

7.1. Training Center hereby agrees to indemnify, defend, and hold harmless the AHA and its affiliates, and their officers, employees, volunteers, and agents, from and against all claims, damages, liabilities, suits, and expenses (including reasonable attorney's fees) arising out of or in connection with (a) Courses offered or provided by the Training Center, Training Sites, Instructors, their employees or agents; (b) acts or omissions of the Training Center, Training Sites and/or Instructors; and (c) any breach by the Training Center and/or Training Sites of the terms of this Agreement. However, this indemnity obligation shall not extend to claims, damages, liabilities, suits and expenses caused solely from the science content of any AHA Materials when used by the Training Center and/or Training Site in full compliance with the Program Guidelines and the curriculum set out in the applicable AHA Instructor's Manual.

7.2. Government Entities: If the Training Center is a governmental entity that, by law, is not permitted to indemnify the AHA, then paragraph 7.1 shall not apply and the Training Center shall be responsible for any claims, damages, liabilities, suits and expenses the Training Center may incur which arise out of or in connection with (a) Courses offered or provided by the Training Center, Training Sites, Instructors, or their employees or agents, (b) acts or omissions of the Training Center, Training Sites and/or Instructors, and (c) any breach by the Training Center and/or Training Sites of the terms of this Agreement.

7.3. In no event shall the AHA and/or its affiliates nor their officers, employees, volunteers or agents be liable to the Training Center or Training Sites or Instructors for any direct, indirect, special, consequential, or incidental damages.

8. WARRANTIES AND LIMITATION OF WARRANTIES

8.1. The Training Center covenants, warrants and represents to AHA during the Term of this Agreement that: (i) it is in compliance with the Program Guidelines; (ii) is in compliance with all applicable local jurisdiction and United States laws, regulations or ordinances necessary to enter into and perform under this Agreement; (iii) it is in compliance with all laws, regulations and ordinances applicable to the collection and remittances of

sales tax, VAT and other fees; (iv) it has obtained any and all authorizations and permits from any applicable governmental or regulatory authority that may be required, (v) it has full power and authority to enter into this Agreement and to make the covenants, representations and warranties in this Agreement, (vi) it has not entered into any agreements or commitments which are inconsistent with or in conflict with the rights of AHA in this Agreement; and (vii) neither the Training Center nor its parent or subsidiaries is a tobacco company or tobacco company corporate subsidiary or parent. For the purpose of this paragraph, the terms "subsidiary" and "parent" are defined as an entity in which there exists a five percent (5%) or greater, direct or indirect, ownership by or of a tobacco company.

8.2. The Training Center warrants and represents to AHA that neither it nor any of its directors, officers, employees, agents or representatives have made or offered and will not make or offer, directly or indirectly, with respect to the matters which are subject of this Agreement, any payment, gift, promise or other advantage, whether directly or through intermediaries, to or for the use of any public official (i.e., any person holding a legislative, administrative or judicial office, including any person exercising a public function for a public agency, a public enterprise or a public international organization) or of any political party, official or candidate, where such payment, gift, promise or advantage would violate applicable laws or the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997 ("Prohibited Payments"). The Training Center acknowledges that all AHA Property provided to the Training Center by AHA may be subject to US reexport licensing restrictions. The Training Center agrees to comply with all US laws and regulations concerning the reexport of such AHA Property, including but not limited to the US Export Administration Regulations (15 CFR Pt 730, et seq.) and the US Foreign Assets Control Regulations (31 CFR Pt 500, et seq.) The Training Center hereby agrees to indemnify and hold harmless AHA and its directors, officers, employees, agents and representatives from and against any and all claims, liabilities, penalties and causes of action, including attorney's fees and court costs, arising from or relating to any Prohibited Payment or prohibited reexport by the Training Center, Training Sites or Instructors or any of their directors, officers, employees, agents or representatives.

8.3. AHA PROPERTY, PARTICIPATION AS A TRAINING CENTER, (IF APPROVED_, AND USE OF THE WEB SITE, (COLLECTIVELY, THE "AHA PRODUCTS AND DELIVERABLES") ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE AHA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE AHA MAKES NO WARRANTY THAT: (i) THE AHA PRODUCTS AND DELIVERABLES WILL MEET THE TRAINING CENTER'S REQUIREMENTS; (ii) THE AHA PRODUCTS AND DELIVERABLES WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE AHA PRODUCTS AND DELIVERABLES OR ANY CONTENT PROVIDED ON OR THROUGH THEM WILL BE ACCURATE OR RELIABLE; OR (iv) THE QUALITY OF THE AHA PRODUCTS AND DELIVERABLES WILL MEET THE TRAINING CENTER'S EXPECTATIONS.

8.4. All representations and warranties made under this Agreement will be deemed to be made upon acceptance of this Agreement, as well as upon use of this Web Site and at all times throughout the duration of this Agreement.

