

## **RISK MANAGEMENT OF RENTAL CONTRACTS**

Over the past several seasons, the Risk Management Program at USA Hockey has been monitoring the types of losses sustained, the numbers of the claims presented against our insurance coverages, and the financial impact on USA Hockey. A disturbing and unfortunate trend continues to arise in areas where rink and arena owners, and/or their management staffs, are attempting to transfer the responsibility for all risks (both related and unrelated to our sport) onto USA Hockey and our insurance programs. Some local hockey programs and their associations are being asked to sign facility rental agreements which take on liability far beyond those risks which relate to the playing of the game. In order to protect USA Hockey and our insurance programs, efforts must be made to minimize the acceptance of these contractual risks and exposures.

**District and Associate Risk Managers, as well as members of teams, leagues and local associations, should review in detail the rental contracts that are being presented for signature, prior to them being signed.** Your District Risk Manager, or their Associate Risk Manager, may request a copy of contracts that have been signed, to begin the process of advising you about suggested changes, so that your group can negotiate those changes for the following season's rental contract. Our District and Associate Risk Managers are not, nor are they expected to be, attorneys; if you have any doubts or concerns they can tell you whom to contact.

# INDEMNITY CLAUSE CHECKLIST

**All arena rental contracts must be carefully reviewed, prior to signing, for provisions requiring the assumption of liability for negligent or intentional acts or omissions.** We suggest that you conduct a careful reading of any facility rental contract you are asked to sign and negotiate to eliminate those that make the Lessee (you) responsible for all claims arising from conditions over which you (and USA Hockey) have no control. If the contract requires your organization to hold them harmless and to cover all legal expenses or claims, you may wish to use the following checklist to evaluate the indemnification clauses in those contracts, and determine the degree of your group's responsibilities.

## **Is there an indemnity (who pays if...) clause?**

- a. Why do you think is this important?
- b. Cautiously read all the fine print and legal language (get help if necessary).**
- c. Is the indemnity against liability or loss, or against both situations?
- d. Does the indemnity cover all costs and expenses of investigations and legal defenses?
- e. Does it obligate the indemnitor (you) to investigate and defend claims against the indemnitee (the arena)?
- f. Under what conditions (if any) does this obligation arise?

## **Is the clause indemnitory (pays for) or exculpatory (defends for)?**

- a. Is the other party seeking to have you stand in his or her shoes in the event of loss?
- b. Is the other party seeking to avoid any and all responsibility altogether?
- c. Is the other party seeking to be "released and indemnified" and to what extent?

Public agencies such as schools, cities, counties and other nonprofit organizations often require, and enforce, exculpatory (defends for) instead of indemnitory (pays for) contract language.

## **What is the scope (detail) of the contract clause's language?**

Does the clause:

- a. Cover your own negligence, concurrent (joint) negligence, sole negligence of the other party, 3rd party negligence, intentional torts, strict liability, Acts of God?
- b. Violate any Federal, State, or Local Statutes, USA By-Laws or Standing Orders of any kind?
- c. Provide, or lack, any insurance protection or any other type of acceptable financial support?
- d. Provide, or lack, any economic justification or other rationale for requiring such a clause?
- e. Violate public policy or offend the sensibilities of your community?
- f. Include any unilateral or unconscionable (wrongful) requirements/provisions?

# RECIPROCAL – STANDARD FORM

**Party A** shall defend and hold Party B, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional-acts or omissions or Party A, its officers agents, or employees.

**Party B** shall defend and hold Party A, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Party B, its officers agents, or employees

**This is the most preferred indemnification form, from a risk and insurance management view point. It allocates the responsibilities of the parties clearly and equitably. We strongly suggest that this form be used in all contracts or agreements offered by Party A to others.**

## **INDEMNIFICATION — MODIFIED FORM**

In some instances, the managers of ice arenas (whose facilities we want to use) may not understand the concept of mutual indemnification and hold harmless provisions. What we are really trying to say (legally) is “if we do wrong, we pay; and if you do wrong, you pay.” In order to try to overcome these difficulties in understanding contract language, and to assist our local organization(s), we have drafted a modified version of the indemnification and reciprocal forms. The new contract clause reads as follows:

“The parties to this contract agreement do hereby mutually agree to release, indemnify and hold harmless each other, from and against all liability for bodily injury (including death), damage to property, personal injury, claims, demands, losses, damages, costs and expenses (including any attorney’s fees), and lawsuits arising from, or alleged to arise from, rental and use of ice surface and/or use of the arena’s facilities, which are the subject of this agreement. Each party shall agree to accept the full responsibility for their own negligence and actions.”

# MODEL ICE ARENA RENTAL AGREEMENT

This Ice Arena License Agreement ("Agreement") is entered into between:

**Rink Operator:** \_\_\_\_\_, its agents, servants, employees and members ("Licensor"); and

**Club:** \_\_\_\_\_, its agents, servants, employees and members ("Licensee"), collectively referred to as the Parties.

This Agreement is intended to control the rights and responsibilities of the Parties regarding Licensee's use of the Ice Arena for its activities, which include ice skating, hockey games and practices. Licensee shall have exclusive use of the ice surface, boards, goals, benches and locker rooms ("Licensed Areas") within Licensor's facility. This agreement shall also control Licensor's rights of and responsibilities for those areas of Licensee's non-exclusive use consisting of the parking lots, walkways, spectator stands and other public areas of the Ice Arena ("Non-Exclusive Areas").

