

**Sale of Goods Agreement**  
between  
**American Heart Association**  
and  
**LOUISVILLE / JEFFERSON COUNTY METRO GOVERNMENT**

This Sale of Goods Agreement ("Agreement"), dated as of September 5, 2019, ("**Effective Date**"), is entered into between the American Heart Association, Inc. ("Seller"), a New York not-for-profit corporation, having its principal offices at 7272 Greenville Avenue, Dallas, Texas 75231-4596, and:

Buyer's Business Name: **LOUISVILLE / JEFFERSON COUNTY METRO GOVERNMENT**

Business Address: 410 SOUTH 5<sup>TH</sup> STREET, LOUISVILLE, KY 40202

("Buyer", and together with Seller, the "Parties", and each, a "Party").

**ARTICLE I**  
**DEFINITIONS**

Capitalized terms have the meanings set forth or referred to in this Article I.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law, in equity or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Basic Purchase Order Terms**" means, collectively, any one or more of the following terms specified by Buyer in a Purchase Order pursuant to Section 4.01: (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the unit Price for each of the Goods to be purchased; (d) the billing address; and (e) the Delivery Location. For the avoidance of doubt, the term "Basic Purchase Order Terms" does not include any general terms or conditions of any Purchase Order.

"**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in Texas are authorized or required by Law to be closed for business.

"**Buyer Indemnitees**" has the meaning set forth in Section 14.02.

"**Claim**" means any Action brought against a Person entitled to indemnification under Article XIV.

"**Confidential Information**" has the meaning set forth in Article XI.

"**Control**" (and with correlative meanings, the terms "Controlled by" and "under common Control with") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

"**Defective**" means not conforming to the warranties in Section 13.01.

"**Defective Goods**" means goods shipped by Seller to Buyer pursuant to this Agreement that are Defective.

"**Delayed Shipment Date**" has the meaning set forth in Section 5.03.

"**Delivery Location**" means the street address specified in the applicable Purchase Order.

"**Disclosing Party**" has the meaning set forth in Article XI.

"**Effective Date**" has the meaning set forth in the preamble.

"**Excess Goods**" means any goods received by Buyer from Seller pursuant to a Purchase Order that materially exceed the quantity of Goods ordered by Buyer pursuant to this Agreement or any Purchase Order. Where the



context requires, Excess Goods are deemed to be Goods for purposes of this Agreement.

**"Force Majeure Event"** has the meaning set forth in Section 17.17.

**"Goods"** means the goods set forth in Exhibit A, as Seller may amend in its sole discretion from time to time.

**"Governmental Authority"** means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction.

**"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, award or determination entered by or with any Governmental Authority.

**"Indemnifying Party"** has the meaning set forth in Section 14.01.

**"Individual Transaction"** means any Purchase Order that has been accepted by Seller pursuant to Section 4.02.

**"Initial Term"** has the meaning set forth in Section 10.01.

**"Inspection Period"** has the meaning set forth in Section 5.05.

**"Intellectual Property Rights"** means all intellectual property rights comprising or relating to: (i) Patents; (ii) Trademarks; (iii) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, websites, and URLs; (iv) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software, and firmware, data, data files, and databases and other specifications and documentation; (v) Trade Secrets; and (vi) all other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction throughout in any part of the world.

**"Law"** means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order, or other requirement or rule of law of any Governmental Authority.

**"Losses"** has the meaning set forth in Section 14.01.

**"Nonconforming Goods"** means any goods received by Buyer from Seller pursuant to a Purchase Order that: (i) do not conform to the items listed in the applicable Purchase Order; or (ii) materially exceed the quantity of Goods ordered by Buyer pursuant to this Agreement or any Purchase Order. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of this Agreement.

**"Notice"** has the meaning set forth in Section 17.03.

**"Party"** has the meaning set forth in the preamble to this Agreement.

**"Payment Failure"** has the meaning set forth in Section 10.03(a).

**"Person"** means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority, or any other entity.

**"Personnel"** means agents, employees, or subcontractors engaged or appointed by Seller or Buyer.

**"Price"** has the meaning set forth in Section 7.01.

**"Pro Forma Invoice"** means an estimated invoice sent by a seller to a buyer in advance of a shipment or delivery of goods. It notes the kind and quantity of goods, their value, and other important information such as weight and transportation charges. Pro forma invoice is not a demand or request for payment.



**"Purchase Order"** means Buyer's purchase order issued to Seller hereunder, including all terms and conditions attached to, or incorporated into, such purchase order.

**"Receiving Party"** has the meaning set forth in Article XI.

**"Renewal Term"** has the meaning set forth in Section 10.02.

**"Representatives"** means a Party's employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors, and permitted assigns.

**"Seller's Intellectual Property Rights"** means all Intellectual Property Rights owned by or licensed to Seller.

**"Seller's Trademarks"** means all Trademarks owned or licensed by Seller.

**"Survival Period"** has the meaning set forth in Section 17.02.

**"Term"** has the meaning set forth in Section 10.02.

**"Trademarks"** means all rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, trade dress, corporate names, and domain names, and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

**"Trade Secrets"** means all inventions, discoveries, trade secrets, business and technical information, and know-how, databases, data collections, patent disclosures, and other confidential and proprietary information and all rights therein.

**"Warranty Period"** has the meaning set forth in Section 13.01.

## ARTICLE II

### AGREEMENT TO PURCHASE AND SELL GOODS

**Section 2.01 Purchase and Sale.** Subject to the terms and conditions of this Agreement, during the Term, Seller shall, on a non-exclusive basis, sell to Buyer, and Buyer shall, on a non-exclusive basis, purchase from Seller, the Goods.

**Section 2.02 No Annual Minimum Quantities.** The Parties agree that:

- (a) Buyer is not obligated to purchase any annual minimum quantities from Seller under this Agreement; and
- (b) Seller is not obligated to sell any annual minimum quantities to Buyer under this Agreement.

## ARTICLE III

### TERMS OF AGREEMENT PREVAIL OVER BUYER'S PURCHASE ORDER

This Agreement is expressly limited to the terms of this Agreement and the Basic Purchase Order Terms contained in the applicable Purchase Order. The terms of this Agreement prevail over any terms or conditions contained in any other documentation and expressly exclude any of Buyer's general terms and conditions contained in any Purchase Order or other document issued by Buyer. In the event of any conflict between the terms of this Agreement and the terms of any Purchase Order or any other document issued by Buyer, the terms of this Agreement prevail.



