



## Essential Contract Information for Elected Officers

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It is a necessary function for Auxiliary Unit Commanders to, from time to time, enter into contractual agreements, for such diverse purposes as securing space for training, meetings, boat & trade shows, change of watch, public education or other authorized Auxiliary activities. Many of the parties to such agreements have in their "standard contracts" language that the Auxiliary finds unacceptable and possibly detrimental to the Auxiliary and its individual units and members. This outline is designed to educate Unit Commanders (FCs, DCPs & DCOs) as to requirements and restraints placed upon contracts and license agreements that impact on Auxiliary Units. This outline is not meant to serve as an enabling device to circumvent the scrutiny and review of these agreements by the District Staff Office – Legal but only as a source of guidance to Unit leaders.

Before proceeding, it should be understood that a contract or license agreement is not required for Auxiliary arrangements with individuals or organizations that provide space or services to the Auxiliary. If the provider does not ask you to sign an agreement, Unit commanders are not required to seek such agreements. However, if a Unit is presented with any type of contractual agreement you must be aware of and be in compliance with the contractual requirements set forth below.

### **LEASES are PROHIBITED!**

Auxiliary Units **ARE NOT**, under any circumstance permitted to enter leases for the use of Real Estate. Directors Offices are not permitted to enter such leases on the behalf of the Auxiliary. There is very little which cannot be accomplished by a license agreement in lieu of a lease." Your DSO-L will assist you in preparing an alternative "license agreement" in circumstances where a Unit may be presented a "lease."

### **Liability Provisions**

"Hold Harmless" or "Indemnification" clauses are unacceptable in Auxiliary contracts. Federal law prohibits Auxiliarists, acting in an "official capacity" from

signing any legally binding agreement containing such language. A "hold harmless" or "indemnification" agreement essentially means that the Auxiliary would assume liability in advance for the negligent acts of the other party, like the owner of a building where you want to teach a BS&S class. Sometimes this clause even extends to the negligence of third parties. This could mean, for example, that the Auxiliary would agree in advance to defend the owner of the building in a lawsuit where one of the attendees at a **BS&S** class negligently injured another student. The Auxiliary cannot agree to such hold harmless or indemnification clauses, for the reasons below.

The Auxiliary, when involved in official events connected with its mission, is an arm of a government agency, so it has the same legal status as the Coast Guard. 23 USC Sec. 831. The United States government may not assume liability for injury or damages except as provided by law in the Federal Tort Claims Act (FTCA), 28 USC Sec. 2674 (FTCA), nor may it release others from their own liability. Simply put, agents of the United States, including Auxiliary members acting in their official capacity, do not have authority to enter into such hold harmless agreements. Even if they sign an agreement with a hold harmless provision, that provision is invalid as to the government.

The United States is "self insured", meaning it does not "carry insurance". Liability is governed exclusively by the FTCA, and claims are handled pursuant to that body of law. It is most desirable to simply strike out the offensive language. Sometimes the licensor insists of some language speaking to liability issues. Please contact the DSO-LP for Guidance.

### **Americans with Disabilities Act and Rehabilitation Act**

In 1973, the Americans With Disabilities Act and Rehabilitation Act were enacted into law. Federal organizations, when contracting for lodging must make certain that the lodging provider is in compliance with the requirements of the Act. Any contract for lodging entered by the Auxiliary must contain the following language:

#### **Americans With Disabilities Act and Rehabilitation Act**

The hotel warrants and represents that its premises, including, but not limited to its facilities, guestrooms, common areas and transportation services comply with the provisions of the Americans With Disabilities Act ("ADA") and the Rehabilitation Act of 1973 as amended and the Regulations promulgated thereunder, and that all of its premises and facilities will be accessible to and useable by individuals with disabilities who may attend or participate in the conference. The hotel further agrees to indemnify and hold harmless the organization, its officers, directors and agents from and against any and all claims, liabilities, losses, damages, suits, penalties, including, but not limited to, reasonable attorney's fees and costs arising out of claims brought against the organization, its officers, directors or agents, claiming that the premises failed to comply with the ADA and/or Rehabilitation Act and Regulations promulgated thereunder.

