

Aquatic Examiner Service Agreement

This **Aquatic Examiner Service Agreement** ("Agreement") is made by and between The American National Red Cross ("Red Cross") and **Saint Paul Parks and Recreation** (the "Customer"), (each a "Party" and together the "Parties"), effective as of the last date of signature set forth below ("Effective Date"), in order for Red Cross to provide services that are included within the service package(s) listed in Appendix B at the locations listed in Appendix C (each a "Service" and together the "Services") by Red Cross certified examiners ("Examiners").

1.0 Red Cross Responsibilities. The Red Cross will:

- 1.1 Provide to the Customer the Service(s) included in Appendix B and more fully described in the *Aquatic Examiner Service Client Get Started Guide* and the *Aquatic Examiner Service Get Started Information Presentation*, as amended from time to time, a copy of the most recent version of which has been provided to Customer concurrently with this Agreement, and the provisions of which are incorporated herein by this reference.

2.0 Customer Responsibilities. The Customer will:

- 2.1 Comply with all Customer requirements set forth in the *Aquatic Examiner Service Client Get Started Guide* and the *Aquatic Examiner Service Get Started Information Presentation* including, but not limited to:
 - A. Accepting responsibility for all activities associated with developing and implementing their own operational and emergency procedures.
 - B. Maintaining on a current basis all applicable government permits or licenses to operate each aquatics facility.
 - C. Granting permission for Red Cross access to the location(s) as necessary in order to conduct Services.
 - D. Assuring that, for each selected Service, the relevant Service requirements as outlined in the *Aquatic Examiner Service Client Get Started Guide* and the *Aquatic Examiner Service Get Started Information Presentation* are provided to Customer's staff.
- 2.2 Cooperate with the Red Cross in scheduling Services on dates and at times and locations that are mutually acceptable to both Customer and Red Cross.
- 2.3 Only schedule Services to be conducted, and otherwise perform under this Agreement, within the United States of America and its territories ("U.S."), as the Red Cross is only permitted to deliver services within the U.S.
- 2.4 Confirm Service details with the Red Cross' point of contact no fewer than thirty (30) business days prior to any desired Service date, including the name and telephone number of a Customer point of contact for each Service location.
- 2.5 Identify the number of participants for in-service training sessions ("Training" or "Trainings") at the relevant location(s) on each requested Training date. For each scheduled Service, Customer will receive an email confirmation from Red Cross (each a "Confirmation") confirming the Service details.
 - A. In order to maintain a sufficient Examiner to Training participant ratio, one Examiner will be assigned for every fifteen (15) participants listed on the Confirmation for each Training session. Customer will be charged a Training fee as indicated on Appendix B for each Examiner needed, based on the number of participants for each assigned Examiner as listed below and continuing in multiples of fifteen (15), as applicable:
 - Examiner 1 (8-15 students)
 - Examiner 2 (16-30 students)
 - Examiner 3 (31-45 students)



Any additional fees are outlined on [Appendix B](#). Customer acknowledges that certain Trainings may require Customer's purchase of additional items, either through the Red Cross or a third-party supplier, the cost of which items is not included under this Agreement. Red Cross will advise Customer in advance if any such items are required for a Training.

- 2.6 Update the number of Training participants, as needed, at least thirty (30) business days before the Training date; provided, however, that if additional Examiners are required due to increased enrollment, Red Cross will schedule one or more additional Trainings if needed to preserve the ceiling, noted in section 2.5 above, on the number of participants for each session.
- 2.7 Comply with, and communicate to Training participants, any requirements for participation which may be communicated by Red Cross to Customer from time to time, including (without limitation) health and safety precautions and active participation and completion requirements.
- 2.8 Provide facilities for each Training having clean, safe and otherwise adequate space and conditions for participation and to practice skills, and adequate training equipment. If the Customer does not have standard training equipment, it will inform the Red Cross point of contact when the Training is scheduled.