## ARTICLE IV

### ORDER PROCEDURE

**Section 4.01 Purchase Orders.** Buyer shall initiate all Purchase Orders in written form via e-mail or shopcpr.heart.org and cause all Purchase Orders to contain the Basic Purchase Order Terms. By placing a Purchase Order, Buyer makes an offer to purchase the Goods pursuant to the terms and conditions of this Agreement, including the Basic Purchase Order Terms, and on no other terms. Except with respect to the Basic Purchase Order Terms, any variations made to the terms and conditions of this Agreement by Buyer in any Purchase Order are void and have no effect.

**Section 4.02 Seller's Right to Accept or Reject Purchase Order.** Seller has the right, in its sole discretion, to accept or reject any Purchase Order. Seller may accept any Purchase Order by confirming the order (whether by written confirmation, invoice or otherwise) or by delivering such Goods, whichever occurs first. No Purchase Order is binding on Seller unless accepted by Seller as provided in this Agreement.

**Section 4.03 Cancellation of Individual Transactions.**

- (a) Seller may, without liability or penalty, cancel any Individual Transaction:
- (i) if Seller determines that Buyer is in violation of its payment obligations or has materially breached this Agreement; or
  - (ii) pursuant to Seller's rights under Section 7.04.

## ARTICLE V

### SHIPMENT AND DELIVERY

**Section 5.01 Shipment.** Unless expressly agreed to by the Parties in writing, Seller shall select the method of shipment of, and the carrier for, the Goods. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will not constitute a separate sale, and Buyer shall pay for all units ordered regardless of if the Purchase Order has been whole or partially fulfilled.

**Section 5.02 Delivery.** Unless expressly agreed to by the Parties in any Individual Transaction, Seller shall deliver the Goods to the Delivery Location, using Seller's standard methods for packaging and shipping such Goods.

**Section 5.03 Late Delivery.** Any time quoted by Seller for delivery is an estimate only. Seller is not liable for or in respect of any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery. However, if Seller delays shipment of all or any Goods for more than thirty (30) days after the estimated delivery date (the "**Delayed Shipment Date**"), then Buyer may, as its sole remedy therefor, cancel the related Purchase Order with respect to the delayed Goods by giving Seller Notice within five (5) days of the Delayed Shipment Date. No delay in the shipment or delivery of any Goods relieves Buyer of its obligations under this Agreement, including without limitation accepting delivery of any remaining installment(s) of Goods.

**Section 5.04 Packaging and Labeling.** Seller shall properly pack, mark, and ship Goods and provide Buyer with shipment documentation showing the Purchase Order number, Seller's identification number for the subject Goods, the quantity of pieces in shipment, the number of cartons or containers in shipment, Seller's name, and the bill of lading number.

**Section 5.05 Inspection.** Buyer shall inspect the Goods within two (2) business days of receiving the Goods ("**Inspection Period**") and either accept or, if such Goods are Nonconforming Goods or Excess Goods, reject such Goods. Buyer will be deemed to have accepted the Goods unless it notifies Seller of any Nonconforming Goods or Excess Goods during the Inspection Period and furnishes such written evidence or other



documentation as [reasonably] required by Seller. If Buyer timely notifies Seller of any Nonconforming Goods or Excess Goods, Seller shall determine, in its sole discretion, whether the Goods are Nonconforming Goods or Excess Goods. If Seller determines that the Goods are Nonconforming Goods or Excess Goods, it shall, in its sole discretion:

- (a) if such Goods are Nonconforming Goods, (i) replace such Nonconforming Goods with conforming Goods, or (ii) refund the Price for such Nonconforming Goods, together with all shipping and handling expenses incurred by Buyer in connection therewith; or
- (b) if such Goods are Excess Goods, refund the Price for such Excess Goods, together with all shipping and handling expenses incurred by Buyer in connection therewith.

Buyer shall ship, at Seller's expense, the Nonconforming Goods or Excess Goods to Seller's facility located at [796 Jacksonville Road, Warminster, PA 18974, USA]. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Seller's expense, the replaced Goods to the Delivery Location.

BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN SECTION 5.05(a) AND SECTION 5.05(b) OF THIS SECTION 5.5 ARE BUYER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS OR EXCESS GOODS, SUBJECT TO BUYER'S RIGHTS UNDER SECTION 13.03 WITH RESPECT TO ANY NONCONFORMING GOODS OR EXCESS GOODS FOR WHICH BUYER HAS ACCEPTED DELIVERY UNDER THIS SECTION 5.5.

**Section 5.06 Limited Right of Return.** Except as provided under Section 5.05 and Section 13.03, Buyer has no right to return Goods purchased under this Agreement to Seller after thirty (30) calendar days of the shipment received date.

## ARTICLE VI

### TITLE AND RISK OF LOSS

**Section 6.01 Title.** Title to Goods ordered under any Individual Transaction passes to Buyer upon delivery of such Goods to the Delivery Location.

**Section 6.02 Risk of Loss.** Risk of loss to all Goods ordered under any Purchase Order passes to Buyer upon Seller's tender of such units to the carrier.

## ARTICLE VII

### PRICE AND PAYMENT

**Section 7.01 Price.** Buyer shall purchase the Goods from Seller at the prices set forth in Seller's price list in effect at the time that Seller accepts the related Purchase Order ("**Prices**"). A sample price list is attached as Attachment A.

**Section 7.02 Shipping Charges, Insurance, and Taxes.** Buyer shall pay for, and shall hold Seller harmless from, all shipping charges and insurance costs. In addition, all Prices are exclusive of, and Buyer is solely responsible for, and shall pay all Taxes, with respect to, or measured by, the manufacture, sale, shipment, use or Price of the Goods (including interest and penalties thereon); provided, however, that Buyer shall not be responsible for any Taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, Personnel or real or personal property or other assets.