### **The Hotel and Motel Fire Safety Act**

The Hotel and Motel Fire Safety Act of 1990 became effective 25 September 1990. Its purpose was to save lives and protect property by promoting fire and life safety in hotels, motels and all places of public accommodation. It applies to all inns, hotels, motels or other establishments that provide lodging to government employees or personnel. The Act prohibits the use of federal funds to sponsor or fund in whole or part a meeting, convention, conference, or training seminar in hotels or motels not in compliance with the Act. Accordingly, Unit commanders seeking a location for a meeting, convention, conference, or training seminar, where any Auxiliary or Coast Guard funds will be expended must make sure that the facility meets the requirements of the Act. Most of the larger accommodation facilities should be aware of the Act's requirements. If they are not, the DSO-L can provide them with guidance as to where they can find the Act's requirements.

Any contract for the accommodation of Auxiliary or Coast Guard personnel must contain the following language:

#### **The Hotel and Motel Fire and Safety Act**

The hotel represents and warrants that its premises comply with the provisions of the Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391) and agrees to indemnify and hold harmless the organization, its officers, directors and agents from and against any and all claims, liabilities, losses, damages, suits, penalties, including, but not limited to, reasonable attorney's fees and costs arising out of claims brought against the organization, its officers, directors or agents, claiming that the premises failed to so comply.

### **Allowance for "Force Majeure" contingencies**

The Auxiliary, by its very nature, is an extension of the United States Coast Guard. As such we must stand ready to respond and assist the Coast Guard in the event of natural disasters or similar crises. Additionally, a large portion of the Auxiliary's budget is dependent of Coast Guard funding, which, as we know, can vary significantly from year to year. Events could conspire to prevent a unit from being in a position to honor contractual commitments. Such unexpected events, of which the Auxiliary Unit has no control, are called "forces majeure." Wherever possible, Auxiliary Units should incorporate into their written agreements language, which would relieve the unit of financial liability, should such forces unexpectedly prevent the Unit from honoring its contracts.

### **Other Cancellation Contingencies**

Along the same line of reasoning as the previous subject, wherever possible, licensees and agreements should reserve the Auxiliary's right to cancel the agreement upon thirty (30) days written notice. A notice period of "90 days" may be substituted if the agreement presenter balks at the 30 day cancellation period. A Unit commander must be fully cognizant of the potentially ramifications of breaching an agreement, especially as most units can ill afford to face the financial consequences of such a breach.

### **Social Security/Employer Identification Numbers**

On many contracts, especially where a sponsoring school charges a general enrollment fee and then "pays" the course providers a percentage or fee, you will be asked to provide a "social security number" for tax reporting purposes. DO NOT use your own personal social security number or the IRS will hold you personally accountable for any taxes that may be due on the payment. The United States Coast Guard Auxiliary has it's own "Employer Identification Number" (EIN) to use in such circumstances. This number is **52-1500576** and is to be used by all units of the Auxiliary where a Contract or License Agreement requires a SSN or EIN for "payment" or taxation purposes.

### **Proper Identification of the Unit & Elected Officer entering the Agreement**

The "contracting" party is not the Unit Commander as an individual. The elected officer enters a contract or agreement on behalf of the Unit they currently command. It is imperative that the correct designation is made on contracts or other agreements that a unit may enter in to. Remember....it is the Unit that is entering the Agreement and not the Unit Commander as an individual.

For a District Level Agreement;

The District should be identified as  
"\_\_\_\_\_ District \_\_\_\_\_ Region,  
United State Coast Guard Auxiliary"

The Commodore, as signer, will be identified as  
" (DCO's Name \_\_\_\_\_), Commodore  
\_\_\_\_\_ District \_\_\_\_\_ Region,  
United States Coast Guard Auxiliary"

For a Division Level Agreement;

The Division should be identified as  
"Division \_\_\_\_\_  
\_\_\_\_\_ District \_\_\_\_\_ Region,  
United State Coast Guard Auxiliary"

The Division Captain, as signer, will be identified as  
" (DCP's Name \_\_\_\_\_), Division Captain  
Division \_\_\_\_\_, District \_\_\_\_\_ Region,  
United States Coast Guard Auxiliary"

For a Flotilla Level Agreement:

The Flotilla should be identified as

“Flotilla \_\_\_\_\_ Division \_\_\_\_\_  
\_\_\_\_\_ District \_\_\_\_\_ Region,  
United State Coast Guard Auxiliary”