3.0 Fees and Invoicing.

- 3.1 Services are included within the service package(s) listed on [Appendix B](#). Fees for Services are set forth in the price list attached to [Appendix B](#). Customer will pay fees that are applicable to each of the Services.
- 3.2 Customer will be invoiced. Invoices will be sent via postal mail, may be issued up to four (4) times per month, and will include all transactions submitted in that billing period. Payment in full is due thirty (30) days from the date of each invoice. Past due amounts will be subject to collections actions and may be referred to an external collections agency. In such an event, Red Cross will be entitled to all costs of collection including interest, and collection agency fees and expenses. Customers with high credit risk or late payments may also result in the suspension or termination of Customer's invoicing privileges at Red Cross's sole discretion. If invoicing privileges are suspended or terminated, Red Cross will not deliver Services until the account(s) is in a current status with no outstanding invoices.
- 3.3 Customer may elect to have invoices delivered electronically to one (1) email address. Customer will provide Red Cross a single valid email address for electronic invoice delivery. Customer will receive a link in the email to a PDF copy of the invoice, which link will expire after thirty (30) days. Customer understands that Customer will not receive an invoice via postal mail after enrollment in electronic invoice delivery.
- 3.4 If Customer desires that invoices issued by Red Cross reflect Customer-issued purchase order numbers, then any such purchase order must be received by Red Cross at least ten (10) business days prior to the scheduling of a Service date; it being understood that under no circumstance will the absence of a customer-issued purchase order number on any invoice excuse Customer's timely payment of that invoice.
- 3.5 To pay an invoice by credit card, or to establish ACH payments, call 888-284-0607. To pay an invoice by check, include the remittance advice showing the Customer account name, number and invoice number and send to:

American Red Cross - Training Services
25688 Network Place
Chicago, IL 60673-1256

- 3.6 If Customer desires that Red Cross use Customer's vendor payment portal, Red Cross will not be obligated to pay Customer or any third party any fee or expense for such use, regardless of any provision to the contrary in such portal's terms of use. Customer will, on demand, promptly reimburse Red Cross for any such fee or expense.

- 3.7 If Customer has account balance or invoice questions or concerns, immediately upon receipt of invoice, Customer may email billing@redcross.org or call 888-284-0607 to report and resolve the inquiry.
- 3.8 Customer warrants that as of the date of this Agreement, it has no overdue balances with the Red Cross.

4.0 Cancellation and Rescheduling.

A Service may be rescheduled or canceled without charge if Red Cross is notified at least thirty (30) business days in advance of the first day of the scheduled Service. Red Cross is authorized to charge a \$300.00 cancellation fee for each occurrence of the Customer rescheduling or canceling a Service with fewer than thirty (30) business days' notice.

5.0 Examiner Expenses.

If the Red Cross incurs unusual expenses ("Expenses") associated with conducting a Service, the Red Cross may request reimbursement for the Expenses (e.g. Examiner mileage to a remote location or overnight lodging, or accommodations for students with disabilities). The Expenses must have prior written approval from each of the Parties and will be invoiced to Customer.

6.0 Term and Termination.

- 6.1 This Agreement will be effective as of the Effective Date listed above and ends on the day before the twelve (12) month anniversary thereof, unless earlier terminated as provided below.
- 6.2 Red Cross may immediately terminate this Agreement if Customer breaches this Agreement.
- 6.3 Either Party may terminate this Agreement with advance written notice to the other Party of at least thirty (30) days.
- 6.4 Upon termination or expiration of this Agreement, Red Cross will immediately cease delivery of the Services and the Customer will be responsible for payment for all fees and reimbursable expenses incurred up until such termination or expiration date.
- 6.5 Notwithstanding expiration or any termination of this Agreement, the provisions of this Agreement will continue to govern with respect to any amounts payable to Red Cross for Services completed prior to such expiration or termination. The Parties' obligations under section 10, below, will also survive any expiration or termination of this Agreement.

7.0 Force Majeure.

Notwithstanding anything in this Agreement to the contrary, no Party will be liable to the other for any loss or damage arising as a result of breach, non-performance or partial performance of its obligations under this Agreement (except for the obligation to pay money when due) due to any cause beyond that Party's reasonable control and without its fault or negligence, including but not limited to any delay or failure caused by failure, unavailability or shortage of power, materials or supplies, flood, fire, storm, other abnormally inclement weather, act of war, terrorism, riot, act or omission of government or governmental agency, strike, work stoppage, other labor unrest, inadequate voluntary donations required for the rendering of the services, other act or omission in the process of manufacture, production or supply under the control of third parties, or any other emergency.

8.0 Notices. Each Party's contact for notices and billing under this Agreement is listed on [Appendix A](#).

9.0 Use of Names and Marks.

- 9.1 Conditioned upon the full and successful completion of the Service, Red Cross grants Customer, for the term of the Agreement, the limited, non-exclusive, non-transferable and non-assignable license in the U.S.

to use the name and logo of the Red Cross in the format provided to the Customer by Red Cross (the "Authorized Mark") solely to acknowledge that the Customer has participated in the Red Cross Aquatic Examiner Service. Such acknowledgment may only state: "Proud participant of the American Red Cross Aquatic Examiner Service." Customer's use of the Authorized Mark shall at all times be consistent with the American Red Cross Brand Standards guidelines available at www.redcross.org/brand, which Red Cross may update from time to time.