**Section 7.03 Payment Terms.**

- (a) **Invoice:** Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of such invoice, except for any amounts disputed by Buyer in good faith. Buyer shall make all payments in US dollars in accordance with the payment methods outlined within the Invoice ("Exhibit B").
- (b) **Credit Card:** Unless otherwise agreed in an agreement signed by both parties, payment must be received by Seller accepts American Express, Discover, Master Card, and Visa for all purchases. Buyer



represents and warrants that (i) the credit card information supplied is true, correct, and complete, (ii) Buyer is duly authorized to use such credit card for the purchase, (iii) charges incurred by Buyer will be honored by Buyer's credit card company, and (iv) Buyer will pay charges incurred at the posted prices, including all applicable taxes, if any.

**Section 7.04 Unsatisfactory Credit Status.** Buyer shall furnish Seller with statements evidencing Buyer's financial condition as Seller may, from time to time, reasonably request, and shall notify Seller immediately of any and all events that may have a material adverse effect on Buyer's business or financial condition. If Seller determines that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Seller's other rights, Seller may without liability or penalty take any of the following actions:

- (a) accelerate all amounts owed by Buyer to Seller under this Agreement and any Individual Transaction;
- (b) on written Notice, modify the payment terms specified in Section 7.03 for outstanding and future Individual Transactions, including requiring Buyer to pay cash in advance;
- (c) cancel any previously accepted Purchase Orders;
- (d) delay any further shipment of Goods to Buyer;
- (e) on written notice, terminate this Agreement; or
- (f) any combination of the above.

No actions taken by Seller under this Section 7.04 (nor any failure of Seller to act under this Section) constitute a waiver by Seller of any of its rights to enforce Buyer's obligations under this Agreement including, but not limited to, the obligation of Buyer to make payments as required under this Agreement.

**Section 7.05 Invoice Disputes.** Buyer shall notify Seller in writing of any dispute with any invoice (along with substantiating documentation) within thirty days from the date of such invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of disputes and shall pay all undisputed amounts due under such invoices within the period set forth in Section 7.03. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, Buyer's obligation to pay all due and undisputed invoice amounts.

**Section 7.06 Late Payments.** Except for invoiced payments that Buyer has successfully disputed, Buyer shall pay interest on all late payments, at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable Law, calculated daily and compounded monthly. Buyer shall also reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at Law (which Seller does not waive by the exercise of any rights under this Agreement), if Buyer fails to pay any amounts when due under this Agreement, Seller may (a) suspend the delivery of any Goods, (b) reject Buyer's Purchase Orders pursuant to the terms of Section 4.02, (c) cancel accepted Purchase Orders pursuant to the terms of Section 4.03, or (d) terminate this Agreement pursuant to the terms of Section 10.03(a).

**Section 7.07 No Set-off Right.** Buyer shall not, and acknowledges that it will have no right, under this Agreement, any Purchase Order, any other agreement, document or Law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing ) to Seller, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller, whether relating to Seller's breach or non-performance of this Agreement, any Purchase Order, any other agreement between (a) Buyer and (b) Seller, or otherwise.

## ARTICLE VIII

### COMPLIANCE WITH LAWS

**Section 8.01 General Compliance With Laws Covenant.** Buyer shall at all times comply with all Laws applicable to this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use or sale of the Goods. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use



of the Goods and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use or otherwise, that violates any Law.

**Section 8.02 Restriction on Resale.** Buyer shall not resell any Goods other than to its end users.

## ARTICLE IX

### INTELLECTUAL PROPERTY RIGHTS

**Section 9.01 Ownership.** Buyer acknowledges and agrees that:

- (a) any and all Seller's Intellectual Property Rights are the sole and exclusive property of Seller or its licensors;
- (b) Buyer shall not acquire any ownership interest in any of Seller's Intellectual Property Rights under this Agreement;
- (c) any goodwill derived from the use by Buyer of Seller's Intellectual Property Rights inures to the benefit of Seller or its licensors, as the case may be;
- (d) if Buyer acquires any Intellectual Property Rights, rights in or relating to any Goods (including any rights in any Trademarks, derivative works, or patent improvements relating thereto) by operation of Law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either of the Parties; and
- (e) Buyer shall use Seller's Intellectual Property Rights solely for purposes of using the Goods under this Agreement and only in accordance with this Agreement and the instructions of Seller.

**Section 9.02 Prohibited Acts.** Buyer shall not:

- (a) take any action that interferes with any of Seller's rights in or to Seller's Intellectual Property Rights, including Seller's ownership or exercise thereof;
- (b) challenge any right, title, or interest of Seller in or to Seller's Intellectual Property Rights;
- (c) make any claim or take any action adverse to Seller's ownership of Seller's Intellectual Property Rights;
- (d) register or apply for registrations, anywhere in the world, for Seller's Trademarks or any other Trademark that is similar to Seller's Trademarks or that incorporates Seller's Trademarks in whole or in confusingly similar part;
- (e) use any mark, anywhere, including in any advertising, marketing or other materials, that is confusingly similar to Seller's Trademarks in whole or in confusingly similar part;
- (f) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the Goods or any Seller's Trademarks;
- (g) misappropriate any of Seller's Trademarks for use as a domain name without prior written consent from Seller;
- (h) alter, obscure or remove any Seller's Trademarks, or Trademark or copyright notices or any other proprietary rights notices placed on the Goods, marketing materials or other materials that Seller may provide; or
- (i) use any name or trade name that is confusingly similar to Seller's name in whole or in confusingly similar part.



## ARTICLE X

### TERM; TERMINATION

**Section 10.01 Initial Term.** The term of this Agreement commences on the Effective Date and continues for a period of twenty-four months, unless and until earlier terminated as provided under this Agreement ("Initial Term"). . In the event that, during the term of this Agreement, the Buyer's Louisville Metro Council fails to appropriate funds for the payment of the Buyer's obligations under this Agreement, the Buyer's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Buyer shall deliver written notice to Seller of any such non-appropriation.

**Section 10.02 Renewal Term.** Upon expiration of the Initial Term, this Agreement automatically renews for additional successive twenty-four month terms unless and until Buyer provides written notice of nonrenewal at least ninety days prior to the end of the then-current term, or unless and until earlier terminated as provided under this Agreement (each a "Renewal Term" and together with the Initial Term, the "Term". If the Term is renewed for any Renewal Term(s) pursuant to this Section, the terms and conditions of this Agreement during each such Renewal Term are the same as the terms in effect immediately prior to such renewal, subject to any change in Prices payable for the Goods and payment terms during the applicable Renewal Term. Notwithstanding the foregoing, in the event Seller provides written Notice of its intent not to renew this Agreement, then, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the then-current Term.

