

HEARTQUARTERS TRAINING AGREEMENT

This Agreement is between the American Heart Association, Inc., a New York, not-for-profit corporation, located at 7272 Greenville Avenue, Dallas, Texas 75231 (“AHA”), and United States Power Squadrons a North Carolina corporation, with its principal offices at 1504 Blue Ridge Road, Raleigh, NC 27607 (“Company”), for and on behalf of itself and any and all of its chartered Squadrons that may participate or otherwise be involved in services covered by this Agreement (“Company”), collectively “Party(ies)” The Parties agree that all references to “Company” in this Agreement shall mean United States Power Squadrons and its chartered Squadrons.

RECITALS

WHEREAS, the AHA is a non-profit organization, dedicated to the reduction disability and death from cardiovascular disease and stroke, and provides training in emergency cardiovascular care (ECC); and

WHEREAS, Company wishes to hire the AHA to provide ECC training to its personnel;

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. Definitions

- a. “Course(s)” means the ECC courses offered by the AHA and listed on the attached Exhibit B.
- b. “Squadron(s)” means individual group(s) chartered by United States Power Squadron that request Courses.
- c. “Attendees” means the persons that Squadrons designates to attend the Course(s).
- d. “Course Completion Cards” are cards which indicate that a named individual has successfully completed a designed Course.
- e. “Instructor” means a teacher qualified to teach the Course(s) pursuant to the AHA’s ECC training guidelines.

2. Services

- a. A Squadron and AHA shall complete a Training Schedule in substantially the same form as set forth in Exhibit A (the “Training Schedule”) for each Training Course to be provided to a Squadron. Each Training Schedule shall specify the Services, including, but not limited to, the Course(s) to be taught, the agreed-upon number of Instructors and required training materials, and other particulars that shall govern the Services rendered under such Training Schedule. Each Training Schedule shall be signed by AHA and Squadron and shall be attached to this Agreement and incorporated herein by reference. All Course(s) will be taught in accordance with the AHA’s guidelines for ECC training. Squadron will designate the Attendees, and will provide the facilities at which the Course(s) will be taught.

3. AHA will be responsible for the following:

- a. Courses. The AHA will provide Squadron with the Course(s) listed on the Training Schedule(s), at the designated location, for the number of enrolled Attendees.
 - b. Instructors. For each Class Unit listed on the Training Schedule(s), the AHA will ensure that all AHA personnel are properly registered, documented, licensed, certified and qualified to teach the Course(s). Upon Squadron's reasonable request, AHA shall remove any personnel who are performing the Services and promptly replace such instructor.
 - c. Training Materials. The AHA will supply sufficient training materials (e.g., textbooks) associated with the Course(s) being taught for the number of enrolled Attendees.
 - d. Training Supplies. The AHA will supply materials necessary to teach the specified Course(s). (e.g. manikins, AEDs)
 - e. Online Course(s). Some Courses may consist of initial course work that can be completed online ("Online Course). When the Course(s) ordered on a Training Schedule include an Online Course component, the AHA will provide Course access for the enrolled Attendees, Attendees will be required to register for Online Courses on the AHA's Online Portal, including acceptance of the User Agreement and successful completion of the Online Course, as a prerequisite to participation in and completion of a Course.
 - f. Course Completion Cards. The AHA will provide Squadron with course completion cards for Attendees who successfully complete a Course.
 - g. Course Rosters. The AHA will maintain Course rosters in accordance with its Program Administration Manual.
4. Company will be responsible for the following:
- a. Attendees. Squadrons will designate the Attendees. Attendees will be personnel that are Squadron members or other persons that the Squadron wishes to receive training. It will be Squadron's responsibility to have them in attendance at the agreed-upon time and location.
 - b. Squadron Contact. Each Squadron will designate a person ("Squadron Contact") within Squadron's organization that will be responsible for coordinating with the AHA, advising Attendees of the dates, locations and times for the Course(s) and providing them with the training materials supplied by the AHA.
 - c. Training Facilities. Squadron will provide a training location that meets AHA size requirements and provides seating and accommodations for the number of enrolled Attendees. Squadron will be responsible for meeting any legal accessibility and other requirements for Attendees and Instructors. Squadron will make available adequate facilities (e.g., restrooms, water fountains) for enrolled Attendees and Instructors. Squadron will provide an LED projector, computer or DVD player, power source, and a classroom that will accommodate the Attendees and manikins (roughly a 10 ft. x 10 ft. area for each manikin set up – each manikin set up will be required for every 3 Attendees).

- d. Card Distribution. Within thirty (30) calendar days following completion of the Classes, the AHA will provide the Squadron Contact with Course Completion Cards. Squadron will distribute them to the designated Attendees upon receipt.

