

TRAINING PROGRAM AGREEMENT

This Agreement, made this _____ day of _____, 2011, between Erie County Technical School, located at 8500 Oliver Road Erie, PA 16509-4699 (hereinafter referred to as "ECTS")

a n d

Institute for High Priority Occupations, a Pennsylvania Limited Liability Company with offices at PO Box 346 New Stanton, PA 15672 (hereinafter referred to as "IHPO").

WITNESSETH:

WHEREAS, ECTS is proposing to offer programs for training students in a variety of industries classified as High Priority Occupations, whose programs would embrace both classroom instruction and practical hands-on training; and

WHEREAS, ECTS has facilities to offer the program and provide the required classroom instruction; and

WHEREAS, IHPO has the training equipment and personnel to manage and conduct the program and the ability to provide the curriculum specific to said programs and has agreed to furnish such components to students enrolled in the program upon the terms and conditions herein provided.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

1. PROGRAM. ECTS agrees to assist IHPO with development and implementation of - various training programs offering classroom and laboratory instruction for adult students (the "Program"). ECTS agrees that facilities and staff will be engaged to permit offering the Program on a continual basis beginning on the date of this Agreement and continuing for the life of this Agreement.
2. OBLIGATIONS OF ECTS. ECTS shall administer all aspects of the Program, including but not limited to, marketing, admissions, instruction, placement, and graduation, including but not limited to administering the following components:
 - a. to select, along with IHPO, the curriculum to be offered;
 - b. to assist IHPO with drafting, implementing and enforcing the policies governing the Program and its students, including, but not limited to, policies pertaining to attendance, grading, permitted absences, completion requirements and terminations prior to completion;
 - c. to provide classroom and office space, furnishings and supplies, utilities, office equipment, phone service, Internet access and classroom audio-visual equipment. ECTS to provide appropriate practice driving area(s). Provided, however, any exterior training which would utilize any ECTS roads or parking areas cannot occur during secondary school hours;
 - d. to cooperate with IHPO's development and implementation of a marketing and advertising plan for the Program, ECTS and IHPO shall coordinate and agree on the plan and associated costs in advance. Advertising shall at all times be in strict compliance with requirements of the appropriate accrediting and licensing bodies. Said marketing materials shall indicate that a portion of the Program is furnished by IHPO, in such a manner as may be agreed upon by the parties;
 - e. to administer and provide the necessary personnel required for the registration of students. ECTS shall not be obligated to provide financial aid to students from its own resources or to act as a guarantor for the repayment of any financial aid and;
 - f. to determine, establish, and administer minimum requirements to be met by students seeking admission to the Program .
3. OBLIGATIONS OF IHPO. IHPO agrees to perform each of the following:

- a. with the advice and consent of ECTS, develop and plan the curriculum and policies for the Program, the selection and supervision of the classroom, lab and field instructors, and the preparation of special promotional and advertising materials for the Program;
- b. to provide a qualified person to be primarily responsible for the services, equipment and facilities furnished by IHPO and ECTS pursuant to this Agreement. Such qualified person shall be available for regularly scheduled meetings with ECTS for the purpose of monitoring compliance with the terms hereof, discussing problems arising in connection with the Program, and insuring coordination of the classroom instruction with the practical training. IHPO also agrees to establish communication procedures for student complaints and suggestions;
- c. to furnish and maintain, at its own expense, sufficient vehicles, equipment and tools for use in the Program, and to pay all costs supplies required for operation of the vehicles, tools and equipment;
- d. to provide, at its expense, all instructional manuals, forms, training aids and materials necessary for use by the instructional staff in the instruction of the Program. IHPO will report to ECTS, on a periodic basis, information relative to instructor/student assignments, progress of students, problems requiring special attention, statistics required by ECTS, and projected and forecasted data pertaining to the Program;
- e. to provide all instructors required for classroom and classroom-related instruction, and all instructors required for the laboratory, range and practical field instruction phases of the Program; and
- f. to assist ECTS in providing job placement for graduates of the Program and to serve as their liaison with the Natural Gas and Oil industries;
- g. to obtain and maintain, at its own expense, appropriate workers' compensation coverage for all employees of IHPO involved in the Program.
- h. assist students with obtaining and processing financial aid, including preparation of any financial aid applications. Under no circumstances shall ECTS be obligated to provide any staff or resources to assist any student with obtaining any financial aid;
- i. require that all students execute a release, acceptable to ECTS, wherein the student releases ECTS from any liability for injury to person or property during any training.