#### **Section 10.03 Seller's Right to Terminate.**

Seller may terminate this Agreement upon written notice to Buyer:

- (a) if Buyer fails to pay any amount when due under this Agreement ("**Payment Failure**");
- (b) if Buyer breaches any provision of this Agreement or any Individual Transaction (other than a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Buyer within thirty days after Buyer's receipt of written notice of such breach;
- (c) if Buyer (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, or (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;
- (d) if Seller terminates any other agreement between (i) Seller and (ii) Buyer; or
- (e) if (i) Buyer sells, leases or exchanges a material portion of Buyer's assets, (ii) Buyer merges or consolidates with or into another Person, or a change in "**Control**" of Buyer occurs.

#### **Section 10.04 Buyer's Right to Terminate.**

Buyer may terminate this Agreement upon written notice to Seller:

- (a) if Seller materially breaches any material provision of this Agreement or any Individual Transaction and either the breach cannot be cured or, if the breach can be cured, it is not cured by Seller within thirty days after Seller's receipt of written notice of such breach;
- (b) if Seller (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, or (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; or
- (c) in the event of a Force Majeure Event affecting the Seller's performance of this Agreement for more than thirty days.]

#### **Section 10.05 Effect of Termination.**

- (a) Expiration or termination of the Term will not affect any rights or obligations of the Parties that:





- (i) come into effect upon or after expiration or termination of this Agreement; or
  - (ii) otherwise survive the expiration or earlier termination of this Agreement pursuant to Section 17.02 and were incurred by the Parties prior to such expiration or earlier termination.
- (b) Any Notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Goods had been accepted by Seller. With respect to any Goods that are still in transit upon termination of this Agreement, Seller may require, in its sole and absolute discretion, that all sales and deliveries of such Goods be made on either a cash-only or certified check basis.
- (c) Upon the expiration or earlier termination of this Agreement, Buyer shall promptly:
- (i) permanently erase all of Seller's Confidential Information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery and/or information technology backup systems. Buyer shall destroy any such copies upon the normal expiration of its backup files; and
  - (ii) certify in writing to Seller that it has complied with the requirements of this clause.
- (d) Subject to Section 10.05(a), the Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of either Party's rights, remedies or defenses under this Agreement, at law, in equity, or otherwise.

## ARTICLE XI

### CONFIDENTIALITY

**Section 11.01 Scope of Confidential Information.** From time to time during the Term, Seller (as the "Disclosing Party") may disclose or make available to Buyer (as the "Receiving Party") information about its business affairs, goods and services, confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information [as well as the terms of this Agreement, (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure:

- (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Article XI by the Receiving Party or any of its Representatives;
- (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;
- (c) was known by or in the possession of the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party;
- (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or
- (e) is required to be disclosed pursuant to applicable Law.

**Section 11.02 Protection of Confidential Information.** The Receiving Party shall, for five years from receipt of such Confidential Information:

- (a) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
- (b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and



(c) not disclose any such Confidential Information to any Person, except to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

The Receiving Party shall be responsible for any breach of this Article XI caused by any of its Representatives.

## ARTICLE XII

### REPRESENTATIONS AND WARRANTIES

**Section 12.01 Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that:

- (a) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement;
- (b) it has the full right, corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (c) the execution of this Agreement by its Representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the Party;
- (d) when executed and delivered by each of Seller and Buyer, this Agreement will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms;
- (e) it is in compliance with all applicable Laws relating to this Agreement, the Goods and the operation of its business;
- (f) it is not insolvent and is paying all of its debts as they become due; and
- (g) all financial information that it has provided to Seller is true and accurate and fairly represents Buyer's financial condition.

**Section 12.02 Seller's Representations and Warranties.** Seller represents and warrants to Buyer that:

- (a) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement;
- (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;
- (c) the execution of this Agreement by its Representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the Party; and
- (d) when executed and delivered by each of Buyer and Seller, this Agreement will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

## ARTICLE XIII

### PRODUCT WARRANTIES

**Section 13.01 Limited Warranty.** Seller warrants to Buyer that:

- (a) no Goods will be Nonconforming Goods.
- (b) for a period of one month from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will be free from significant defects in material and workmanship; and



(c) Buyer will receive good and valid title to the Goods, free and clear of all encumbrances and liens of any kind.

**Section 13.02 Warranty Limitations.** The warranties under Section 13.01 do not apply where the Goods have been subjected to abuse, misuse, neglect, negligence, accident, improper storage, improper handling, or abnormal environmental conditions.

**Section 13.03 Buyer's Exclusive Remedy for Defective Goods.** Notwithstanding any other provision of this Agreement, this Section 13.03 contains Buyer's exclusive remedy for Defective Goods. Buyer's remedy under this Section 13.03 is conditioned upon Buyer's compliance with its obligations under Section 13.03(a) and Section 13.03(b) below. During the Warranty Period, with respect to any allegedly Defective Goods:

(a) Buyer shall notify Seller of any alleged claim or defect within two (2) Business Days from the shipment received date, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable Warranty Period);

(b) Buyer shall ship, at the expense and risk of loss of Seller through Return Merchandise Authorization (RMA), such allegedly Defective Goods to Seller's facility for inspection by Seller;

(c) If Seller's inspection reveals, to Seller's reasonable satisfaction, that such Goods are Defective and any such defect has not been caused or contributed to by any of the factors described under Section 13.02, Seller shall in its sole discretion, and at its expense (subject to Section 13.03(b) and Section 13.03(d)), (i) replace such Defective Goods, or (ii) credit or refund the Price of such Defective Goods less any applicable discounts, rebates or credits;

(d) If Seller exercises its option to replace, Seller shall, after receiving Buyer's shipment of such Defective Goods, ship to Buyer, at Seller's expense and risk of loss, the replaced Goods to the Delivery Location designated by Seller.

Buyer has no right to return for replacement, credit, or refund any Goods except as set forth in this Section 13.03 (or if otherwise applicable, Section 5.05).

THIS Section 13.03 SETS FORTH THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND Seller's ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN Section 13.01.

**Section 13.04 Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN Section 13.01, Seller MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY Seller, OR ANY OTHER PERSON ON Seller's BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN Section 13.02 AND Section 13.01 OF THIS Agreement.

