

Continuing Education Provider Agreement

This non-exclusive Continuing Education Provider Agreement ("Agreement"), effective as of this _____ day of _____, 201__ is entered into by and between American Council on Exercise, a California corporation with its principal place of business at 4851 Paramount Drive, San Diego, California 92123 ("ACE") and the organization and individual listed below ("Provider").

Whereas, ACE-certified Professionals ("Professionals") are required to complete twenty (20) hours of continuing education credits biannually (2.0 CEC's) in order to maintain their certification and thus seek out workshops, seminars, correspondence courses, and industry conventions ("the Product"), that have been awarded ACE CEC approved status;

Whereas, ACE seeks ACE Continuing Education Providers to assist in providing these high quality CEC's to Professionals; and

Whereas, Provider desires to become an ACE Continuing Education Provider for 201__ in order to assist in the effort to deliver high quality CEC education and training to Professionals;

NOW, THEREFORE, In consideration of the above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Statement of Agreement

1.1 In applying to become or renew Provider's status as an ACE Continuing Education Provider, Provider agrees to the terms set out herein. Additionally, Provider agrees that: (a) it has submitted or will submit with this Agreement a completed and accurate Continuing Education Provider Application (a copy of which is attached hereto as Exhibit A and which is hereby incorporated herein by this reference); and (b) it will abide by ACE's Continuing Education Provider Policies and Procedures and Code of Ethics, copies of which attached hereto as Exhibits B and C, respectively and which are hereby incorporated herein by this reference). Furthermore, Provider agrees that it has submitted or will submit with this Agreement all items listed on ACE's Live Course Application Checklist if Provider intends to provide the Product(s) to one or more Professionals in person and/or ACE's Distance Learning Application Checklist if Provider intends to provide the Product(s) to one or more Professionals via the Internet or some other form of distance learning. Copies of ACE's Live Course Application Checklist and Distance Learning Application Checklist are attached hereto as Exhibits D and E, respectively, and are hereby incorporated herein by this reference. ACE reserves the right to modify the documents attached hereto as Exhibits A – E and to require compliance by Provider with such modifications within ninety (90) days of notification of any modifications. Provider acknowledges and agrees that ACE application fees are non-refundable and are charged in consideration of ACE's review of Provider's application to become a Provider pursuant to this Agreement and all materials related to such application. ACE reserves the right at its sole discretion, to publicize and promote this Continuing Education Provider relationship in any manner ACE deems appropriate.

1.2 Should Provider be approved to join the ACE Academy, ACE agrees to review workshops, seminars, and like products produced by Provider for CEC approval.

2. Term

This Agreement shall commence as of the date of final execution of the parties herein and continue through December 31, 2011. Should Provider not be admitted into the ACE Academy, this Agreement will immediately terminate without any further notice to Provider. This Agreement may be renewed for additional one (1) year terms by mutual written agreement of the parties. All rights granted herein shall terminate upon the termination of this Agreement.

3. Grant of License

During the term hereof, and subject to the terms and conditions of this Agreement ACE grants to Provider a non-exclusive, non-transferable limited license to use the ACE APPROVED mark and logo (the "Mark") in connection with the sale and distribution of only the Product expressly approved for CEC's in writing by ACE. That license is personal to the Provider named in this Agreement. A copy of the Mark is attached hereto as Exhibit G and incorporated by this reference as though fully set forth herein.

The Product may be marketed, distributed and sold by Provider throughout the World. Provider's right to use the Mark is limited to use of the mark ACE APPROVED. Provider may not use the Mark in any other manner, on any other products, or in any other media without the express written permission of ACE.

4. License Limitations

All rights not specifically granted to Provider herein are expressly reserved by ACE. Provider agrees to use the proper trademark notice (TM) for each reference to the Mark. Provider may not: (a) use the ACE® or AMERICAN COUNCIL ON EXERCISE® marks; (b) use the Mark with any descriptive qualifier other than "approved"; (c) use the Mark on any promotional materials that promote Provider's other services; or (d) use the Mark in conjunction with any other product or service not approved in writing by ACE.

5. Ownership of Trademark

Provider acknowledges that ACE is the owner of the Mark and all other rights and entitlements related thereto. Other than as expressly set forth herein, Provider has absolutely no right title or interest in or to the Mark. Provider further agrees that it will not alter the Mark in any way, that it will do nothing inconsistent with ACE's ownership of the Mark, and that all goodwill from use of the Mark by Provider shall inure solely to the benefit of ACE.