4. CLASSES AND TUITION. IHPO may offer the following classes but are not limited to:

- a. Certified Natural Gas Well Tender with CDL Class A
- b. Certified Natural Gas & Oil Facility Technician
- c. Certified Energy Specialist (Evening)
- d. Heavy Equipment Operator

In addition to the tuition fees referenced above, students may be required to expend additional fees (such as fees for U.S. Department of Transportation physical exam and drug test, state permit, license and test, motor vehicle record, criminal background checks, books or loan application fees). The tuition and fees charged to each student for enrollment in the Program may be changed from time to time by ECTS and ECTS shall advise IHPO of said amount and of any changes that may occur. ECTS shall collect all tuition from students in accordance with its pre-existing tuition collection procedure, which is subject to modification at the discretion of ECTS.

5. COMPENSATION. As compensation for the services provided hereunder, IHPO shall be paid ninety percent (90%) of the program tuition per student, plus required student fees incurred by IHPO, as collected by ECTS. ECTS shall not be obligated to pursue collection efforts in the event a student, sponsoring agency, employer or a source of financial aid defaults in the payment of tuition. For those students terminated from the Program prior to completion, IHPO shall be paid a pro-rated share of the tuition amount retained by ECTS. IHPO's compensation shall be paid to IHPO within thirty (30) days of receipt of the tuition by ECTS from the student, any sponsoring agency, employers or any other source.

6. REFUNDS. If ECTS is required to refund tuition to a student or to the student's source of financial aid pursuant to its published policies or for any other reason, except the default of ECTS, the refund shall be deducted from total tuition payments upon which IHPO's compensation is based as provided in Paragraph 5, so that the parties shall bear the cost of such refunds in the proportions set forth in Paragraph 5.
7. SUSPENSION OF SESSIONS. Neither ECTS nor IHPO shall be obliged to conduct any session in which it is determined by mutual agreement that one or both parties have sufficient reasons not to begin that session or sessions.
8. INDEPENDENT CONTRACTOR. In the performance of its obligations hereunder, it is understood and agreed that IHPO is at all times acting and performing as an independent contractor, and ECTS shall neither have nor exercise any control or direction over the methods by which IHPO or its employees shall perform their work and functions, so long as reasonable standards established by ECTS and all applicable laws, rules and regulations of any and all governmental authorities and accrediting agencies have been met. Nothing herein shall be construed as establishing a joint venture or employment relationship between ECTS and IHPO or its employees.
9. INDEMNIFICATION. IHPO agrees to indemnify and hold ECTS harmless from any and all loss, expense, cost, damage or liability incurred by ECTS and arising out of the acts or omissions by IHPO of services pursuant to this Agreement, except to the extent that such loss, expense, cost, damage or liability arises out of the acts or omissions of ECTS or its employees, agents or students. Subject to and without waiver of the immunities and limitations of liability set forth in the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. §§ 8541, et seq., ECTS agrees to indemnify and hold IHPO harmless from any and all loss, expense, cost, damage or liability incurred by IHPO and arising out of the acts or omissions of students or the acts or omissions by ECTS of services pursuant to this Agreement, except to the extent that such loss, expense, cost, damage or liability arises out of the acts or omissions of IHPO or its employees or agents.
10. INSURANCE COVERAGE. IHPO shall maintain insurance coverage, including, but not limited to comprehensive general liability for the premises upon which the Program is conducted in the amount of \$1,000,000.00. IHPO agrees to maintain fleet liability in the amount of \$1,000,000.00, with \$1,000.00 deductible for physical damage (specified perils and collision) on all tractor/trailer units and heavy equipment. Such insurance shall be an "occurrence" policy. Such insurance shall be kept in force throughout the term of this Agreement and for two (2) years following the date of expiration or termination of this Agreement, provided that such insurance is readily available in the marketplace and at commercially reasonable premiums. A certificate of insurance in favor of ECTS must be provided. It must clearly show ECTS named as an additional insured; and it must further provide that the policy shall not be cancelled, non-renewed, or materially changed so as to affect the insurance described until 30 days notice of such action has been delivered to ECTS. Such policy shall provide primary coverage to ECTS without requirement of contribution by ECTS or from ECTS's insurance.
11. TERM AND TERMINATION.
 - a. INITIAL TERM. The initial term of this Agreement shall continue until the second anniversary of the commencement of the first session of the Program offered by ECTS; provided, however, that any sessions then in progress upon such anniversary date shall be completed in accordance with the terms thereof; and the term shall then continue from year to year thereafter unless either party serves written notice upon the other not less than sixty (60) days prior to the end of the initial two (2) year term or the then current one (1) year term of its intention not to extend the term beyond the conclusion of the then current term.
 - b. TERMINATION. This Agreement may be terminated prior to the date set forth above, provided all students enrolled at the time have completed their training, upon the occurrence of any of the following:
 - i. MUTUAL AGREEMENT. If ECTS and IHPO shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.
 - ii. DEFAULT. If either party shall give notice in compliance with this Agreement to the other party that such other party has substantially defaulted in the performance of any material responsibility or obligation under this Agreement, and such default shall not have been resolved within fifteen (15) days following the giving of such notice, the party giving such notice shall have the right to terminate this Agreement immediately.
 - iii. CONVENIENCE. Either ECTS or IHPO may terminate this Agreement for convenience and without the necessity of cause by the provision of written notice to the other party not less than sixty (60) days prior to the effective date of termination, provided that any session that has been