## ARTICLE XIV

### INDEMNIFICATION

**Section 14.01 Indemnification.** Subject to the terms and conditions of this Agreement, including those set forth in Section 14.02, and only to the extent permitted by Kentucky law, Buyer (as "**Indemnifying Party**") shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party (collectively, "**Losses**"), arising out or resulting from any Claim of a third party alleging:

(a) breach or non-fulfillment of any representation, warranty, or covenant under this Agreement by Indemnifying Party or Indemnifying Party's Personnel;

(b) any negligent or omission of Indemnifying Party or its Personnel in connection with the performance of



its obligations under this Agreement;

(c) any bodily injury, death of any Person or damage to real or tangible personal property caused by the acts or omissions of Indemnifying Party or its Personnel; or

(c) any failure by Indemnifying Party or its Personnel to comply with any applicable Laws.

**Section 14.02 Seller Intellectual Property Indemnification.** Subject to the terms and conditions of this Agreement, Seller shall indemnify, defend and hold harmless Buyer and its Representatives (collectively, the "Buyer Indemnitees") from and against all Losses awarded against any Buyer Indemnitee in a final judgment arising out of any Claim of a third party alleging that any of the Goods or Buyer's receipt or use thereof infringes any Intellectual Property Right of a third party.

If the Goods, or any part of the Goods, becomes, or in Seller's opinion is likely to become, subject to a Claim of a third party that qualifies for intellectual property indemnification coverage under this Section 14.02, Seller shall, at its sole option and expense, notify Buyer in writing to cease using all or a part of the Goods, in which case Buyer shall immediately cease all such use of such Goods on receipt of Seller's Notice.

**Section 14.03 Exclusive Remedy.** Article XIV SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR EACH INDEMNIFIED PARTY FOR ANY LOSSES COVERED BY Article XIV.

## ARTICLE XV

### LIMITATION OF LIABILITY

**Section 15.01 No Liability for Consequential or Indirect Damages.** EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS Agreement, LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY NOR ITS REPRESENTATIVES IS LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**Section 15.02 Maximum Liability.** Seller's AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO Seller PURSUANT TO THIS AGREEMENT IN THE YEAR PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**Section 15.03 ASSUMPTION OF RISK.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY Seller, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.

## ARTICLE XVI

### BUYER INSURANCE OBLIGATIONS

During the Term, Buyer shall, at its own expense, maintain and carry in full force and effect commercial general liability (including product liability) in a sum no less than \$2,000,000 with financially sound and reputable insurers, and upon Seller's request, shall provide Seller with a certificate of insurance evidencing the insurance



coverage specified in this Section.

## ARTICLE XVII

### Section 17.01 Entire Agreement.

(a) Subject to Article III, this Agreement, including all related exhibits, together with the Basic Purchase Order Terms, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

**Section 17.02 Survival; Statute of Limitations.** Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement for a period of twelve months after such expiration or termination; and (b) any provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is specified for a period of twelve months after such expiration or termination.

**Section 17.03 Notices.** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

Notice to Seller:

American Heart Association  
7272 Greenville Ave.  
Dallas, TX 75231

Attention: General Counsel

Notice to Buyer:

[BUYER ADDRESS]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

**Section 17.04 Interpretation.** For purposes of this Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, and exhibits mean the sections of, and exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

**Section 17.05 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**Section 17.06 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction; provided,



however, that if any fundamental term or provision of this Agreement is invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible].

**Section 17.07 Amendment and Modification.** No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by an authorized Representative of each Party.

**Section 17.08 Waiver.**

(a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by an authorized representative of the Party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.

(c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission, or course of dealing between the Parties.

**Section 17.09 Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Buyer's right under Section 5.05, Section 13.03 and Article XIV are Buyer's exclusive remedies for the events specified therein.

**Section 17.10 Equitable Remedies.** Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of any of its obligations may give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such Party of any such obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to such Party at law, at equity, or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each Party agrees that such Party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 17.10.

**Section 17.11 Assignment.** Buyer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

**Section 17.12 Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

**Section 17.13 No Third-Party Beneficiaries.**

(a) This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 17.14 Choice of Law.** This Agreement, including all Individual Transaction documents and exhibits, schedules, attachments and appendices attached to this Agreement and thereto, are governed by, and construed in accordance with, the Laws of the State of Texas, United States of America, without regard to the



conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the Laws of any jurisdiction other than those of the State of Texas. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**Section 17.15 Choice of Forum.** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all Individual Transaction Documents and exhibits attached to this Agreement and thereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the courts of the State of Texas sitting in Dallas, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. .

**Section 17.16 Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

**Section 17.17 Force Majeure.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) Law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any Governmental Authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities (each a "**Force Majeure Event**").

**Section 17.18 Relationship of Parties.** Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Buyer is an independent contractor pursuant to this Agreement. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

**Section 17.19 No Public Announcements.** Neither Party shall make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotion materials regarding the other Party or its business unless: (a) it has received the express written consent of the other Party; or (b) it is required to do so by Law.

**Section 17.20 Terms Required by Kentucky Law**

- (a) **Records Audit.** Seller shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Seller's costs which are chargeable to Buyer under this Agreement; and Buyer shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Seller shall include (without limitation): (a) payroll records accounting for total time distribution of Seller's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Seller's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

**Language above is required in every contract by Metro OMB regulations and Metro Ordinance LMCO 20.20.**

- (b) Pursuant to KRS 45A.455:
- (1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:
- (a) He, or any member of his immediate family has a financial interest therein; or
- (b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or



(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

- (c) 3. Seller shall reveal any final determination of a violation by Seller or its subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to Seller or its subcontractor. Seller shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to Seller or its subcontractor for the duration of this Agreement.

a) This language is required by KRS 45A.343(2) to appear in all Metro contracts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

American Heart Association

By Tim Braun  
Name: Tim Braun  
Title: VP Global Ops.

