

**ASSUMPTION OF RISK, RELEASE AND WAIVER OF LIABILITY, AND INDEMNITY AGREEMENT RELATING TO COVID-19 EXPOSURE, COVID-19 LIABILITY, AND COVID-19 RISKS**

*The persons to whom this Agreement applies are, as follows:*

Adult Participant Name: \_\_\_\_\_

Minor Participant Name(s): \_\_\_\_\_ Participant Age(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(If applicable) Name of Participant's Parent or Legal Guardian signing below: \_\_\_\_\_

IN CONSIDERATION for myself and/or my children listed above being permitted to utilize the services, utilize the facilities and/or participate in the programs of \_\_\_\_\_ (the "Organization"), including, but not limited to, observation or use of facilities or equipment, or participation in or acting as a spectator during any program affiliated with the Organization, the undersigned, on behalf of himself or herself and such participating children and any personal representatives, heirs, and next of kin (hereinafter referred to as "the undersigned") hereby acknowledges, agrees and represents that he or she has inspected and carefully considered such premises, equipment, and facilities and has considered the Organization's programs and that the undersigned finds and accepts same as being safe and reasonably suited for the use or participation by the undersigned and such participating children.

In addition, the undersigned acknowledges that novel coronavirus ("COVID-19") infections have been confirmed throughout the United States, including several cases in the undersigned's own State and locality. In accordance with the most recent guidance and recommendations issued by the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), undersigned's own State's Department of Health (DOH) for slowing the transmission of COVID-19, the undersigned hereby agrees, represents, and warrants that neither the undersigned nor such participating children shall visit or utilize the facilities, services, and/or programs of the Organization (other than any exclusively online services and programs) within 14 days after (i) returning from highly impacted areas subject to a CDC Level 3 Travel Health Notice, (ii) exposure to any person returning from areas subject to a CDC Level 3 Travel Health Notice, or (iii) exposure to any person who has a suspected or confirmed case of COVID-19. The CDC Travel Health Network is continuously updating this list and the undersigned agrees that they are aware of this list and the countries listed. The undersigned agrees to check on a daily basis the CDC Travel Health Notices list (<https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>) prior to participating in or utilizing the facilities, services, and programs of the Organization. The undersigned hereby agrees, represents, and warrants that neither the undersigned nor such participating children shall participate in, visit or utilize the facilities, services, and/or programs of the Organization if he or she (i) experiences symptoms of COVID-19, including, without limitation, fever, cough, loss of sense of taste or smell, or shortness of breath, or (ii) has a suspected or diagnosed/confirmed case of COVID-19. The undersigned agrees to notify the

Organization immediately if he or she believes that any of the foregoing access/use restrictions may apply.

The Organization has taken certain steps to implement certain recommended guidance and recommendations issued by public health agencies for slowing the transmission of COVID-19, including, without limitation, the access/use restrictions set forth above. The undersigned acknowledges and agrees that the Organization may revise its procedures at any time based on updated recommended guidance and recommendations issued by public health agencies and further agrees to comply with the Organization's revised procedures prior to utilizing the facilities, services, and/or prior to participating in the programs of the Organization. The undersigned further acknowledges and agrees that, due to the nature of the facilities, services, and programs offered by the Organization, social distancing of 6 feet per person among children and their fellow participants or others is not always possible. The undersigned fully understands and appreciates both the known and potential dangers of participating in the programs and/or utilizing the facilities and services of the Organization and acknowledges that use thereof by the undersigned and/or such participating children may, despite the Organization's reasonable efforts to mitigate such dangers, result in exposure to COVID-19, which could result in quarantine requirements, serious illness, disability, and/or death.

IN FURTHER CONSIDERATION OF BEING PERMITTED TO PARTICIPATE IN THE ORGANIZATION'S PROGRAMS, THE UNDERSIGNED HEREBY AGREES TO THE FOLLOWING:

THE UNDERSIGNED, ON HIS OR HER BEHALF AND ON BEHALF OF SUCH PARTICIPATING CHILDREN, HEREBY RELEASES, WAIVES, DISCHARGES AND COVENANTS NOT TO SUE the Organization or its national governing body organization, or any of their respective directors, officers, employees, volunteers and agents, or any of the fellow participants or their family members or guests from all liability to the undersigned or such participating children and all personal representatives, assigns, heirs, and next of kin of the undersigned or such participating children for any loss or damage, and any claim or demands on account of any property damage or any injury to, or an illness or the death of, the undersigned or such participating children (or any person who may contract COVID-19, directly or indirectly, from the undersigned or such participating children) *whether caused by the negligence, active or passive, of the Organization or otherwise while the undersigned or such participating children are in, upon, or about the premises or any facilities or using any equipment of or participating in any program of or affiliated with the Organization.* To the extent such statute applies, the undersigned also expressly and knowingly waives all rights under California Civil Code Section 1542, which provides: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

THE UNDERSIGNED HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS the Organization or its national governing body organization, or any of their respective directors, officers, employees, volunteers and agents, and each of them, from any loss, liability, damages or costs they may incur, *whether caused by the Organization's negligence, active or passive, or*

*otherwise* while the undersigned or any participating child is participating in any program of the Organization or in, upon, or about the premises or any facilities or equipment affiliated with the Organization. The undersigned understands and agrees that the Organization is not required to provide insurance to cover the undersigned or such participating children in the event they suffer illness, injury, death, property loss, theft or damage of any sort upon, or about the premises or any facilities or equipment therein or while participating in any program affiliated with the Organization.