commenced on or before the date of such notice shall be completed before the termination shall be effective.

12. **DEFAULT.** Any party claiming a substantial default in the performance of any material responsibility or obligation under this Agreement shall provide written notice of such default to the defaulting party. Should any such default remain unresolved fifteen (15) days after written notice thereof, the non-defaulting party, in addition to any other remedies hereunder or otherwise, may terminate this Agreement by further written notice to the defaulting party, provided, however, that all students enrolled at the time have completed their training. Notice hereunder may be delivered personally or sent by certified mail addressed to the defaulting party at the address set forth on page 1 of this Agreement.
13. **ATTORNEY'S FEES.** In the event of litigation arising from a default of this Agreement, the non-prevailing or defaulting party shall pay the other party's reasonable attorney's fees and costs.
14. **ASSIGNMENT.** Neither party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other party.
15. **TITLE IV FRAUD.** ECTS and IHPO each represent and warrant that they have not been, and are not an "ineligible institution" under federal regulation 34 C.F.R. section 600.7, and, in particular, but without limiting the foregoing, that neither ECTS nor IHPO, their respective affiliates, subsidiaries, owners, presidents or chief operating officers, have ever pled guilty to, nolo contendere to, or been found guilty of, a crime involving the acquisition, use, or expenditure of Title IV, HEA program funds, nor have they been judicially determined to have committed fraud involving Title IV, HEA program funds.
16. **CONFIDENTIAL INFORMATION.** IHPO and ECTS have developed certain confidential and proprietary information ("Confidential Information") including, but not limited to, financial statements, financing documents, business plans, trade secrets, new products, copyrights, patentable inventions, computer software, documentation, and specifications. In order to pursue a business relationship the parties recognize the need for disclosure of Confidential Information between the parties. The parties are willing to disclose Confidential Information to each other, and each party acknowledges:
 - a. that all material and information which has or will come into its possession or knowledge in connection with business discussions, conferences or other activities between IHPO and ECTS is proprietary to the respective party that developed the Confidential Information, having been designed, developed or accumulated by that party at a great expense and over lengthy periods of time; and includes, but is not limited to trade secrets, systems, software and hardware, concepts, designs, configurations, schedules, costs, performance features, specifications, techniques, lesson plans, manuals, instructional materials, catalogs, forms, copyrighted matter, patented or patentable inventions, plans, methods, drawings, data, tables, calculations, documents or other paperwork, computer program narratives, flow charts, source and object codes, and also includes business and marketing plans, dealings, arrangements, objectives, locations, and current and potential student and customer information.
 - b. except to the extent that disclosure is required by the Right-To-Know Law, 65 P.S. §67.101 et seq., or to comply with any other law or court order, that any use or disclosure of Confidential Information other than for the sole benefit of the respective parties in accordance with this Agreement will be wrongful and will cause irreparable injury to the non-disclosing party and, therefore, the parties agree to hold Confidential Information in strictest confidence and not to make use of it other than for the sole benefit of each respective party in furtherance of this Agreement.
 - c. except to the extent that disclosure is required by the Right-To-Know Law, 65 P.S. §67.101 et seq., or to comply with any other law or court order, that the parties agree not to disclose or otherwise communicate Confidential Information in any form to any third party without the prior written consent of the non-disclosing party, and shall use their best efforts to prevent inadvertent disclosure of Confidential Information to any third party, except to the extent that the parties need to disseminate Confidential Information to various of their employees, and in such event the disclosing party agrees to cause any such employee to whom Confidential Information is transmitted to be bound to the same obligation of secrecy and confidentiality that the parties are bound to under this Agreement.
 - d. that the obligations of Section 16 of the Agreement shall terminate five (5) years after the date of this Agreement, or five (5) years after the date upon which the business relationship between the parties is terminated, whichever shall be later.

