

# **D-BAT & LINCOLN SOX WAIVER OF LIABILITY, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT**

D-BAT, its owners, executives, directors, officers, employees, and agents (collectively D-BAT), provides facilities, training services and equipment for use in baseball and softball training and recreational activities for use by participants, such as its: employees and staff; batting cages; pitching machines; pitching mounds (bullpen areas); other training areas; protective cages; and bats, balls and helmets. The LINCOLN SOX have a sub-lease agreement with D-Bat for the north room to hold team and individual practices and training.

## **1 ASSUMPTION OF RISKS**

I understand that baseball and softball are physical activities that, by their very nature, carry certain INHERENT RISKS OF INJURY THAT CANNOT BE ELIMINATED regardless of the care taken to avoid injuries. The use of D-BAT's/LINCOLN SOX' facilities, training services and equipment involves close encounters with solid, fast-moving objects and projectiles, such bats and hard balls. Also, baseball and softball activities involve strenuous exertions of physical strength, use of various and multiple muscle groups, quick movement involving speed and change of direction, and sustained physical activity placing stress on joints and the cardiovascular system. The use of D-BAT's/LINCOLN SOX' facilities, training services, and equipment during these activities does not guarantee my safety. Even with the use of protective equipment, injuries relating to this type of activity may still occur as a result of factors outside of D-BAT's or LINCOLN SOX' control. For example, the use of equipment not provided by D-BAT or LINCOLN SOX, the level of alertness, physical condition or athletic skill, are some of the factors that may contribute to the potential for a participant's injury.

The specific risks of injury that may occur engaging in baseball and softball activities vary greatly, but a non-exhaustive list of examples of potential injuries include and are not limited to: 1) minor injuries such as scratches, bruises, and sprains; 2) serious injuries such as broken bones, broken teeth, concussion, eye injuries or loss of eyesight, joint injuries, back injuries or heart attacks; and 3) catastrophic injuries, including paralysis and death.

I understand and agree that D-BAT and LINCOLN SOX provides its baseball and softball facilities and equipment in an AS IS CONDITION, WITHOUT WARRANTY OR GUARANTEE that a specific facility or piece of equipment will eliminate a participant's risk for injury, or that a specific facility or piece of equipment has been inspected or tested by D-BAT or LINCOLN SOX prior to each individual participant's use. I understand that D-BAT NOR LINCOLN SOX INSPECT OR TEST EACH PIECE OF EQUIPMENT (OR PROTECTIVE CAGING) PRIOR TO EACH PARTICIPANT'S USE.

I HAVE READ THE PREVIOUS PARAGRAPHS AND I KNOW, UNDERSTAND, APPRECIATE THESE AND OTHER RISKS THAT ARE INHERENT in the use of facilities, training services and equipment provided by D-BAT and LINCOLN SOX. I hereby ASSERT THAT MY PARTICIPATION IN THE USE OF D-BAT/LINCOLN SOX PROVIDED FACILITIES, TRAINING SERVICES AND EQUIPMENT IS VOLUNTARY, AND THAT I KNOWINGLY ASSUME ALL SUCH RISKS.

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## **2 WAIVER**

In consideration of being permitted to use today, and on all future dates, the facilities, training services, and equipment provided by D-BAT and/or LINCOLN SOX, I, for myself, my heirs, personal representatives or assigns, minors of whom I am the parent or guardian or have responsibility for, and guests accompanying me, whether or not they make use of the facilities, training service, or equipment (collectively the PARTICIPANTS), DO HEREBY RELEASE, WAIVE, DISCHARGE, AND COVENANT NOT TO SUE D-BAT OR LINCOLN SOX, from liability FROM ANY AND ALL CLAIMS, INCLUDING CLAIMS RELATED TO ALLEGED NEGLIGENCE OR BREACHES OF CONTRACT OR WARRANTIES BY D-BAT OR LINCOLN SOX, resulting in personal injury, accidents, illnesses (including death), or property damage or monetary loss, whether to me, any PARTICIPANT, or any third party, arising from my or any PARTICIPANT's participation in, or observation of, the use of baseball or softball facilities, training services or equipment provided by D-BAT or LINCOLN SOX.

I agree that I am responsible for the conduct and behavior of all minors and guests that accompany me regardless of whether they use the facilities, training services, or equipment. I agree to reimburse D-BAT and/or LINCOLN SOX for all costs, expenses or fees or damages incurred by D-BAT or LINCOLN SOX, including damages to the facility and equipment, arising out of my conduct or the conduct of any minors and guests that accompany me.