6. Quality Control/Approval of Product

6.1 Provider shall provide the final version of the Product to ACE for content review in order to allow ACE to determine, in its sole judgment if all content is consistent with ACE's standards. Provider must obtain ACE's written approval prior to any distribution or sale of Products bearing the Mark and reasonable approval will not be withheld. After the Product is approved in writing, Provider shall not depart there from without resubmitting the new finished Product for subsequent written approval by ACE. Provider agrees that the nature and quality of the Product shall be of the highest quality, manufactured free from defects and in full compliance with all laws, and with the quality control standards established by ACE. Provider shall operate its business in a manner that reflects favorably at all times on the Mark. At ACE's request Provider shall provide ACE with copies of the Product or any materials related to the Product including, but not limited to, brochures, line sheets, advertisements, and promotional materials.

Except as provided in section 6.1 above and section 2 of Schedule 1 attached hereto, if, at any time, ACE determines in its reasonable discretion that a Product bearing the Mark is of poor quality, ACE may give Provider notice to immediately cease production and distribution of said Product until its quality is improved to the reasonable satisfaction of ACE. Upon notice of defect given by ACE, Provider shall promptly cure the defects in the use of the Mark or the goods offered thereunder. In the event that the Provider does not take reasonable steps to cure such defect within thirty (30) days after notification by ACE, ACE shall have the right to terminate this Agreement without further notice to Provider. Provider agrees not to use any other trademark or service mark of a third party in combination with the Mark without prior written approval of ACE. Provider agrees to conduct itself in a manner that reflects favorably at all times on the Mark and ACE. If, at any time, ACE determines in its reasonable discretion that Provider has misused the Mark, violated the ACE Continuing Education Provider Policies and Procedures or ACE Continuing Education Provider Code of Ethics, misled consumers, or misrepresented itself or its products or services in any way, ACE shall have the right to terminate Provider's ACE Continuing Education Provider Membership and this Agreement without further notice to Provider.

7. Release and Insurance

Provider hereby agrees to waive, release, and forever discharge ACE and ACE's affiliates, agents, servants, employees, officers, directors, instructors and all others from any and all responsibilities or liability of any nature from injuries or damages resulting from or related to Provider's Product.

Provider further agrees to obtain and keep in force policies of general liability insurance which will include but not be limited to personal injury liability, premises liability, workers compensation insurance, employer's liability insurance, broad form property damage, and independent contractor coverage which would cover any act or injury occurring related to Provider's Product. Insurance will hold limits of \$1,000,000 with an insurance company that ACE deems satisfactory, Provider's insurance will be considered primary of any similar insurance carried by ACE. Copies of insurance policies will be made available to ACE upon written request.

8. Notices

Any notice, communication or payment hereunder shall be deemed sufficiently given if in writing and deposited in the United States Mail in a sealed envelope registered or certified with postal charges prepaid, (International applicants must utilize overnight delivery service with package tracking and delivery confirmation, i.e. FedEx), to the following address:

To ACE:
American Council on Exercise
4851 Paramount Drive
San Diego, CA, 92123

To Provider: At the address listed below under "Provider".

9. Additional Terms and Conditions:

Additional Standard Terms and Conditions are attached hereto as Schedule 1 and hereby incorporated by this reference.

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List of Attachments

- Schedule 1 – Standard Terms and Conditions
- Exhibit A - Continuing Education Provider Application Overview
- Exhibit B - ACE's Continuing Education Provider Policies and Procedures
- Exhibit C - ACE's Continuing Education Provider Code of Ethics
- Exhibit D - ACE's Live Course Application Checklist
- Exhibit E - ACE's Distance Learning Application Checklist
- Exhibit F - ACE's Conference Application Checklist
- Exhibit G - Licensed Mark

Schedule 1

Standard Terms and Conditions

1. Infringement Proceedings

If Provider becomes aware of any fraudulent use, misuse, or infringement of the Mark, Provider shall immediately notify ACE of the particulars. In its sole discretion, ACE shall maintain and defend all actions with respect to protection and maintenance of the Mark. Any recovery shall belong exclusively to ACE.

2. Termination of Agreement

Upon termination of this Agreement: (a) all rights in the Mark and the goodwill connected therewith shall remain the property of ACE; (b) all rights granted herein to Provider shall terminate and Provider shall have no further rights to the Mark; (c) Provider shall cease use of the Mark and all related manufacturing, sale and any activity that suggests that it has any right to the Mark or that it has any association with ACE; and (d) Provider shall return to ACE all products and packaging bearing the Mark.