9. LIMITATION OF LIABILITY

9.1. The AHA will not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from: (i) the unavailability or interruption of the Web Site or any features thereof; (ii) use of the AHA Products and Deliverables (regardless of whether AHA provided any assistance in their use); (iii) the content of any of the AHA Products and Deliverables; or (iv) the collection of, storage of, protection of, and use of information obtained from the Training Center.

9.2. THE AHA WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF BUSINESS), REGARDLESS OF WHETHER THE AHA KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY. THE TOTAL AND AGGREGATE LIABILITY OF THE AHA UNDER THIS AGREEMENT MAY NOT EXCEED THE FEES, IF ANY, ACTUALLY PAID BY THE TRAINING CENTER TO THE AHA PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR DAMAGES, OR \$50,000 (US\$), WHICHEVER IS LESS. IN NO EVENT SHALL AHA BE LIABLE TO THE TRAINING CENTER, OR ANY THIRD PARTY, FOR ANY DAMAGES RESULTING FROM THE CONTENT OR NATURE OF THE PRODUCTS AND DELIVERABLES. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

10. DISPUTE RESOLUTION UNDER THE PROGRAM GUIDELINES

Notwithstanding the Dispute Resolution Policy set out in the Program Guidelines, each party to this Agreement shall at all times be entirely free to exercise its rights under this Agreement, including its rights of termination under this Agreement without regard to whether a dispute exists at the time of such termination which, in the absence of such termination, would be resolved pursuant to the Dispute Resolution Policy, and, if such a dispute should then exist, without any requirement that such dispute be resolved pursuant to the Dispute Resolution Policy.

11. TERM AND TERMINATION

11.1. Notwithstanding the dispute resolution process set out in the Program Administration Manual, this Agreement, and status as a Training Center, may be terminated by either party if the other party breaches any term or condition of the Agreement and fails to cure the breach within ten (10) business days after receipt of written notice describing the breach. The Training Center acknowledges and agrees that breach includes, but is not limited to, failure by the Training Center or its Training Sites or Instructors to comply with program and/or curriculum guidelines, and that neither the AHA nor its affiliates nor their officers, employees volunteers or agents shall have any liability for any resulting termination under this Agreement.

11.2. This Agreement shall automatically terminate if Training Center (i) becomes insolvent or is generally unable to pay its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, (iii) makes or seeks to make a general assignment for the

benefit of its creditors, (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business, (v) merges or consolidates with or into another person or entity, or (vi) suffers a Change of Control.

11.3. This Agreement may also be terminated by either party, without cause, upon sixty (60) calendar days' prior written notice.

11.4. Notwithstanding any other provisions of this Agreement or the Program Guidelines, the AHA reserves the right, without notice and in its sole discretion, to terminate use of this Web Site and to block or prevent future access to, and use of, the Web Site.

12. GENERAL TERMS

12.1. Assignment: This Agreement, use of the Web Site and status as a Training Center may not be assigned, sold, licensed, sub-licensed, or transferred without the prior written consent of the AHA. Any attempted or purported transfer, license, sub-license, sale, or assignment without AHA's prior written consent shall be void.

12.2. Entire Agreement: This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed, and supersedes all prior written or oral agreements or communications between the parties. In the event of any conflict between the terms of this Agreement and the terms of the Program Guidelines, the terms of this Agreement shall prevail.

12.3. Waiver: No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, shall be deemed to be, or shall constitute, a waiver of any other provision hereof; nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12.4. Modification: No supplement, modification, or amendment of any term, provision, or condition of this Agreement shall be binding or enforceable on either party hereto unless in writing signed by both parties.

12.5. Parties Named: Nothing in this Agreement, whether express or implied, is intended to confer upon any person, other than the parties identified herein (and their respective heirs, representatives, successors, and permitted assigns), any rights or remedies under, or by reason of, this Agreement. Nothing in this Agreement is intended to relieve or discharge any liability of any party hereto or any third party. No provision in this Agreement shall give any entity any right of subrogation against any party hereto.

12.6. Severability: Should any part, term, or provision of this Agreement be declared to be invalid, void, or unenforceable, all remaining parts, terms, and provisions hereof shall remain in full force and effect, and shall in no way be invalidated, impaired, or affected thereby.

12.7. Applicable Law: This Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions.

12.8. Subject Headings: The subject headings of the sections, paragraphs, and subparagraphs of this Agreement are included herein solely for the purposes of convenience and reference, and shall not be deemed to explain, modify, limit, amplify, or aid in the meaning, construction, or interpretation of any of the provisions of this Agreement.

12.9. Survival: The following paragraphs, including their subparagraphs, shall survive termination of this Agreement: 6, 7, 8, and 9.