

HOPEY'S HEART FOUNDATION AUTOMATED EXTERNAL DEFIBRILLATOR DONATION AGREEMENT

This Hopey's Heart Foundation Automated External Defibrillator (AED) Donation Agreement ("Agreement") is entered into and effective as of ___/___/___ by and between the Hopey's Heart Foundation ("Foundation") and _____ ("Donee").

WHEREAS, sudden cardiac death caused by sudden cardiac arrest (SCA) is a leading cause of death in the U.S. and can strike young people participating in athletic activities at schools, community centers, and recreation centers.

WHEREAS, placing AEDs in schools, community centers, and recreation centers may help increase the chances of saving the lives of young athletes experiencing SCA in these environments.

WHEREAS, the Foundation is donating AEDs to selected non-profit schools, community centers, and recreation centers who have applied for such donations.

WHEREAS, Donee represents to the Foundation that it is 501(c)(3) tax-exempt entity or another type of nonprofit entity.

WHEREAS, Donee wishes to receive an AED donated by the Foundation.

WHEREAS, the Foundation requires all donees to enter into this Agreement as a condition of receiving an AED donation.

NOW, THEREFORE, in consideration of the foregoing recitals, and intending to be legally bound, the parties agree as follows:

1. Recitals. The foregoing recitals are incorporated into and made a material part of this Agreement.
2. Obligations of the Foundation. Subject to the terms of this Agreement, the Foundation agrees to donate to Donee, without cost, one AED and one AED wall cabinet ("Equipment").
3. Obligations of Donee. In consideration for the receipt of the donated Equipment, Donee hereby:
 - 3.1. Understands, acknowledges and agrees that the Foundation is not, pursuant to this Agreement or its Equipment donation, providing AED program services to or otherwise assuming responsibility for any aspect of Donee's use, attempted use, or non-use of, the Equipment or Donee's AED program.
 - 3.2. Understands, acknowledges, and agrees that, to the extent that any manufacturer or distributor provides any training or services in connection with the Equipment, such training and services are in no way associated with or endorsed by the Foundation.
 - 3.3. Assumes sole and exclusive responsibility for all aspects of Donee's use, attempted use, or non-use of the Equipment and the creation, implementation, and operation of all aspects of Donee's AED program;
 - 3.4. Applicant acknowledges and agrees that the Foundation has not and will not be providing Applicant with any medical advice or advice regarding the use of the Equipment or Donee's AED program. Applicant understands that there may be risks associated with the Equipment and fully accepts such risks. Applicant further acknowledges that the Foundation does not recommend or endorse any specific physicians, AED products, procedures, AED program design, opinions, or other information that

may be mentioned in the AED Application, this Agreement, the Foundation website, links from the Foundation website, or offered by any person or entity affiliated in any way with the Foundation.

3.5. UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT (i) ANY EQUIPMENT PROVIDED BY OR THROUGH THE FOUNDATION IS PROVIDED “AS IS” WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER WHETHER EXPRESS OR IMPLIED (ii) THE EQUIPMENT TO BE DONATED MAY BE PROVIDED BY ONE OR MORE MANUFACTURERS, DEPENDING ON AVAILABILITY, COST, PROMOTIONS OR OTHER FACTORS: (iii) THE FOUNDATION DOES NOT ENDORSE ANY PARTICULAR EQUIPMENT MANUFACTURER AND THE FACT THAT A DONATED AED IS PRODUCED BY A CERTAIN MANUFACTURER SHOULD NOT BE CONSTRUED AS AN ENDORSEMENT BY THE FOUNDATION AS TO QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

3.6. Agrees to comply with all applicable laws, regulations, and standards of care governing the placement and use of AEDs in non-medical, school, community center, and/or recreation center settings.

3.7 The Foundation requests (but does not require) that Donee provide the Foundation with one or more photographs of the AED at Donee’s location for use on the Foundation’s website and other promotional materials in furtherance of the Foundation’s mission. By sending such photograph(s) to the Foundation, Donee grants the Foundation a license to use the photograph(s) for such purposes and represents that it has the permission of the photographer(s) and the permission of all persons in the photograph(s) to grant the Foundation such license.

4. Equipment Ownership. Upon the Foundation’s donation to Donee of the Equipment, all right, title and interest in and to the Equipment is irrevocably transferred to Donee.