- 9.2 Except as expressly provided in this Agreement, neither Party may use the other Party's name(s), logos, trademarks or other intellectual property in marketing materials, press releases, presentations, , or otherwise without the advance written consent of the other Party, which consent may be granted or withheld in the other Party's sole discretion.
- 9.3 Customer shall not state or imply that that Red Cross sponsors or endorses Customer's business, products or services generally, or that any other training courses and services other than the Services, are owned or endorsed by or otherwise associated or affiliated with Red Cross.
- 9.4 Customer shall not (i) create a compound mark with the Authorized Mark or (ii) use the Authorized Mark with any other design, slogan or trademark when such combination would tend to cause confusion as to source or affiliation.
- 9.5 Customer shall not in any instance, use a Greek red cross design in association with its business, goods and/or services.

10.0 Confidentiality. Except as required by applicable law or otherwise provided herein, each Party will maintain the confidentiality of all provisions of this Agreement or other confidential information, documents and materials received for the purposes of this Agreement.

11.0 Indemnity and Hold Harmless

Customer agrees to indemnify, defend, and hold harmless the Red Cross and its directors, officers, agents, volunteers, and employees against any and all claims, demands, damages, lawsuits, penalties, administrative proceedings, judgments, costs or expenses, resulting from, or arising out of the acts or omissions of either Party in connection with the Customer its operations, or performance or breach of this Agreement. The foregoing notwithstanding, Customer shall have no obligation to indemnify or hold harmless the Red Cross, its directors, officers, agents, volunteers and employees if it has been determined by the final order of a court of competent jurisdiction that a proportion of the liability thereof was caused by the willful misconduct or negligent activity of the Red Cross, its directors, officers, employees, volunteers or agents, in which case, the Red Cross shall be responsible solely for its proportionate share of the liability. This clause survives termination of this Agreement.

12.0 Limitation of Red Cross Liability. Each Party understands and agrees that:

- 12.1 The Red Cross is not undertaking to approve, certify or take responsibility for the safe design, operation or function of the Customer or its equipment, nor is it undertaking to identify all risks, errors, gaps, defects or omissions of the Customer. The Customer's participation in the Aquatic Examiner Service does not guarantee that (i) the Customer will be accident free; (ii) the operations of the Customer are safe, or (iii) the Customer is in compliance with any laws, codes or ordinances. The Red Cross is not responsible for the acts or omissions of the Customer, its agents, contractors or employees. The Red Cross's provision of Aquatic Examiner Service shall not constitute an undertaking on behalf or for the benefit of Customer users or others not a party to this Agreement.

- 12.2 The Red Cross is not responsible for the activities or operations of the Customer. The Red Cross has no authority, obligation or ability to make changes to the Customer or its operations or implement suggestions for improvement.
- 12.3 The assessments and evaluations that the Red Cross provides to the Customer are based solely on observations made on the dates of the visits. It is the Customer's sole responsibility to decide whether or not to implement any suggestions made by the Red Cross in the context of Aquatic Examiner Service.

13.0 Limitation of Warranties and Damages.

With respect to the Red Cross, the foregoing is in lieu of all other warranties of merchantability and fitness for a particular purpose. The Red Cross will not be liable for special, indirect or consequential damages, including lost income or profits, even if the Red Cross has been advised of the possibility of such damages.