LOUISVILLE / JEFFERSON COUNTY METRO GOVERNMENT

By [Signature]  
Name:  
Title:







# CPR & ECC Materials List

## Education and Training

### CPR & Emergency Cardiovascular Care

Products reflect the 2015 Guidelines for CPR and ECC		
Product Number	Description	Suggested Retail Price
<b>Resources</b>		
15-1001	2015 AHA Guidelines for CPR and ECC	\$22.00
15-3104	2015 AHA Guidelines for CPR and ECC eBook	\$22.00
15-1000	2015 Handbook of Emergency Cardiovascular Care	\$27.50
15-3105	2015 Handbook of Emergency Cardiovascular Care eBook	\$27.50
<b>BLS</b>		
15-1010	BLS Provider Manual	\$14.50
15-3102	BLS Provider Manual eBook	\$14.50
15-1400	HeartCode BLS	\$28.50
15-1009	BLS Instructor Manual	\$39.25
15-3103	BLS Instructor Manual eBook	\$39.25
15-1011	BLS DVD Set (2-disc)	\$81.00
15-1077	BLS Instructor Package with Renewal	\$125.00
15-1078	BLS Renewal DVD	\$65.00
15-1079	BLS DVD Set with Renewal (3-disc)	\$86.00
15-1414	BLS Video Streaming	\$86.00
<b>ACLS</b>		
15-1005	ACLS Provider Manual	\$39.00
15-3100	ACLS Provider Manual eBook	\$39.00
15-1407	HeartCode ACLS	\$132.00
15-1004	ACLS DVD Set (2-disc)	\$86.25
15-1413	ACLS Video Streaming	\$86.25
15-1003	ACLS Instructor Manual	\$50.00
15-3101	ACLS Instructor Manual eBook	\$50.00
15-1006	ACLS Instructor Package	\$212.00



<b>ACLS, continued</b>		
15-1007	ACLS Pocket Reference Card (set of 2)	\$15.25
15-3109	ACLS Digital Pocket Reference Card (set of 2)	\$15.25
15-1042	ACLS Poster Set (set of 9)	\$55.95
15-1008	ACLS Emergency Crash Cart Cards (set of 4)	\$25.00
15-1043	Suspected Stroke Algorithm/Prehospital Stroke Scale Card (25-pack)	\$22.50
<b>ACLS EP</b>		
15-1411	ACLS for Experienced Providers (ACLS EP) Online Exam	\$7.50
15-1063	ACLS EP DVD Set	\$167.95
15-1065	ACLS EP Instructor Package	\$233.95
15-1064	ACLS EP Manual and Resource Text	\$75.95
15-3134	ACLS EP Manual and Resource Text eBook	\$75.95
<b>PALS</b>		
15-1058	PALS Provider Manual	\$46.00
15-1046	PALS Pocket Reference Card	\$9.00
15-3120	PALS Provider Manual eBook	\$46.00
15-3121	PALS Digital Pocket Reference Card Set	\$9.00
15-1051	PALS DVD Set (2-disc)	\$86.50
15-1047	PALS Instructor Manual	\$49.75
15-3122	PALS Instructor Manual eBook	\$49.75
15-1048	PALS Instructor Package	\$212.00
15-1049	PALS Poster Set (set of 10)	\$58.00
15-1050	PALS Emergency Crash Cart Cards (set of 4)	\$25.00
15-1412	HeartCode PALS	\$132.00
<b>PEARS</b>		
15-1052	PEARS Provider Manual	\$34.50
15-3123	PEARS Provider Manual eBook	\$34.50

<b>PEARS, continued</b>
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15-1053	PEARS Pocket Reference Card	\$9.00
15-3124	PEARS Digital Reference Card	\$9.00
15-1054	PEARS Instructor Manual	\$46.50
15-3125	PEARS Instructor Manual eBook	\$46.50
15-1055	PEARS DVD	\$83.50
15-1056	PEARS Posters (set of 9)	\$50.00
15-1057	PEARS Instructor Package	\$165.00
<b>Heartsaver First Aid CPR AED</b>		
15-1018	Heartsaver First Aid CPR AED Student Workbook	\$2.50
15-1075	Heartsaver First Aid CPR AED Student Workbook (6-pack)	\$15.00
15-3117	Heartsaver First Aid CPR AED Student eBook	\$2.50
15-1403	Heartsaver First Aid CPR AED Online	\$30.00
15-1020	Heartsaver CPR AED Student Workbook	\$2.50
15-1074	Heartsaver CPR AED Student Workbook (6-pack)	\$15.00
15-3116	Heartsaver CPR AED Student eBook	\$2.50
15-1401	Heartsaver CPR AED Online	\$15.00
15-1021	Heartsaver First Aid Student Workbook	\$2.50
15-1076	Heartsaver First Aid Student Workbook (6-pack)	\$15.00
15-3115	Heartsaver First Aid Student eBook	\$2.50
15-1402	Heartsaver First Aid Online	\$20.00
15-1022	Heartsaver First Aid Quick Reference Guide	\$5.50
15-3118	Heartsaver First Aid Digital Quick Reference Guide	\$5.50
15-1019	Heartsaver First Aid CPR AED DVD Set (2-disc)	\$165.00
15-1023	Heartsaver First Aid CPR AED Instructor Manual	\$54.00
15-3114	Heartsaver First Aid CPR AED Instructor Manual eBook	\$54.00
15-1024	Heartsaver Adult CPR AED Wallet Card (100-pack)	\$13.10

<b>Heartsaver First Aid CPR AED, continued</b>		
15-1025	Heartsaver Child & Infant CPR AED Wallet Card (100-pack)	\$13.10
15-1045	Heartsaver Child & Infant Choking Wallet Card (100-pack)	\$13.10
15-1030	Heartsaver Poster Pack (2 each of 6 posters)	\$35.50



