



RISK NOTE

SUBJECT: When others use your facilities and equipment

Background

Health Care Agencies (HCA) and facilities are exposed to risk of loss when they allow user groups or individuals from outside their institution to use their facilities and equipment. If someone is injured or suffers property damage during the user's activity the facility could be liable. If the facility or equipment is damaged, the HCA could suffer a financial loss.

Examples of such use would be outside groups using a hydrotherapy pool, fund raising events of a community group being conducted on HCA grounds, movie companies filming on HCA premises or where an individual is using the HCA's bathing facilities (Please see our specific Risk Note "[When others use your bathing facilities](#)").

Risk Management

We recommend user groups enter into a **contract** or **licence agreement with the HCA**, or obtain a **permit** for the use of the facilities. The document should include certain standard clauses, depending on the type of user group or individual and the nature of the proposed activity.

We anticipate most user groups can be classified as one of the following types:

- ◆ **Commercial Users:** Individuals, partnerships, corporations, or other businesses set up for commercial or profit purposes, using the facilities with the intention of making a profit (e.g. film production company).
- ◆ **Non-Profit Users:** Individuals, organizations, associations, cultural or religious groups, educational, youth or service groups, or sports organizations set up for non-profit activities using the facilities for events (e.g. holding a fund-raising auction).
- ◆ **Community Users:** Individuals, organizations, associations, societies, or other groups resident in the community using the facilities for any casual and/or informal community or non-therapeutic activities (e.g. lectures, use of hydrotherapy pool).

The standard clauses HCAs can use to protect themselves from risks include the following:

- Indemnification & Hold Harmless
- Liability insurance
- Waiver of Subrogation
- Certificate of Insurance

Please refer to the chart below and the sample wording clauses that follow for recommended inclusion in user agreements:

Standard Clauses	User Groups			
	Commercial	Non-Profit Organization	Community Groups	Individuals
Indemnification and Hold Harmless	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Liability Insurance Requirement	<input type="checkbox"/>	<input type="checkbox"/>		
Waiver of Subrogation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Certificates of Insurance	<input type="checkbox"/>			

Terms of the contract should also include:

- What facilities/equipment can be used
- Who will have the key to the facility
- What procedures must be followed for locking up facility and ensuring any appliances (e.g. coffee pot/kettle) are turned off/unplugged at the end of activity

Other Risk Management Considerations include:

- All HCA records and equipment should be secured in all accessible rooms (e.g. rooms enroute to washrooms)
- If possible staff/security should attend to ensure these facilities are secured at the end of the activity
- Duty of care under the Occupier's Liability Act (e.g. snow removal, slippery floors, loose cords)

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It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate. If you have any questions about the content of this Risk Note please contact your organization's risk manager or chief risk officer to discuss.

SAMPLE CLAUSES

Indemnification and Hold Harmless Clause

The _____ (User Group) shall indemnify and hold harmless the (HCA/owner) and any of its officers, employees, servants, agents and contractors from any and all loss, liability, claims or expense arising out of the use and/or occupation of the property belonging to the (HCA) by the _____ (User Group) and any of its officers, employees, servants, agents, contractors and volunteers, except to the extent that such loss arises from the independent negligence of the HCA.

Liability Insurance Clause

The _____ (User Group) shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in British Columbia and in forms and amounts acceptable to the _____ (HCA).

General Liability Insurance with a Limit of not less than \$2,000,000, inclusive per occurrence for Bodily Injury and Property Damage including loss of use thereof. Such insurance shall extend to cover the _____ (User Group), its officers, employees, servants, agents, contractors, and volunteers and shall include the HCA, its officers, employees, servants, agents and contractors as Additional Insureds with respect to Liability arising out of the use or occupation by the _____ (User Group) of the property belonging to the HCA.

Waiver of Subrogation Clause

The _____ (User Group) hereby agrees to waive all rights of subrogation or recourse against the HCA with respect to the use or occupation by the _____ (User Group) of the premises described in the permit or agreements.

Certificates of Insurance Clause

The _____ (User Group) shall provide the HCA with evidence of all required insurance prior to the effective date of the (contract, licence agreement or permit). Such evidence of insurance shall be in the form of the attached Certificate of Insurance. When requested by the HCA, the _____ (User Group) shall provide certified copies of required insurance policies.

Certificates of insurance must be issued by the Insurer or Insurance Broker of the User Group and contain the following information:

1. Name of Insurance Company and the Binder or Policy Number;
2. Name and Address of the Insured (User Group);
3. Policy Period (covering at least the period the agreement is in place);
4. Description of Coverage;
5. Policy Limits;
6. Description of Insured Operations and Location(s);
7. Signature of Authorized Representative and Date.

Note:

Some event activities are more hazardous than others and create an increased exposure for the facility owner. Give careful attention to the liability insurance the user group obtains for these activities; it may contain a fairly common exclusion regarding injury to participants which is unacceptable for risk management purposes.

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CERTIFICATE OF INSURANCE

Freedom of Information and Protection of Privacy Act
 The personal information requested on this form is collected under the authority of and used for the purposes of contract review.

Part 1 To be completed by the Health Care Agency

THIS CERTIFICATE IS REQUESTED BY and ISSUED TO (<i>Name of office</i>)		AGREEMENT IDENTIFICATION NO.	
HEALTH CARE AGENCY CONTACT PERSON NAME & TITLE		PHONE NO ()	
		FAX NO ()	
MAILING ADDRESS			POSTAL CODE
CONTRACTOR NAME			
CONTRACTOR ADDRESS			POSTAL CODE

Part 2 To be completed by the Insurance Agent or Broker

INSURED	NAME		
	ADDRESS		POSTAL CODE
OPERATIONS INSURED	PROVIDE DETAILS		
TYPE OF INSURANCE List each separately	COMPANY NAME, POLICY NO. & BRIEF DESCRIPTION	EXPIRY DATE YYYY/MM/DD	LIMIT OF LIABILITY/AMOUNT

This certificate certifies that policies of insurance described herein are in full force and effective as of the date of this certificate and comply with the insurance requirements of the Agreement identified above, except as follows:

AGENT OR BROKER COMMENTS:

AGENT OR BROKER	ADDRESS	PHONE NO ()
SIGNED BY THE AGENT OR BROKER ON BEHALF OF THE ABOVE INSURER(S)		DATE SIGNED

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