5. Payment

- a. Company will pay the AHA the amounts set out in the Training Schedule(s). The AHA will invoice each Squadron for its Classes upon execution of the Training Schedule and payment in full is due on or before thirty (30) calendar days following invoice. Invoices will include the following information: (i) invoice number; (ii) invoice date; (iii) date(s) that the Course(s) were provided or will be provided; (iv) itemized invoice amount; (v) amounts charged for expenses, if applicable; and (vi) reference to this Agreement and the applicable Training Schedule. Company agrees that the fees set out in Exhibit B are discounted fees for Company for only first year of this agreement; afterward Company will pay the AHA's usual and customary fees for Courses.
- b. If AHA is required to pay or collect any federal, state, local, value-added, goods-and-services or any other similar taxes or duties based on Services provided under this Agreement and any Training Schedule, then such taxes and/or duties shall be invoiced to and paid by Squadron pursuant to the terms herein; provided, however, that Squadron shall not be required to pay any taxes based on AHA's net income.
- c. Invoices will be sent to each Squadron in accordance with the specifications of the associated Training Schedule.

6. Limitation of Liability.

- a. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL DAMAGES OR THE LIKE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES. THE LIMITATIONS SPECIFIED IN THIS SECTION WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- b. Company acknowledges that participation in Course(s) may require physical activity, such as sitting, standing, bending and lifting, and that the AHA shall not be liable for any injuries to Attendees resulting from participation in Course(s).
- c. The entire liability of the AHA, and Company's exclusive remedy for damages from any cause arising out of this Agreement, whether in contract or in tort, will not exceed \$10,000. ALL IMPLIED WARRANTIES, INCLUDING FITNESS, MERCHANTABILITY, OR OTHERWISE, ARE HEREBY EXCLUDED.

7. Indemnification.

- a. Each Party ("Indemnitor") shall indemnify, defend and hold harmless the other Party, its stockholders, officers, directors, employees, representatives, agents and assignees

("Indemnitee") from and against any and all Claims (as defined below) asserted against, imposed upon or incurred by an Indemnitee arising out of or relating to (i) the death of or injury to any individual or damage to or loss of personal or real property of an Indemnitee due to the negligence and/or willful acts of Indemnitor; or (ii) the negligent or illegal act or omission or the willful misconduct of Indemnitor. "Claim(s)" shall mean any and all foreseeable or unforeseeable and alleged or actual third party actions, causes of action (whether in tort, agreement or strict liability, and whether in law, equity, statutory or otherwise), bodily harm or personal injury (including sickness, disease or death of any person), claims, damages (including consequential, direct, economic, exemplary, future, incidental, indirect, noneconomic, past, special and punitive), demands, disbursements, judgments, lawsuits, legal proceedings, liability, litigation, losses (including lost income or profit), property damage (including any harm, impairment, theft, loss or loss of use), sanctions, settlement payments, costs or expenses of any nature whatsoever, whether accrued, absolute, contingent or otherwise, including, without limitation, attorneys' fees and costs (whether or not suit is brought).

- b. Upon receipt of notice, from whatever source, of Claims against the Indemnitee, the Indemnitor immediately shall take necessary and appropriate action to protect Indemnitee's interests with regard to the Claims. Indemnitee shall notify Indemnitor of the assertion, filing or service of any Claims of which Indemnitee has knowledge, as soon as is reasonably practicable.
- c. Notwithstanding the foregoing, however, if Indemnitee reasonably determines that there may be a conflict between its position and that of Indemnitor in connection with the defense of a Claim or that there may be legal defenses available to Indemnitee different from or in addition to those available to Indemnitor, then, at Indemnitor's expense, counsel for Indemnitee shall be entitled to conduct a defense to the extent Indemnitee reasonably determines necessary to protect the interest of Indemnitee. If Indemnitee, in its reasonable discretion, determines that the counsel provided by Indemnitor to defend Indemnitee is unacceptable or that a conflict of interest exists between Indemnitee and counsel, Indemnitee may request that Indemnitor replace the counsel. If Indemnitor fails to timely replace counsel, Indemnitee may replace the counsel and, as part of Indemnitor's indemnification obligation to Indemnitee, Indemnitor shall pay to the new counsel, or reimburse Indemnitee, any and all reasonable fees and expenses as to the new counsel, including any and all expenses or costs to change counsel.
- d. Indemnitor, in the defense of any Claim or litigation, shall not, except with the written consent of Indemnitee, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term the giving by the claimant or plaintiff to Indemnitee of a release from all liability and blame with respect to the claim or litigation. Indemnitee shall have the right at all times to accept or reject any offer to settle any Claim or litigation against it.

8. Term and Termination

- a. Subject to the termination rights specified below, this Agreement shall become effective as of January 28, 2012 and shall automatically terminate on the expiration of three (3) calendar years unless extended by mutual written agreement of the parties. Further, it may be terminated by either Party upon thirty (30) days written notice to the other Party.

