

## Training Center Agreement

This is an agreement between the American Heart Association, Inc., with offices at 1100 E Campbell Road, Suite 100, Richardson, TX 75081, (hereinafter the "AHA") and Las Positas College, with its principal place of business at 3000 Campus Hill Drive, Livermore, CA 94551 (hereinafter "Training Center" or "TC").

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, TC 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:

1.1. *AHA Materials*: "AHA Materials" shall mean all ECC materials published by the AHA, including, but not limited to, textbooks, instructor's manuals, exams, answer keys, toolkits, newsletters, and course completion cards.

1.2. *Courses*: "Course" or "Courses" shall mean the approved ECC courses listed below in which Course Cards will be distributed [list only the approved courses].

A     Basic Life Support  
       Provider Course(s)  
       Instructor Course(s)

1.3. *Course Cards*: "Course Cards" shall mean those cards bearing the AHA Servicemarks and ECC logo, which TC may distribute to students pursuant to Program Guidelines to indicate that the student participated in or successfully completed a Course.

1.4. *Geographic Territory*: The "Geographic Territory" shall mean California

1.5. *Training Sites*: "Training Sites" shall mean persons or organizations engaged or authorized by TC to teach Courses and for whom TC will process course rosters.

1.6. *Instructors*: "Instructors" shall mean persons engaged or authorized by TC or Training Sites to teach Courses.

1.7. *Program Guidelines*: "Program Guidelines" shall mean the then current *Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care*, and the then current *Program Administration Manual: Guidelines for Program Administration and Training* updated October 22, 2012, 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. TC acknowledges receipt of a set of Program Guidelines.

**2. Responsibilities of Training Center:**

2.1. *Courses:* TC shall conduct courses and shall authorize Instructors and/or Training Sites to conduct courses only within the Geographic Territory. TC shall ensure that all Courses taught by TC, 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. TC acknowledges and agrees that this Agreement is non-exclusive and that the AHA may enter into Training Center Agreements with other parties within the Geographic Territory.

2.2. TC shall comply with the requirements of the Program Guidelines including, but not limited to:

2.2.1. TC shall promptly notify, forward, or otherwise communicate to its instructors all correspondence from the American Heart Association regarding changes to science or curricula.

2.2.2. TC must issue course cards within twenty (20) calendar days following receipt of completed roster and course documents from instructors.

2.3. The TC will support Chain of Survival initiatives in cooperation with the AHA in their region and/or community, within available resources as outlined in Program Guidelines.

2.4. The TC will support local public advocacy Chain of Survival activities, e.g., public access defibrillation.

2.5. *Rosters and Course Completion Cards:*

2.5.1. TC shall safeguard Course Cards from unauthorized distribution. It shall limit the distribution of Course Cards only to persons who are students of TC, Training Site and/or Instructors and who have met the requirements for receipt of Course Cards in accordance with Program Guidelines. Only the approved TC Coordinator or a TC employee designated by the TC Coordinator and acting under the direct supervision of the TC Coordinator may receive Course Cards from distributors and the TC will be solely responsible for the control and security of card issuance. This responsibility may not be assigned or transferred to any other organization or individual, including Training Sites or Instructors. TC shall ensure that only the appropriate type of Course Card, as set out in the Program Guidelines, is issued to each student.

2.5.2. TC may not substitute any other organization's card for the appropriate AHA Course Card, or issue any Course Card not currently authorized for an AHA Course, or use non-AHA course materials in lieu of AHA materials to teach an AHA Course.

2.5.3. TC shall maintain rosters and records for all Courses conducted by TC and/or Training Site for at least 3 years after the date the Course was conducted.

2.5.4. TC shall submit statistical data and/or reports to the AHA as required under the Program Guidelines.

## 2.6. AHA Materials:

2.6.1. TC may purchase AHA Materials from third party distributors subject to the distributor's policies regarding payment terms, prices, shipping, and handling.

2.6.2. TC may sell AHA ECC textbooks and Instructor's Manuals to students, Instructors, and other third parties. However, it may not sell or distribute to any third party, other than Training Sites and/or Instructors, AHA Course exams and/or answer keys. AHA Course exams and/or answer keys may be used only for provision of Courses under this Agreement. Training Centers 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. TC shall prohibit Training Sites or Instructors from unauthorized copying, re-selling or distributing AHA Course exams and answer keys.

2.7. *TC Coordinators:* TC shall designate a primary contact (hereinafter "TC Coordinator") between TC and the AHA regarding all administration of ECC training, including, but not limited to, customer service, Course scheduling, card issuance, and records maintenance and retention. TC shall ensure that new TC Coordinators attend an orientation with AHA within thirty (30) calendar days following execution of the TC Agreement or, in the case of staff turnover, within thirty (30) calendar days following designation as a TC Coordinator.

**3. Reviews:** The AHA may monitor and/or review TC's and Training Sites' performance and compliance with Program Guidelines and AHA curriculum at least once each year through a review of Course records, site reviews, and course audits. TC shall provide the AHA with access, as needed, to Training Site facilities and records. This shall be in addition to the monitoring of Instructors as a part of their review.

## 4. Dispute Resolution:

4.1. Subject to paragraph 4.2 below, TC agrees that any disputes regarding Course curriculum, TC's compliance with Program Guidelines, or other matters regarding

its delivery of AHA ECC training shall be resolved according to the Dispute Resolution Policy set out in the Program Guidelines.