1. **USE.** The facilities are to be used by Licensee for and during the Term of this Agreement for ice hockey games, practices, team meetings and related club activities unless modified in writing and signed by the parties to this Agreement.
2. **TERM.** This Agreement shall be in effect from \_\_\_\_\_, until \_\_\_\_\_, unless extended by the parties in writing.
3. **FEES.** Charges are due as set forth below:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

4. **LICENSOR'S DUTIES & OBLIGATIONS.** Licensor shall: (a) Make the Arena available at the dates and times specified herein; (b) Provide a facility that is free from open and obvious physical defects in, of, or upon the Licensed Areas and an Ice Arena that is reasonably fit for its intended use and purpose; (c) Advance preparation of the ice surface, placement of nets, boards, lights, scoreboard and PA system as needed for its intended use and purpose; (d) Make reasonable efforts to resolve all concerns, including, but not limited to, correcting all defects that Licensee brings to Licensor's attention; (e) Be responsible for the condition of the Non-Exclusive Areas and maintain the Ice Arena in accordance with industry standards; and (f) Maintain order and control unruly behavior among spectators jointly with Licensee during all times when the Ice Arena is in use.

5. **LICENSEE'S DUTIES & OBLIGATIONS.** Licensee shall: (a) Abide by such reasonable rules and regulations as are generally applicable to any or all tenants of the Ice Arena; (b) Maintain all Licensed Areas in a clean and orderly manner; (c) Supervise and control the activities of its members, prospective members, players, coaches and invitees; (d) Notify Licensor of any open and obvious physical defects in the Licensed Areas of which it becomes aware; (e) If Licensee requires additional service providers, such as security personnel, for their event, Licensee may retain such providers, at its cost, subject to the prior approval of Licensor, and such an approval shall not be unreasonably withheld; and (f) Maintain order and control unruly behavior among spectators jointly with Licensor during all times when the Arena is in use.

6. **MUTUAL INDEMNIFICATION.** The parties to this Agreement do hereby mutually agree to release, indemnify and hold harmless each other, from and against all liability for bodily injury (including death), damage to property, personal injury, claims, demands, losses, damages, costs and expenses (including any attorney's fees), and lawsuits arising from, or alleged to arise from, rental and use of ice surface and/or use of the arena's facilities, which are the subject of this agreement. Each party shall agree to accept the full responsibility for their own negligence and actions.

- 7. INSURANCE.** The parties to this Agreement shall each secure and keep in force during the term of this agreement, from an insurance company, government self-insurance pool or government self-retention fund authorized to do business in the state in which the parties are located, commercial general liability with minimum limits of liability of \$1,000,000 per occurrence and a \$2,000,000 general aggregate and a \$1,000,000 products-completed operations aggregate.
- 8. EXCUSE OF PERFORMANCE.** The parties to this Agreement shall be excused from the performance of the terms and conditions of this Agreement when such failure is attributable to, and caused by, an Act of God, by governmental rules, regulations or actions, by a power failure, or by other circumstances that are beyond the control of any of the parties hereto.
- 9. ASSIGNMENT.** Except for exchanges of, or the resale of, selected ice rental periods by Licensee, by notice to Licensor, neither party may assign this Agreement or transfer any of its rights, duties or obligations hereunder, without the prior written consent of the other party.
- 10. CANCELLATION.** This Agreement may be canceled at any time by either party on 30 days written notice.
- 11. COMPLETE AGREEMENT.** This Agreement shall constitute the entire Agreement, including any Addendum(s) or Exhibit(s) as may be attached. In the event that any portion of this Agreement shall be ruled to be unenforceable by the courts, the remainder of this Agreement shall continue in full force and effect, for the term of the Agreement.
- 12. NOTICE.** Any notices concerning this agreement may be given, and all notices required by this agreement or concerning performance under this agreement shall be given, in writing, and shall be personally delivered or mailed addressed to the addresses shown below, or such other address or addresses as may be designated by either of the parties, in writing, from time to time. Notice shall also be sent via e-mail to the e-mail address for the party indicated below.
- 13. DISPUTE RESOLUTION.** All disputes, controversies, or claims arising out of or relating to this contract, specifically including, but not limited to, those relating to the determination of the duties and responsibilities of the parties and their respective liability for claims arising therefrom, shall first be discussed between the parties and if they cannot resolve the dispute shall be submitted binding arbitration in accordance with the applicable rules of the American Arbitration Association then in effect.

**14. ADDITIONAL PROVISIONS.**

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IN WITNESS WHEREOF, Licensor and Licensee have mutually executed this Agreement as of the day first above written, or as shown in any Addendum(s) to this Agreement.

Licensor: _____	Licensee: _____
By: _____	By: _____
Its: _____	Its: _____
Address: _____	Address: _____
_____	_____
Phone: _____	Phone: _____
E-Mail: _____	E-Mail: _____