- b. Company may terminate this Agreement or cancel any Training Schedule at least fifteen (15) business days prior to the scheduled date of the Course by providing the AHA with advance written notice. Any Courses cancelled less than fifteen (15) business days prior to the scheduled date of the Course, or for which Attendees have already registered for the Online Course portion, will require payment of the full cost of the Course.
- c. If either party defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) business days after receipt of written notice of such default within which to cure such default. If the defaulting party fails to cure the default within such period of time, then the other party shall have the right, without further notice, and without prejudice to any other remedy to which it may be entitled at law or in equity, or elsewhere under this Agreement, to terminate this Agreement.

9. Miscellaneous

- a. **Independent Contractors.** Company and AHA are acting hereunder as independent contractors. Neither Party shall be considered or deemed to be an agent, employee, joint venture or partner of the other Party. The personnel of one Party shall not be considered employees of the other Party, shall not be entitled to any benefits that the other Party grants its employees and shall have no authority to act or purport to act on the other Party's behalf. Each Party shall be responsible for the conduct of its own personnel. Neither Party has the right, and shall not seek, to exercise any control over the other Party. Each Party shall be solely responsible for hiring, firing, promoting, demoting, rates of pay, paying, taxes, benefits and other terms and conditions in regard to its own personnel.
- b. **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other.
- c. **Force Majeure.** No Party shall be in default under this Agreement, if such results, whether directly or indirectly, from fire, explosion, strike, freight embargo, act of God, or of the public enemy, war, civil disturbance, act of any government, de jure or de facto, or agency or official thereof, labor shortage, transportation contingencies, unusually severe weather, default of manufacturer or a supplier, quarantine restrictions, epidemic, or catastrophe. Whenever possible, any schedule or time for performance set out in this Agreement shall be extended as necessary to overcome the effects of such force majeure.
- d. **Severability.** Should any part, term, or provision of this Agreement be declared to be invalid, void, or unenforceable, all remaining parts, terms, and provisions hereof shall remain in full force and effect, and shall in no way be invalidated, impaired or affected thereby.
- e. **Waiver.** No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, shall be deemed to be, or shall constitute, a waiver of any other provision hereof; nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- f. **Applicable Law.** This Agreement shall be governed by the laws of the State of New York, without regard to its conflict of laws provisions.
- g. **Publicity and Use of Trademarks.** Neither Party shall use the name, logo, trademarks or trade names of the other Party in publicity releases, promotional material, customer lists,

advertising, marketing or business-generating efforts, whether written or oral, without obtaining the other Party's prior written consent, which consent shall be given at the other Party's sole discretion.

- h. Integrated Agreement. This Agreement, attached exhibits and all executed Schedules of Training constitute the complete integrated agreement between the parties concerning the subject matter hereof. All prior and contemporaneous agreements, understandings, negotiations or representations, whether oral or in writing, relating to the subject matter of this Agreement are superseded and canceled in their entirety. In the event of a conflict between the terms of this Agreement, any exhibits and Schedules of Training, the order of precedence (with the first being the controlling) shall be as follows: (i) this Agreement, (ii) Schedule of Training and (iii) the exhibits.
- i. Amendments. No alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement shall be valid or binding on either Party unless mutually assented to in writing by authorized representatives of both Parties.
- j. Entirety. This writing embodies the entire agreement of the Parties, and they expressly acknowledge that there are no promises, terms, conditions, or obligations other than those contained in this Agreement. All previous or contemporaneous communications, representations or agreements, either verbal or written between the Parties are superseded by this Agreement.
- k. Representation and Warranty. United States Power Squadron represents and warrants that it is authorized to represent and bind the Squadrons to all duties and obligations of Company under this Agreement and to execute this Agreement on behalf of the Squadrons.

This Agreement is dated this 28th day of January, 2012.

AGREED:

AMERICAN HEART ASSOCIATION, INC.

UNITED STATES POWER SQUADRON

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: Frank A. Dvorak
Title: Chief Commander
Date: _____



EXHIBIT A

FORM TRAINING SCHEDULE

Course(s):

Online Course Component: Yes: No:

Date:

Location:

Class Units:

Max. Attendees per Class Unit:

No. of Attendees
Enrolled:*

Price/Class Unit: \$

Total Price: \$

Invoice Information:

Company Contact:

* Pricing is based upon required Instructor/Student ratio and is subject to increase if number of Attendees increases. Any changes in number of Attendees will require AHA approval.

Subject to the terms of the HeartQuarters Training Agreement between the AHA and United States Power Squadron, dated January 28, 2012.

Agreed:

American Heart Association, Inc.

United States Power Squadron

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

Exhibit B

<u>Courses</u>	<u>Price</u>
Heartsaver First Aid CPR AED Adult and Child	\$765.00 per class of up to 9 students
Special introductory rate:	\$630.00, valid for 1 year from the date of the contract

Company may request other Course as the AHA's usual and customary rates.

Squadron leaders may schedule training by contacting HeartQuarters at: 1-800-242-1793 or at heartquarterstraining@heart.org.