- e. that in the event of any violation or threatened violation of Section 16 of the Agreement, the non-disclosing party shall be entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief, as well as an equitable accounting of all profits or benefits arising from such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies at law or in equity to which the non-disclosing party may be entitled.
 - f. IHPO acknowledges that by contracting with ECTS, IHPO may be subject to the Right-to Know Law. If a record created by IHPO contains a trade secret or confidential, proprietary information, IHPO must provide ECTS with a written statement signed by a representative of IHPO that the record contains a trade secret or confidential, proprietary information at the time the record is submitted to ECTS.
- 17. AMENDMENT. This Agreement may be amended or modified only by the express written consent of ECTS and IHPO and, as to ECTS, upon approval by a publicly adopted resolution of the Joint Operating Committee.
 - 18. EMPLOYEES. IHPO agrees that it shall not at any time solicit nor recruit, with the intent to hire, employees from ECTS and in turn ECTS agrees that it shall not at any time solicit nor recruit, with the intent to hire, employees from IHPO.
 - 19. EQUAL OPPORTUNITY. Without limitation of any provision herein set forth, both parties expressly agree to abide by any and all applicable federal and/or state equal opportunity statutes, rules and regulations including, but not limited to, Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination and Employment Act of 1967, the Equal Pay Act of 1963, the National Labor Relations Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Occupational Safety and Health Act of 1970, and the Americans with Disabilities Act, all as may be from time to time modified or amended. Both parties further agree to hold the other party harmless from any and all liability arising from any breach of this covenant.
 - 20. OTHER ACTIVITIES. Notwithstanding any other provision herein, either party to this Agreement may engage in any other or similar activities, either individually or in conjunction with another party, without having or incurring any obligation to offer any interest in such activities to any party hereto or otherwise.
 - 21. GOVERNING LAW AND VENUE. This Agreement shall be interpreted and construed in accordance with the laws of the State of Pennsylvania. The parties agree that venue for any legal action brought to enforce this Agreement shall be in the Court of Common Pleas of Erie County, Pennsylvania.
 - 22. ENTIRE AGREEMENT. This agreement constitutes the entire agreement between the parties and supersedes any prior agreement and/or understanding between the parties relating to the subject matter of this Agreement. The parties hereto shall be entitled to no benefit other than those specified herein. No changes in or additions to this Agreement shall be recognized unless incorporated by amendment as provided herein, such amendment(s) to become effective on the date stipulated in such amendment(s). No amendment or waiver of any provision of this Agreement shall be enforceable against ECTS unless such amendment or waiver has been approved by resolution of ECTS Joint Operating Committee adopted at a duly constituted public meeting. Both parties specifically acknowledge that in entering into and executing this Agreement, both parties rely solely upon the representations and agreements contained in this Agreement and no others.
 - 23. HEADINGS. Headings of paragraphs are for convenience only, form no part of this Agreement and shall not affect its interpretation.
 - 24. INTERPRETATION. The parties acknowledge and agree that this Agreement has been mutually prepared, such that the terms of this Agreement shall not be presumptively construed in favor of or against either party hereto.
 - 25. SEVERABILITY. If any term, provision, covenant or condition of this Agreement or application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year first above written.

ERIE COUNTY TECHNICAL SCHOOL

By: _____

Print: _____

Title: _____

ATTEST:

Secretary: _____

[SEAL]

**INSTITUTE for HIGH PRIORITY OCCUPATIONS,
LLC.**

By: _____

Print: _____

Title: _____