The Flotilla Commander, as signer, will be identified as

“ (FC's Name \_\_\_\_\_, Flotilla Commander  
Flotilla \_\_\_\_\_ Division \_\_\_\_\_,  
\_\_\_\_\_ District \_\_\_\_\_ Region,  
United States Coast Guard Auxiliary”

### **Signing Authority**

Remember, though designated subordinates may negotiate the terms or make arrangements for the use of outside facilities, only the current elected unit commander (i.e. District Commodore, Division Captain or Flotilla Commander) may sign such contracts after the approval of the DSO-Legal. Only Unit Commanders currently in office have contract signing authority. A “Flotilla Commander - Elect” for example, would not have contract or license agreement signing authority just because he or she will be in office when the class or event will actually take place. The Unit Commander currently in office is the only person authorized to sign a contract regardless of when the event or class will be held. **Under no circumstances may VCOs, RCOs, DSOs, Vice Commanders, Vice Captains, SOs, or Flotilla Staff Officers, or “Flotilla Commander, Division Captain or Commodore – Elects” sign contracts.** Contract signing authority cannot be delegated.

A District Commodore may not sign a Division or Flotilla level agreement. Likewise, a Division Captain may not sign a Flotilla level Agreement.

### **Processing the Contract/License Agreement Through the DSO-LP**

All contracts & license Agreements, regardless of the Unit level, **must** be submitted to the District Staff Officer. It does not matter if the contract currently before you is exactly the same as a previously DSO-LP approved document. The new contract/License agreement must be re-submitted to the DSO-LP prior to being signed.

Whenever possible, the original copy (not a photocopy) of the contract should be sent to the DSO-L for review and approval. Be sure to allow sufficient time for the DSO-L to review the documents and for the mail to return it to you. The minimum suggested time is to have the original contract to the DSO-L at least two weeks before it is due to be signed and turned in.

**Department of Legal Affairs**

**APPENDIX "A"**

**ADDENDUM TO CONTRACT/LICENSE AGREEMENT**

Between

And

(Federally permitted substitute language for stricken liability paragraphs)

"The USCG Auxiliary, in carrying out the terms of this agreement, may be liable as an element of the USCG, for damage or loss of property, personal injury, or death caused by the acts or omissions of its members or agents, pursuant to the terms of the Federal Tort Claims Act, 28 USC 2671.11"

APPENDIX "B"

ADDENDUM TO CONTRACT/LICENSE AGREEMENT

Between

And

1. Americans With Disabilities Act and Rehabilitation Act

The hotel warrants and represents that its premises, including, but not limited to its facilities, guestrooms, common areas and transportation services comply with the provisions of the Americans With Disabilities Act ("ADA") and the Rehabilitation Act of 1973 as amended and the Regulations promulgated thereunder, and that all of its premises and facilities will be accessible to and useable by individuals with disabilities who may attend or participate in the conference. The hotel further agrees to indemnify and hold harmless the organization, its officers, directors and agents from and against any and all claims, liabilities, losses, damages, suits, penalties, including, but not limited to, reasonable attorney's fees and costs arising out of claims brought against the organization, its officers, directors or agents, claiming that the premises failed to comply with the ADA and/or Rehabilitation Act and Regulations promulgated thereunder.

2. The Hotel and Motel Fire and Safety Act

The hotel represents and warrants that its premises comply with the provisions of the Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391) and agrees to indemnify and hold harmless the organization, its officers, directors and agents from and against any and all claims, liabilities, losses, damages, suits, penalties, including, but not limited to, reasonable attorney's fees and costs arising out of claims brought against the organization, its officers, directors or agents, claiming that the premises failed to so comply.

**APPENDIX "C"**

**ADDENDUM TO CONTRACT/LICENSE AGREEMENT**

Between

And

The Hotel/Licenser recognizes that the United States Coast Guard Auxiliary and its individual units are part of the United States Coast Guard and therefore subject to the directives, assignments and funding allocations of Commandant of the United States Coast Guard. Furthermore the Hotel recognizes that as an integral part of the United State Coast Guard, Auxiliary members may be called upon in mass to provide their services to the public in the event of a natural disaster or other similar emergency. If such unforeseen circumstances or other force majeure were to occur, the Auxiliary may be unable to honor the terms of this agreement. Under such unique circumstances, the United States Coast Guard Auxiliary shall have the option to cancel this contract without penalty regardless of any other contradictory language contained in the attached contract/license agreement.