The undersigned agrees and acknowledges that use of the Organization facilities and services, and participation in the Organization programs, may involve inherent danger and risk, including, without limitation, the risk of physical illness or injury, death or property damage. THE UNDERSIGNED HEREBY ASSUMES FULL RESPONSIBIUTY FOR, AND RISK OF ILLNESS, BODILY INJURY, DEATH OR PROPERTY DAMAGE to the undersigned or such participating children due to negligence, active or passive, or otherwise while in, about or upon the premises of the Organization and/or while using the premises or any facilities or equipment thereon and/or while participating in or observing any program affiliated with the Organization. The undersigned acknowledges that any illness or injuries that the undersigned or such participating children contract or sustain may be compounded by negligent first aid or emergency response of the Releasees and waive any claim in respect thereof.

THE UNDERSIGNED further expressly agrees that the foregoing ASSUMPTION OF RISK, RELEASE AND WAIYER OF LIABILITY, AND INDEMNITY AGREEMENT is intended to be as broad and inclusive as is permitted by the laws of the State in which the undersigned resides or participates and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

I HAVE CAREFULLY READ AND VOLUNTARILY SIGN THIS ASSUMPTION OF RISK, RELEASE AND WAIYER OF LIABILITY, AND INDEMNITY AGREEMENT AND FURTHER AGREE THAT NO ORAL REPRESENTATIONS, STATEMENTS OR INDUCEMENT APART FROM THE FOREGOING WRITTEN AGREEMENT HAVE BEEN MADE. I AM AWARE THAT BY AGREEING TO THIS AGREEMENT I AM GIVING UP VALUABLE LEGAL RIGHTS, INCLUDING THE RIGHT TO RECOVER DAMAGES FROM THE ORGANIZATION IN CASE OF ILLNESS, INJURY, DEATH OR PROPERTY LOSS OR DAMAGE, INCLUDING, FOR THE AVOIDANCE OF DOUBT AND WITHOUT LIMITATION, EXPOSURE TO COVID-19 AT ANY ORGANIZATION FACILITY OR DURING PARTICIPATION IN ANY PROGRAM AND ANY ILLNESS, INJURY OR DEATH RESULTING THEREFROM. I UNDERSTAND THAT THIS DOCUMENT IS A PROMISE NOT TO SUE AND A RELEASE OF AND INDEMNIFICATION FOR ALL CLAIMS. IF SIGNING ON BEHALF OF MINOR: I ALSO UNDERSTAND THAT THIS AGREEMENT IS MADE ON BEHALF OF MY MINOR CHILD(REN) AND/OR LEGAL WARDS AND I REPRESENT AND WARRANT TO THE ORGANIZATION THAT I HAVE FULL AUTHORITY TO SIGN THIS AGREEMENT ON BEHALF OF SUCH MINOR(S).

**I have read and understand the terms of this Assumption of Risk, Release and Waiver of Liability, and Indemnity Agreement and agree to its terms.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Emergency Contact Name

\_\_\_\_\_  
Emergency Contact Number



### USA Softball COVID-19 Insurance Q & A

**Q:** We have heard rumors that softball insurance providers will not cover players if they are playing ball outside of the state while their home state is shut down. Can you please provide insight on this as we are trying to weigh options regarding the remainder of our season?

**A:** The insurance program for USA Softball has not changed with regard to softball claims. If a USA Softball team has insurance through Individual Registration or through Team Insurance, the USA Softball Insurance policy will respond to softball-related accident and liability claims in the same manner as it always has. However, with regard to when to begin playing, permission to travel to another state, etc., due to COVID-19, RPS Bollinger and the USA Softball Insurance Program has no authority and can give no direction in that matter. Teams must follow the direction of the federal, state, and local authorities as to whether they can begin play locally, in other jurisdictions in their own states, or travel to other states.

**Q:** Is there coverage for COVID-19 on the USA Softball Liability Policy?

**A:** Under the General Liability policy for USA Softball, there is no *exclusion* for Virus or Contagious Disease; however, simply because the policy is silent does not automatically confer coverage for such claims. The General Liability policy was never designed to cover liability claims stemming from a pandemic, but it may be forced to respond and provide a defense, depending on the specific accusation in the lawsuit.

**Q:** Are there liability risks associated with beginning to play softball while the pandemic is not completely contained?

**A:** Yes. Because of the litigious nature of the U.S., organizations have to consider that they could face a lawsuit in association with COVID-19. While seemingly absurd from many angles, it is conceivable that USA Softball organizations could be accused of responsibility with the spread of the virus, and its effects. Such a case would be difficult to prove, but as we have seen from our experience with other liability claims, the ability to win the case is not always a deterrent. We are hopeful that there will be at least a measure of immunity for organizations and businesses against liability claims where the accusation is negligence with regard to people contracting COVID-19 while trying to re-start activity, but that legislation has not taken shape yet.

Organizations that do not follow federal, state, and local guidelines with regard to activities will increase their risk and will most likely find no coverage under the liability policy due to the exclusion for intentional acts.

**Q:** Is there insurance coverage for virtual practices though the internet?

**A:** Yes. As long as the instruction is “live” and supervised, there will be insurance coverage for softball injuries on the Accident Policy. The injury will need to be verified and the regular claim process applies. Coverage on the liability policy for virtual practices will depend on the specific claim accusation.

**Q:** Should USA Softball consider implementing a waiver for the risks associated with playing an organized group sport while COVID-19 remains a threat?

**A:** While we know that waivers are by no means foolproof, we do endorse the idea of a waiver for players and spectators to sign off that they understand the risks of contracting COVID-19, and that they will not hold a USA Softball Coach, Team, Commissioner, or USA Softball itself responsible.

**Q:** Is there coverage for COVID-19 illness under the USA Softball Accident Policy?

**A:** No. There is an exclusion for sickness and disease on the accident policy.