4.2. Notwithstanding the terms of paragraph 4.1, each party to this Agreement shall at all times be entirely free to exercise its rights of termination under Section 10 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 Section 4.1, and, if such a dispute should then exist, without any requirement that such dispute be resolved pursuant to Section 4.1.

**5. Costs and Fees:** All costs of providing Courses and fees charged to students shall be the responsibility of the TC. The AHA shall not have any responsibility for any costs incurred, or fees charged, by TC or Training Sites. The AHA is paid no fees by TC or any Training Sites or Instructors, and the AHA has no financial interest in the business of TC, Training Sites or Instructors.

**6. 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. TC is solely responsible for carrying out its responsibilities under this agreement. TC is solely responsible for Training Sites' performance under this Agreement and for its contractual relationship with Training Sites. Employees of TC and/or Training Sites are not, and shall not be considered employees of the AHA. Without limiting the foregoing, TC acknowledges and agrees that the AHA shall have no responsibility for any activities of TC or Training Sites, including, but not limited to, their conduct of courses, their employment, supervision and training of Instructors and other employees or agents, their scheduling of Courses, their obligation to provide Courses to third parties, their 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.

**7. Conflict of Interest:** TC acknowledges 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 TC employees from acting as AHA volunteers in the ECC program. TC will not knowingly permit its employees or agents to take any actions that violate the AHA's conflict of interest policy.

## **8. Proprietary Rights:**

8.1. TC 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.

8.2. TC acknowledges and agrees that 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.

8.3. The name "American Heart Association," the heart-and-torch logo, and the slogan "Learn and Live" (hereinafter collectively "AHA Servicemarks") are servicemarks of the American Heart Association, Inc. TC acknowledges and agrees that it 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.

8.4. TC's use of the AHA Servicemarks , and AHA Materials shall accrue exclusively to the AHA's benefit, and all ownership, copyrights, servicemarks, trademarks, and other rights, titles, and interests in them shall be in the AHA's name and shall belong to the AHA. TC shall not contest the validity of the AHA's copyrights, servicemarks, or trademarks or other AHA proprietary right, title or interest, including, without limitation, after the expiration or termination of this Agreement.

## 9. Indemnification:

9.1. TC 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 TC, Training Sites, Instructors, their employees or agents; (b) acts or omissions of TC, Training Sites and/or Instructors; and (c) any breach by TC 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 TC and/or Training Site in full compliance with the Program Guidelines and the curriculum set out in the applicable AHA Instructor's Manual.

9.2. AHA hereby agrees to indemnify, defend, and hold harmless the TC 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 TC, Training Sites, Instructors, their employees or agents; (b) acts or omissions of TC, Training Sites and/or Instructors; and (c) any breach by TC and/or Training Sites of the terms of this Agreement.

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

9.4. For the duration of this Agreement TC shall obtain and maintain at its expense general liability insurance from a carrier rated A, VII or better, with limits equal to or greater than \$300,000 if the only Courses conducted under this Agreement are Basic Life Support Courses listed under Section 1.2. of this Agreement and \$1,000,000 if any Course other than Basic Life Support Courses is listed in Section 1.2 of this Agreement. This policy shall specify that it may not be modified or canceled by the insurer, except after thirty (30) days prior written notice by the insurer to the AHA. TC must provide the AHA with a certificate of insurance evidencing this coverage upon execution of the Agreement and upon any renewals hereof.

## 10. Term and Termination

10.1. The term of this Agreement shall be for a **two (2) year period**, beginning on November 1 2013. It shall automatically renew for a twenty four (24) month period at the end of the initial term and at the end of each term thereafter, so long as before the end of the term, the AHA provides the TC with written notice of renewal for the following period. Each party is free to decline to renew or extend the term of this Agreement.

10.2. Following expiration or termination of this agreement for any reason, TC may not issue any Course Cards.

10.3. All procedures listed in the Program Guidelines regarding the retention or handling of unused Course Cards, completed rosters, completed monitoring forms and other records must be followed upon termination or expiration, with or without cause. Notwithstanding, TC shall deliver all such records to the AHA upon request.

10.4. This agreement 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. TC acknowledges and agrees that breach includes, but is not limited to, failure by TC or Training Sites 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.

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

## 11. General Terms:

11.1. *Assignment*: This Agreement may not be assigned or transferred by TC without the prior written consent of the AHA.

11.2. *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.

11.3. TC warrants and represents that upon execution hereof, this Agreement shall be the legal, valid and binding obligation of TC, enforceable against TC in accordance with its terms. The individual signing this Agreement warrants and represents that he/she is duly authorized to sign this Agreement on behalf of TC.

11.4. *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.

11.5. *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.

11.6. *Parties Named*: Nothing in this Agreement, whether express or implied, is intended to confer upon any person, other than the parties identified herein and the AHA (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.

11.7. *Notices:* All notices shall be sent postage prepaid to the intended party at the address set forth above (unless notification of a change of address is given in writing) and two (2) business days following the date of mailing shall be deemed the date notice is given.

11.8. *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.

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

11.10. *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.

11.11. *Survival:* The following paragraphs, including their subparagraphs, shall survive termination of this agreement: 4.2, 8, 9, 10.3, 11.2, 11.6, 11.7, 11.8, 11.9 and 11.11.

AGREED:

**American Heart Association, Inc.**

**Las Positas College**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Timothy E. Williams

Print Name: Lorenzo Legaspi

Title: Director, Training Center Operations & Quality

Title: Vice Chancellor, Business Services

Date: \_\_\_\_\_

Date: \_\_\_\_\_