15-1028	Heartsaver Adult Poster Pack (3 each of 2 posters)	\$24.00
15-1029	Heartsaver Child & Infant Poster Pack (2 each of 4 posters)	\$30.00
15-1026	Heartsaver Adult CPR AED Poster (3-pack)	\$13.50
15-1027	Heartsaver Adult Choking Poster (3-pack)	\$13.50
15-1085	Heartsaver First Aid CPR AED Course Video in Streaming Format	\$165.00
<b>Heartsaver Pediatric First Aid CPR AED</b>		
15-1038	Heartsaver Pediatric First Aid CPR AED Student Workbook	\$2.50
15-1404	Heartsaver Pediatric First Aid CPR AED Online	\$20.00
15-1039	Heartsaver Pediatric First Aid CPR AED Instructor Manual	\$30.00
15-1040	Heartsaver Pediatric First Aid Quick Reference Guide	\$5.50
15-1041	Heartsaver Pediatric First Aid CPR AED DVD Set (2-disc)	\$99.00
15-3112	Heartsaver Pediatric First Aid CPR AED Instructor Manual eBook	\$30.00
15-3113	Heartsaver Pediatric First Aid CPR AED Student eBook	\$2.50
15-3119	Heartsaver Pediatric First Aid Digital Quick Reference Guide	\$5.50
15-1073	Heartsaver Pediatric First Aid CPR AED Student Workbook (6-pack)	\$15.00
15-1084	Heartsaver Pediatric First Aid CPR AED Course Video in Streaming Format	\$99.00
<b>Heartsaver Bloodborne Pathogens</b>		
15-1035	Heartsaver Bloodborne Pathogens Student Workbook	\$7.50
15-1036	Heartsaver Bloodborne Pathogens Facilitator Package	\$32.00
15-1037	Heartsaver Bloodborne Pathogens Poster Pack (5-pack)	\$21.50
15-1405	Heartsaver Bloodborne Pathogens Online	\$22.00
15-3111	Heartsaver Bloodborne Pathogens Student eBook	\$7.50

<b>Opioid Courses</b>		
15-1422	Opioid Education for Healthcare Providers	\$20.00
15-1423	Opioid Education for Non-Clinical Staff and Lay Responders	\$10.00
<b>Family &amp; Friends and CPR Anytime</b>		
15-1016	Family & Friends CPR Student Manual	\$1.85
15-1017	Family & Friends CPR DVD with Facilitator Guide	\$35.99
15-3132	Family & Friends CPR Student Manual eBook	\$1.85
15-3133	Family & Friends CPR DVD with Facilitator Guide eBook	\$35.99



15-1014	Adult & Child CPR Anytime Kit	\$38.50
15-1013	Infant CPR Anytime Kit	\$38.50
<b>AHA Instructor Training</b>		
15-1420	BLS Instructor Essentials Online	\$34.00
15-1067	BLS/Heartsaver Instructor Essentials Course DVD	\$14.85
15-1418	Heartsaver Instructor Essentials Online	\$34.00
15-1419	ACLS Instructor Essentials Online	\$34.00
15-1068	ACLS/ACLS EP Instructor Essentials Course DVD	\$14.85
15-1417	PALS Instructor Essentials Online	\$34.00
15-1416	PEARS Instructor Essentials Online	\$34.00
15-1069	PALS/PEARS Instructor Essentials Course DVD	\$14.85



<b>Course Completion Cards</b>		
15-1804	BLS Instructor Card (24-pack)	\$62.50
15-1805	BLS Provider Card (24-pack)	\$62.50
15-3001	BLS Provider eCard	\$2.40
15-1802	ACLS Instructor Card (24-pack)	\$142.00
15-1803	ACLS Provider Card (24-pack)	\$142.00
15-3000	ACLS Provider eCard	\$5.40
15-1801	ACLS EP Card (15-pack)	\$89.75
15-3007	ACLS EP eCard	\$5.40
15-1800	ACLS EP Instructor Card (12-pack)	\$71.00
15-1807	PALS Provider Card (24-pack)	\$142.00
15-1806	PALS Instructor Card (15-pack)	\$89.00
15-3006	PALS Provider eCard	\$5.40
15-1808	PEARS Instructor Card (15-pack)	\$89.00
15-1809	PEARS Course Completion Cards (24-pack)	\$142.00
15-3008	PEARS Provider eCard	\$5.40
15-1812	Heartsaver First Aid CPR AED Course Completion Card (24-pack)	\$408.00
15-3002	Heartsaver First Aid CPR AED eCard	\$17.00
15-1810	Heartsaver CPR AED Course Completion Card (24-pack)	\$408.00
15-3004	Heartsaver CPR AED eCard	\$17.00
15-1811	Heartsaver First Aid Course Completion Card (24-pack)	\$408.00
15-3005	Heartsaver First Aid eCard	\$17.00
15-1814	Heartsaver Instructor Card (15-pack)	\$37.50
15-1815	Heartsaver Pediatric First Aid Card (6-pack)	\$102.00
15-1816	Heartsaver First Aid Card (6-pack)	\$102.00
15-1817	Heartsaver CPR AED Card (6-pack)	\$102.00

<b>Course Completion Cards, continued</b>		
15-1818	Heartsaver First Aid CPR AED Course Completion Card (6-pack)	\$102.00
15-1813	Heartsaver Pediatric First Aid CPR AED Course Completion Card (24-pack)	\$408.00



15-3003	Heartsaver Pediatric First Aid CPR AED eCard	\$17.00
15-1819	Heartsaver for K-12 Schools Course Completion Card (24-pack)	\$57.65
15-3011	Heartsaver for K-12 Schools eCard	\$2.10
<b>Promotional Materials</b>		
90-1532	ACLS Lapel Pin (10-pack)	\$34.00
90-1534	BLS Lapel Pin (10-pack)	\$34.00
90-1535	CPR Lapel Pin(10-pack)	\$34.00
90-1533	PALS Lapel Pin (10-pack)	\$34.00
90-1579	PEARS Lapel Pin (10-pack)	\$34.00
90-1059	Emergency Action Wallet Card (50-pack)	\$6.99
80-1159	ACLS Instructor Lapel Pin	\$4.50
80-1160	BLS Instructor Lapel Pin	\$4.50
80-1161	PALS Instructor Lapel Pin	\$4.50
80-1685	Heartsaver Instructor Lapel Pin	\$3.35
70-2350	ECC Red Click Pen (20-pack)	\$33.99
70-2284A	AHA Lanyard (10-pack)	\$14.50
70-2308	AHA Red Travel Mug	\$14.50
70-2311	AHA Red Magnet Paper Clip	\$2.15
77-0218	Black Canvas Briefcase	\$24.00
90-1500	Black Recycle Tote Bag	\$2.85
90-1527	AHA Notebook	\$6.25
15-1501	AHA Stopwatch	\$6.95
15-1502	Rolling Backpack	\$76.99