5. Waiver, Release, and Indemnification by Donee. Donee, on behalf of itself and its directors, officers, agents, employees, representatives, and assigns hereby:

5.1. Releases, waives, discharges, and covenants not to sue the Foundation, or its current and past directors, trustees, officers, agents, affiliates, subsidiaries, employees, representatives, and assigns (collectively referred to as “Releasees”) from any and all liability to Donee (or any other person or entity) for any loss or damage and any claims or demands on account of any injury (including death) or damage of any kind whatsoever that results from the acceptance, use, attempted use, or non-use of the Equipment received by Donee from the Foundation and/or the operation of Donee’s AED program, whether caused by the negligence of Releasees or otherwise.

5.2. Agrees to indemnify, save, and hold harmless the Releasees from any injury (including death) loss, liability, damage, or costs, including attorneys’ fees, costs of any actual or threatened suit, action complaint or settlement, and any direct, consequential, special, incidental, punitive, or indirect damages of any kind that arise out of or are related to the use, attempted use, or non-use of the Equipment and/or the operation of Donee’s AED program. Donee acknowledges and agrees that this shall include injury (including death), loss, liability, damage, and costs that result from the use, attempted use, or nonuse of the Equipment by any party, including untrained individuals and members of the public unrelated to Donee. 5.3. Assumes full and exclusive responsibility for any injury, death, or damage that arises out of or is related to the use, attempted use, or non-use of the Equipment and/or the operation of Donee’s AED program.

6. Term and Termination. This Agreement shall be effective as of the date specified above and shall continue for as long as Donee continues to make donated Equipment available for use.

7. Equipment Transfer. In the event Donee transfers ownership of the donated Equipment to a successor party, the terms of this Agreement shall be binding upon successor owners of the Equipment.

8. Severability. Donee acknowledges and agrees that this Agreement is intended to be as broad and inclusive as is permitted by law and if any portion of this Agreement is held invalid, and further agrees that the balance shall, notwithstanding, continue in full legal force and effect.

9. Notice. Any and all notices required or permitted by this Agreement shall be deemed delivered if (i) delivered personally, (ii) transmitted by electronic facsimile/email, or (iii) mailed by registered or certified mail or express mail, postage prepaid to a party at its principal place of business listed on the signature line or at such other address as may be designated by the party from time to time.

10. Entire Agreement. This written Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties as to the Agreement's subject matter. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions of this Agreement.

11. Binding Effect. Subject to the provisions set forth in this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties hereto and upon their respective successors, parent entities, subsidiaries, affiliates, trustees, directors, officers, agents, attorneys, insurers, employees, representatives, assigns, successors, plan administrators, and all persons acting by, through, under, or in concert with them, past and present.

12. Amendment. Unless otherwise specifically provided in this Agreement, no amendment, modification, or supplement to this Agreement shall be valid or binding unless set out in writing and executed by the parties in the same manner as the execution of this Agreement.

13. Strict Performance. No waiver by either party of any provision of this Agreement shall be deemed to have been made unless such waiver be in writing signed by the waiving party. The failure of either party to insist upon the strict performance of any of the covenants or conditions of this Agreement, or to exercise any option conferred, shall not be construed as waiving or relinquishing for the future any such covenants, conditions, or options, but the same shall continue and remain in full force and effect.

14. Governing Law and Venue. This Agreement is executed in the State of New York and shall be construed in accordance with the internal laws of the State of New York (without reference to conflicts of law statutes or decisions). Any action brought to enforce or interpret this Agreement shall be brought only in federal or state court having competent jurisdiction and sitting in New York, New York, and the parties consent to such venue and jurisdiction.

15. Voluntary Agreement. This Agreement contains important legal commitments, releases and waivers. By signing below, the signatories acknowledge that they fully understand the terms of this Agreement and are entering into it knowingly and voluntarily. This Agreement shall not be construed against either party as the drafter.

16. Authorized Agents. The parties acknowledge that they are duly authorized to enter into this Agreement and that this Agreement is being signed by agents duly authorized to act on their respective

behalf. Donee further represents and warrants that no higher authority such as a Chancellor, other official at as Board of Education, or other person is required to sign this Agreement in order for it to be legal binding on Donee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Hopey’s Heart Foundation

Donee

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Donee Name: _____

(1) AED Manufacturer

Defibtech Auto

Donee Mailing Address:

P.O BOX NOT ALLOWED

Address 1: _____

Address 2: _____

City: _____

State: _____ Zip Code: _____

Email: _____

Phone: _____