ACE shall have the right to terminate this Agreement upon fifteen (15) days written notice to Provider in the event of any affirmative act of insolvency by Provider, or upon the appointment of any receiver or trustee to take possession of the properties of Provider or upon winding-up, sale, consolidation, merger or any sequestration by governmental authority of Provider. In the event of the termination by ACE for failure by Provider to satisfy the terms and conditions of this Agreement, Provider agrees that ACE will not be liable for any direct or consequential damages as a result of such termination.

3. Choice at Law, Venue, Fees and Costs

This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement is deemed to be consummated in the State of California and the parties consent to venue and personal jurisdiction in San Diego, California in the event of a dispute.

All disputes shall be resolved by the procedures established by the ACE Continuing Education Provider Policies and Procedures. If the parties fail to resolve their dispute, it will be decided by the commercial rules of The American Arbitration Association and held in San Diego, California. In the event that any party to this Agreement commences any action, legal or otherwise, concerning any aspect of this Agreement including but not limited to the interpretation or enforcement of any of its provisions or because of any alleged dispute, breach, default, or misrepresentation in connection with any aspect or provision of this Agreement the prevailing party shall be entitled to recover reasonable attorneys' fees and all other costs and expenses incurred in connection with the action or proceeding. The award of attorney's fees shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, include the full amount of costs, expenses, and attorney fees incurred in good faith.

4. Representations and Indemnity

ACE hereby represents and warrants to Provider that: (i) ACE has the power and authority to enter into this Agreement and to perform its obligations hereunder; and (ii) The Mark or any related materials will not violate the rights of any third party and

will not give rise to any claim of such violation.

Provider hereby indemnifies and agrees to hold harmless ACE, ACE's affiliates and agents, servants, employees, officers, directors and other officials (collectively, the "Indemnified Parties") from any loss, liability, damage, cost or expense (including reasonable attorneys' fees), arising out of the manufacture and distribution of any products including, without limitation, any lawsuits involving any of the Indemnified Parties by reason of or alleging any (i) acts or omissions of Provider, (ii) breach of any representations, warranties or covenants of Provider under this Agreement, (iii) unauthorized or infringing use by Provider of any patent, process, trade secret, copyright, trademark, or publicity right or other similar property rights or (iv) any alleged defects (design, manufacturing, handling or other) or inherent dangers in the Product or the use thereof, ACE shall have the right to control the defense of any claim and no such claim shall be settled without the approval of ACE. ACE shall notify Provider promptly of any claim hereunder as to which ACE is seeking indemnification.

5. Entire Agreement, Modification, Assignability

This Agreement contains the entire agreement of the parties hereto and no prior written or oral negotiations, representations, inducements, promises, or agreements between them regarding the subject of this Agreement not embodied herein shall be of any force or effect. No express or implied warranties, covenants, or representations have been made concerning the subject matter of this Agreement unless expressly stated herein. The Section headings in this Agreement are for identification purposes only and shall not affect the interpretation of this Agreement or any party hereof.

This Agreement may not be superseded and none of the terms of this Agreement may be waived or modified except by an express written agreement signed by all parties hereto. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent written modification signed by all parties. The invalidity or unenforceability of any provision herein shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Neither this Agreement nor any of Provider's rights hereunder are assignable by Provider without the express written consent of ACE. Subject to the above restraints on assignment, this Agreement shall be binding upon and shall inure to the benefit of all successors and assigns of the parties.

6. Non-Agency of Parties

This Agreement does not constitute and shall not be construed as constituting an agency, a partnership or joint venture between ACE and Provider. Provider acknowledges that it is an independent contractor and not an employee of ACE, Provider shall have no right to obligate or bind ACE in any manner whatsoever, and nothing herein contained shall give, or is intended to give any rights of any kind to any third parties.

Exhibit A

Continuing Education Provider Application

The following information will be required as part of your online CEC provider application:

Company Name

Primary Contact First Name

Primary Contact Last Name

Address 1

Address 2

Address 3

City

State/Province

Country/Region

Phone

Fax

Email

Website

AceFitness.Org Username

Confirm Username

Password

Confirm Password

Exhibit B

ACE's Continuing Education Provider Policies and Procedures

I. Operational Guidelines & Procedures

- 1.) ACE operational guidelines and procedures ensure quality education and service to ACE-certified professionals. These operational guidelines and procedures may be modified by ACE at any time. Each approved organization and its designated contact agrees to adhere to the following:

1. "In Class"

Before the Course

- a. Identify one individual as a contact person who will be responsible for communicating with ACE and disseminating information to all approved instructors.
- b. Respond to any ACE staff inquiries and customer complaints.
- c. Notify ACE prior to any course, instructor or organizational changes.
- d. Represent ACE and ACE's materials in a positive and professional manner.
- e. Ensure all instructors are approved and follow ACE guidelines.