<b>Spanish Materials</b>		
15-2303	Spanish 2015 Handbook of Emergency Cardiovascular Care for Healthcare Providers	\$27.50
15-2308	Spanish Basic Life Support (BLS) Provider Manual	\$14.85
15-2309	Spanish Basic Life Support (BLS) DVD Set	\$82.50
15-2310	Spanish Heartsaver® Bloodborne Pathogens Student Workbook	\$6.50
15-2315	Spanish Advanced Cardiovascular Life Support (ACLS) Provider Manual	\$38.50



15-2318	Spanish Advanced Cardiovascular Life Support (ACLS) DVD Set	\$82.50
15-2322	Spanish Heartsaver First Aid CPR AED DVD Set	\$165.00
15-2324	Spanish Heartsaver FA CPR AED Student Workbook	\$16.45
15-2326	Spanish Family & Friends CPR Student Manual	\$2.20
15-2327	Spanish Family & Friends CPR DVD W/Facilitator Guide	\$32.99
15-2328	Spanish Pediatric Advanced Life Support (PALS) DVD Set	\$82.50
15-2330	Spanish Pediatric Advanced Life Support (PALS) Provider Manual	\$42.35
15-2342	Spanish PEARS Provider Manual	\$35.00
15-2343	Spanish PEARS DVD	\$80.00
15-2347	Spanish Basic Life Support/Heartsaver Instructor Essential DVD	\$18.00
15-2348	Spanish ACLS Instructor Essential DVD	\$18.00
15-2305	2015 Spanish Handbook of Emergency Cardiovascular Care for Healthcare Providers eBook	\$27.50
15-2306	Spanish Basic Life Support (BLS) Instructor Manual eBook	\$36.30
15-2307	Spanish Basic Life Support (BLS) Provider Manual eBook	\$14.85
15-2312	Spanish Heartsaver® Bloodborne Pathogens Student eBook	\$6.50
15-2316	Spanish Advanced Cardiovascular Life Support (ACLS) Provider Manual eBook	\$38.50
15-2317	Spanish Advanced Cardiovascular Life Support (ACLS) Instructor Manual eBook	\$46.25
15-2323	Spanish HS FA CPR AED Instructor Manual eBook	\$33.00
15-2325	Spanish Heartsaver First Aid CPR AED (HS FA CPR AED) Student Workbook eBook	\$16.45
15-2329	Spanish Pediatric Advanced Life Support (PALS) Instructor Manual eBook	\$46.00







**Office of Management and Budget  
Division of Purchasing  
Non-Competitive Contract Request Form**

Department	Emergency Services	Department Contact	Michael Bennett
Contact Email	michael.bennett@louisvilleky.gov	Contact Phone	502-572-3465

Contract Type: check one	<b>New</b>	<b>Amendment</b>		
		Additional Funds	Time Extension	Scope
Professional Service				
Sole Source (goods/services)	✓			
	<b>Start</b>	<b>End</b>		
Requested Contract Dates (MM/DD/YYYY)	07/01/2020	06/30/2021		

**VENDOR INFORMATION**

Vendor Legal Name	American Heart Association				
DBA					
Point of Contact	Darlene Clayton	Email	darlene.clayton@heart.org		
Street					
Suite/Floor/Apt		Phone	214-570-2923		
City	Richardson	State	TX	Zip Code	
Federal Tax ID#	[REDACTED]		SSN# (If sole proprietor)		
Louisville Revenue Commission Account #					
<a href="#">Human Relations Commission Certified Vendors</a>	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business		
Select if applicable					

**FINANCIAL INFORMATION**

Not to Exceed Contract Amount	<b>\$300,000</b>	(including reimbursement expenses, if applicable)			
Fund Source: General Fund	✓				
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	1101	362	2225	222501	531414
Payment Rate	per hour		per day		per service
	per month		Other		
Payment Frequency	Monthly	✓	Upon Completion / Delivery		
	Quarterly		Other		



Office of Management and Budget  
Division of Purchasing  
Non-Competitive Contract Request Form

**CONTRACT SCOPE and PURPOSE** (Attach additional documentation if necessary)

**Amendments:** Describe the circumstances under which a time extension or scope change is needed.

**New:** Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

Louisville Metro EMS CPR center teaches CPR and a variety of related classes through an affiliation with the American Heart Association. In order to certify students with the AHA, the CPR center needs to purchase product from the AHA that is then sold to students taking classes. The most frequent example is people who sign up for a HeartSaver First-Aid and CPR Course. They need to purchase educational materials and then there is a cost for the card that verifies their successful completion of the course. The CPR center charges an up-charge for the product so that the CPR center is very close to self-sufficient. The revenue they bring in offsets the operational cost of running the center (administration, salaries). The benefit to Metro Government and the city of Louisville is that more people are trained in the life saving skill of CPR. The risk of surviving a cardiac event greatly increases when bystander CPR is performed before first responders arrive on scene.

**JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE** (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

Channing Bete used to be a reseller of AHA material. They have gone out of business as of July 2019. The American Heart Association has shifted their distribution model so that they are the only place to order their products. A sole source letter is attached as additional documentation. In order to be an affiliated AHA center, the CPR Center must use AHA material in its education of students. The AHA is the industry leader in the education of CPR training and the LMEMS CPR Center has a long-standing partnership with the AHA to provide this training in our community.

**AUTHORIZATIONS:** Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director Edward J. Merzman Date 7/23/2020

Signature EDUARDO J. MERZMAN EA  
Printed Name

DocuSigned by:

Purchasing Director Joel Neaveill Date 8/25/2020

Signature 78B36603FB3A42D...

Joel Neaveill

RESOLUTION NO. \_\_\_\_\_, SERIES 2020

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED SOLE SOURCE CONTRACT FOR EMS CONCERNING CPR, FIRST AID AND CARDIOVASCULAR CARE MATERIALS - (AMERICAN HEART ASSOCIATION, INC., - \$300,000.00).

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

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The following appropriation for the listed contract is hereby approved:

**EMS**

\$300,000.00 for a noncompetitively negotiated Sole Source Contract with American Heart Association, Inc. for CPR, first aid and cardiovascular care materials for use in EMS training from July 1, 2020 through June 30, 2021.

SECTION II: This Resolution shall take effect upon its passage and approval.

\_\_\_\_\_  
Sonya Harward  
Metro Council Clerk

\_\_\_\_\_  
David James  
President of the Council

\_\_\_\_\_  
Greg Fischer  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

DocuSigned by:  
BY: Paul Rutherford 8/25/2020