14.0 Miscellaneous.

- 14.1 Severability. In the event any provision of this Agreement is held invalid, illegal or unenforceable (any such provision, an "Invalid Provision") in any jurisdiction, the Red Cross and the Customer will promptly negotiate in good faith a lawful, valid and enforceable provision that is as similar in terms to such Invalid Provision as may be possible while giving effect to the future benefits and burdens accruing to the Parties hereunder. But, in no way will the Invalid Provision affect the validity or enforceability of any other portion or provision of this Agreement, regardless of the ability of the Parties to negotiate a new provision.
- 14.2 Independent Contractors. Each Party is an independent contractor with respect to the other, and nothing herein shall create any association, partnership, franchise, or joint venture between the Parties or an employer-employee relationship. No agent, employee or servant of any Party will be, or will be deemed to be, the employee, agent or servant of the other Party, and each Party will be solely and entirely responsible for its acts and the acts of its agents, employees and servants.
- 14.3 Assignment. Neither Party's rights under this Agreement may be assigned, or its obligations delegated, in whole or in part without the prior written consent of the other Party; provided, however, that Red Cross's use from time to time of Instructors who are volunteers or employees of third parties to furnish Course instruction under this Agreement does not constitute a delegation of Red Cross's obligations under this Agreement and will not require Customer's advance consent. Any attempted assignment or delegation in violation of the foregoing will be null and void.
- 14.4 Governing Law. The Contract is governed by the laws of the State of Minnesota, without giving effect to its choice or conflict of law rules and any disputes related to or arising from this Agreement shall be venued in the courts located in Ramsey County Minnesota.

15.0 Insurance.

Red Cross shall be required to carry insurance of the kind and in the amounts shown below during the term of this Agreement. Certificates for Commercial General Liability Insurance must state that the City of Saint Paul, its officials, employees, agents and representatives are Additional Insureds.

Commercial General or Business Liability Insurance
\$1,000,000 per occurrence
\$2,000,000 aggregate
\$2,000,000 products/completed operations
\$1,000,000 personal injury and advertising

Workers Compensation and Employer's Liability. Worker's Compensation coverage with limits as required by Minnesota Statute. Employer's Liability shall have a minimum of:

- \$1,000,000 per accident
- \$1,000,000 disease (per employee)
- \$1,000,000 per disease (policy limit)

General Insurance Requirements

- Red Cross may not commence any work until a Certificates of Insurance evidencing the insurance required is provided to the Customer's Project manager and has issued a notice to proceed.
- Insurance must remain in place for the duration of the original contract and any extension periods.
- Satisfaction of policy limits required above for General Liability Insurance may be met with umbrella or excess policies.

16.0 Entire Agreement and Modifications.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, understandings and representations, both written and oral, between the Parties with respect to the subject matter of this Agreement. Amendments, addenda and waivers to this Agreement will be effective only if made, in each case, by a non-preprinted document clearly understood by both Parties to be an amendment, addendum or waiver, as the case may be. Any additional or different terms or conditions contained in any purchase order, confirmation, receipt, invoice, click-through agreement, or similar documents will not be binding on either Party, whether or not such terms and conditions would materially alter this Agreement (and even if the receiving Party has signed or otherwise acknowledged such purchase order, confirmation, receipt, invoice, click-through agreement, or similar document), and each Party hereby rejects all such additional or different terms and conditions.

17.0 Counterparts.

The Parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

18.0 Electronic Signatures.

The Parties agree that the electronic signature of a Party to this Agreement shall be as valid as an original signature of such Party and shall be effective to bind such Party to this Agreement. The Parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any Party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.



The Parties, acting through their duly authorized officers, have executed this Agreement, which will come into force as of the Effective Date.

Customer Name: Saint Paul Parks and Recreation	The American National Red Cross
Customer Signature:	Red Cross Signature:
Name:	Name: Cindy Dassow
Title:	Title: Strategic Account Executive
Date:	Date:



Appendix A – Contact Information

Customer Information

Customer: **Saint Paul Parks and Recreation**

Customer Address: **25 West 4th Street, Suite 400** Customer Fax: **(651) 292-7405**
Saint Paul, MN 55102

Customer Account Number: **23193-11-60004**

Customer Contact: **Amanda Smith**

Customer Contact Email: **amanda.smith@ci.stpaul.mn.us**

Customer Contact Phone: **(651) 266-6400** Extension:

(NOTE: All Billing Contact information MUST be completed for a specific individual; not a system/generic email)

Billing Contact Name: **Amanda Smith**

Billing Contact Phone: **(651) 266-6400** Extension:

Billing Contact Email: **amanda.smith@ci.stpaul.mn.us**

Customer Billing Address: **25 West 4th Street, Suite 400**
Saint Paul, MN 55102

Customer DUNS Number:

Email for Invoice Delivery (if electing electronic invoice delivery):

Notices to be delivered to Customer Contact, above.

Red Cross Strategic Account Executive

Name: **Cindy Dassow**

Phone: **(309) 357-3459** Extension: Email: **cindy.dassow@redcross.org**

Notices to be delivered to your Red Cross Strategic Account Executive with a copy to The American National Red Cross, Office of the General Counsel at 431 18TH Street NW, Washington, DC 20006.