## **3 INDEMNIFICATION AND HOLD HARMLESS**

I agree to INDEMNIFY AND HOLD D-BAT AND LINCOLN SOX HARMLESS from any and all claims, actions, suits, procedures, costs, expenses, damages and liabilities, including attorney's fees, brought by me, any PARTICIPANT, or any third party, as a result of my or any PARTICIPANT's use of (or from observation of the use of) D-BAT/LINCOLN SOX provided facilities, training services or equipment. I also agree to reimburse D-BAT and/or LINCOLN SOX for any such costs, expenses, fees or damages incurred by me, any PARTICIPANT, or any third party, as a result of my or any PARTICIPANT's use of (or from observation of the use of) D-BAT/LINCOLN SOX provided facilities, training services or equipment.

## **4 PERMISSION FOR USE OF IMAGE, NAME AND STATEMENTS**

I understand that D-BAT and LINCOLN SOX, as part of its baseball and softball training services and that in the general operation of its business, may obtain photographs, video or other recordings of participants using the facilities, training services and equipment of D-BAT or LINCOLN SOX, regardless of the participant's age or level of skill. I hereby grant to D-BAT and LINCOLN SOX permission to use or reproduce my name, image, likeness, photographic image, videographic image, or any oral or written recorded statement of mine related to my use of D-BAT's/LINCOLN SOX' facilities, training service or equipment in any D-BAT/LINCOLN SOX training materials, broadcast, advertisement, brochures, web-pages or web-based publications associated with D-BAT/LINCOLN SOX.

I understand that D-BAT and LINCOLN SOX will rely on this permission and release in producing, broadcasting, posting, and distributing materials containing my name, likeness, photographic image, videographic image, or any oral or written recorded statement of mine relating to my use of D-BAT/LINCOLN SOX facilities, training services, or equipment. I also acknowledge and understand that I will receive no money, royalties or remuneration of any kind for D-BAT or LINCOLN SOX related to this permission and release, or from the materials covered by this permission and release.

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## **5 SAFETY**

D-BAT/LINCOLN SOX has posted throughout the facility safety signs, posters and instructions. I agree to comply with all of D-BAT's/LINCOLN SOX' safety rules, procedures and requirements, including but not limited to wearing protective gear. I understand that failure to comply may result in D-BAT's/LINCOLN SOX' terminating my use of the facilities, training services, and equipment and requiring me to leave the premises, at D-BAT's/LINCOLN SOX' sole and absolute discretion.

## **6 SEVERABILITY**

The undersigned further expressly agrees that the foregoing waiver of liability, assumption of risks, indemnity agreement, and permission for the use of image, name and statements is intended to be as broad and inclusive as is permitted by the laws of the that State of Nebraska and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

## **7 FURTHER ACKNOWLEDGEMENT OF UNDERSTANDING**

I have read this waiver of liability, assumption of risk, indemnity agreement and permission for use of image, name and statements. I fully understand its terms. I UNDERSTAND THAT BY SIGNING THIS WAIVER OF LIABILITY, ASSUMPTION OF RISK, INDEMNITY AGREEMENT AND PERMISSION FOR USE OF IMAGE, NAME AND STATEMENTS, THAT I AM GIVING UP SUBSTANTIAL RIGHTS, INCLUDING MY RIGHT TO SUE. I acknowledge that I am signing this waiver of liability, assumption of risk, indemnity agreement and permission for use of image, name and statements freely and voluntarily, and that I INTEND BY MY SIGNATURE OR ELECTRONIC ACCEPTANCE OF THIS DOCUMENT, FOR THIS TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY to the greatest extent allowed by law.

### **ADDDITIONAL HELMET WAIVER**

I understand that for my safety D-BAT/LINCOLN SOX requires me to wear a helmet when using the facilities, training services and equipment. In consideration of D-BAT waiving the requirement to wear a helmet when I use the slow pitch softball batting or pitching cages (whether being pitched by machine or person), I agree to the following.

I represent that I am an adult over the age of 18 and am of sound mind and body and capable of making this waiver, indemnity and release.

In consideration of being permitted to use today, and on all future dates, the facilities, training services, and equipment provided by D-BAT/LINCOLN SOX, I, for myself, my heirs, personal representatives or assigns, ASSUME THE RISK OF NOT WEARING A HELMET, AND DO HEREBY RELEASE, WAIVE, DISCHARGE, AND COVENANT NOT TO SUE D-BAT OR LINCOLN SOX, from liability FROM ANY AND ALL CLAIMS, INCLUDING CLAIMS RELATED TO ALLEGED NEGLIGENCE OR BREACHES OF CONTRACT OR WARRANTIES BY D-BAT OR LINCOLN SOX, resulting in personal injury, accidents, illnesses (including death), or property damage or monetary loss, arising from my not using a helmet in my participation in the use of the facilities, training services or equipment provided by D-BAT OR LINCOLN SOX.

I agree to INDEMNIFY AND HOLD D-BAT HARMLESS from any and all claims, actions, suits, procedures, costs, expenses, damages and liabilities, including attorney's fees, brought as a result of my use of D-BAT/LINCOLN SOX provided facilities, training services or equipment without a helmet.