During the Course

- a. Issue each attendee an accurate certificate of completion at the conclusion of every ACE approved course. An accurate certificate of completion must include: attendee name, course title (as approved by ACE), ACE approval number, course date, number of continuing education credits (CECs) and the approved presenter's name.
- b. The ACE Approved Logo may not be used on certificates of completion.
- c. ACE will not approve courses that culminate in the award of a core certification (e.g., foundational and advanced personal trainer, exercise specialist and group fitness instructor certifications) that is non-NCCA accredited. ACE will however approve quality continuing education programs (e.g., specialty certifications, certificate programs, and instructor training courses) that are committed to providing outstanding information and training to certified fitness professionals. An accredited certification represents an unbiased measure of an individual's knowledge and competence in a given area. Continuing education provides the professional with an opportunity to increase his/her knowledge and skills. ACE believes strongly that establishing a legitimate standard for credentialing while upholding separate rigorous requirements for continuing education is essential to providing the highest level of service to consumers and enhancing the image of our industry's professionals.
- e. Allow ACE to administer quality assurance audits.
- f. Teach the course as submitted and approved by ACE.

After the Course

- a. Keep master copies of approved course content on file for two years.
- b. Keep course attendance electronic/paper records on file for at least three years.
- c. Ensure that contact information is readily available to course participants and that customers receive a timely response to inquiries.

2. "At Home"

Text/DVD Format

- a. Deliver materials to customers within one week of payment.
- b. Make a refund policy available if materials are not delivered on time or in good condition.
- c. Use a traceable carrier when shipping materials.
- d. Incorporating a complete-by-date in your course materials is highly recommended.

Online Format

- a. Technical specifications for online courses must be stated prior to purchase of the course (e.g. operating system, memory and speed of processor, download of video/audio capability, etc.).
- b. A course that has been significantly modified or changed in content will be considered a new course and will require a separate application and applicable fees.
- c. A text/DVD or live course which has been adapted for online delivery must go through a separate application process.

Exhibit B

ACE's Continuing Education Provider Policies and Procedures (con't)

II. Marketing Guidelines

As an ACE Continuing Education Provider, you are required to thoroughly review and abide by all guidelines as outlined in the ACE Style Guide. This includes policies and procedures for usage of the ACE-approved Logo and the American Council on Exercise name. The ACE Style Guide and ACE-approved Logo files can be found at www.acefitness.org.

III. Leasing the ACE Mailing List

The American Council on Exercise will lease the ACE-certified Personal Trainer, Advanced Health Fitness Specialist, Group Fitness Instructor and Lifestyle & Weight Management Consultant (collectively known as ACE-certified Professionals) list to qualified ACE Continuing Education Providers to promote their ACE-approved courses. Use of this list is restricted to educational programs, products and services approved by ACE. To lease the ACE mailing list, you must complete the ACE mailing list order form, sign the mailing list agreement and submit a rough draft of your promotional piece. Requests will be processed within ten business days. Detailed instructions on how to lease the ACE mailing list will be provided upon course approval. Requests to lease the ACE mailing list must follow the guidelines listed below:

- a. Follow ACE Marketing Guidelines.
- b. Promote products/services that are safe and developed on a solid foundation of science and best practices.
- c. Promote only courses, products and services that are approved by ACE.
- d. Present appropriate advertising to ACE audience and represent ACE in an accurate and professional manner.
- e. ACE reserves the right to refuse a mailing list request if it conflicts with ACE's goals, purpose or mission statement. ACE reserves the right to change guidelines without notice.

IV. Provider Disciplinary Procedures

ACE Continuing Education Providers must submit honest and accurate information in the application process and comply with ACE policies and procedures and the terms of the Continuing Education Provider Agreement. ACE policies and procedures may be modified by ACE at any time. Providers found to be in violation of these policies and procedures will be notified by ACE and given the opportunity to correct the situation. Failure to do so on the part of the ACE Provider may result in revocation or other action with regard to the application or course approval and/or disciplinary action for those holding ACE certification.

Exhibit C

Continuing Education Provider Code of Ethics

As an ACE Continuing Education Provider, you will be expected to:

- Provide high quality, up-to-date, scientifically sound, and practically relevant continuing education.
- Uphold the scope of practice of the fitness professional.
- Adhere to all education program standards and operational guidelines and procedures as outlined by ACE.
- Be truthful in statements to ACE, the public and other fitness professionals.
- Comply with all applicable business, employment and copyright laws
- Provide equal and fair treatment to all clients and students.
- Uphold and enhance public appreciation and trust for the fitness industry.
- Maintain the confidentiality of all client and student information.
- Maintain the integrity and copyright of all ACE documents and materials.
- Maintain a drug- and alcohol-free work and educational environment.

Mission Statement

The American Council on Exercise (ACE)[®] is a non-profit organization committed to enriching quality of life through safe and effective physical activity. As America's Authority on Fitness,[™] ACE protects all segments of society against ineffective fitness products, programs, and trends through its ongoing public education, outreach and research. ACE further protects the public by setting certification and continuing education standards for fitness professionals.

Exhibit D

Live Course Application Checklist

You should be prepared to enter the following information into the online course application:

- Description (descriptions should be clear and engaging. Use 100-150 words to represent the focus, subject and intended audience)
- List of Objectives (objectives must be clear and specific to the outline submitted. Briefly list three measurable objectives the participants will be able to meet after attending your course. Start each objective with “Students will be able to...”

For example:

- Students will be able to calculate percent fat when give a food label
 - Students will be able to identify 10 major muscles in the lower body
 - Students will be able to demonstrate standard technique when performing a squat
- Course Length (in hours)
 - Instructor Information (enter the first and last name of your instructor or one of your instructors, and upload his/her resume in MS Word or PDF format. (*Once the course is approved, additional instructors may teach the course granted they meet ACE's presenter requirements).
 - Course Upload (please upload one file of course information (detailed course outline or course manual) that you would like the ACE Academy department to review. We will only accept PDFs, Zip, and MS Word files (.pdf, .zip, .doc, .docx) and the file must be less than 10 MB in size).

Exhibit E

Distance Learning Course Application Checklist

You should be prepared to enter the following information into the online course application:

- Course Title
- Course Description (100-150 words)
- List of Objectives (objectives must be clear and specific to the outline submitted. Briefly list three measurable objectives individuals will be able to meet after completing your course. Start each objective with “Students will be able to . . .”

For example:

- Students will be able to calculate percent fat when give a food label
 - Students will be able to identify 10 major muscles in the lower body
 - Students will be able to demonstrate standard technique when performing a squat
- Author(s) including degrees, certifications and experience related to the topic area.
 - Course Outline – Outlines must contain the agenda of information that meets the objectives listed. An estimated time allotment for each section must be noted. Include detailed descriptions of all practical drills/skill enhancement.
 - Names and email addresses of three reviewers

If applicable, you will also be asked to provide:

- Run Time of DVD/CD or video materials
- Word count of print materials
- Link to access online course

You must submit to ACE a complete set of course materials. If you are submitting an online course, these should be available through the link you provide to ACE. All other course materials should be sent to ACE at the following address:

American Council on Exercise
Academy – Continuing Education Applications
4851 Paramount Drive
San Diego, CA 92123

Course materials should include:

1. All manuals, text, DVDs, CDs and other materials which comprise the course.
2. Bibliography/references – Bibliographies and references demonstrate that the author has done adequate background research and also provide resources that students can refer to if they wish to learn more about the topic.
3. Post-completion test – An exam should be designed to verify participant completion of the course, reinforce important content, evaluate student comprehension and verify that the learning objectives were met. It is recommended that courses valued at 0.1-0.2 CECs have 8-10 exam questions for each contact hour. Fewer questions (5-8) are acceptable per credit hour for longer courses.
4. Clear instructions on how to complete the course
5. Material permissions - If the author is not affiliated with your organization, please explain your right to use the material.
6. Three completed review forms (3) - You must obtain reviews of your course from three reviewers using the ACE Distance Learning Course Review Form. Reviewers should be subject matter experts and/or fitness professionals who represent your intended audience. Reviewers should provide feedback as to course content, relevance, accuracy and readability as well as completion time. You are responsible for making changes to your course based on reviewer feedback prior to submission. Please send completed review forms to ACE when you are mailing in course materials.

Exhibit F

Conference Application Checklist

You should be prepared to enter the following information into the online course application:

- Conference Title
- Conference Description
- Conference Start Date
- Conference Length in Days
- Conference Location (city, state and ZIP code)
- Number of Conference Sessions
- **Conference Upload** (upload a copy of the event brochure which includes a session grid (specifying the date/time of each session), session descriptions and presenter bios. The PDF must be smaller than 10MB).

Exhibit G Licensed Mark

As an ACE Continuing Education Provider, you are required to thoroughly review and abide by all guidelines as outlined in the ACE Style Guide. This includes policies and procedures for usage of the ACE-approved Logo and the American Council on Exercise name. The ACE Style Guide and ACE-approved Logo files can be found at www.acefitness.org. (Select the "Continuing Education Provider" link then login to your account when prompted)."

