

DISCLAIMER

This model contract has been drafted with great care but makes no claim to completeness or absolute accuracy. It is intended as a checklist and formulation aid and is intended as a suggestion. It does not exempt the user from examining it with all due care and on an individual basis. If you require a tailor-made contract, you should preferably contact a lawyer you trust.

Swiss Basketball does not take any responsibility whatsoever in connection with this model contract.

AGREEMENT AGENT-PLAYER

Contract between

Agent's Full Name: ...

Agent's FIBA License Number: ...

Company Name (if applicable): ...

Full Address: ...

hereinafter "the Agent" - and

Player's Full Name: ...

Full Address: ...

hereinafter "the Player"

(the Agent and the Player being referred to as "the Parties")

A. PREAMBLE

This contract (hereinafter the "Contract") is based on the master agreement provided by FIBA (Fédération internationale de basketball) pursuant to the FIBA Internal Regulations governing Agents (in their version amended as of 1st January 2022) and has been adapted for the placement and management of players in Switzerland by Swiss Basketball (Fédération Suisse de basketball).

B. AGREEMENT**1 Appointment of the Agent**

- 1.1 The Player hereby appoints the Agent and the Agent hereby agrees to act as agent for the Player.

[Comments by Swiss Basketball : The Agent cannot advise both the Player and the Club, otherwise its remuneration is null and void due to a conflict of interests (art. 20 CO ; e.g. FIBA Rules, Book 3, ch. 298).]

- 1.2 The Agent performs its services as an independent contractor. The Agent is not empowered to commit the Player in any manner whatsoever and shall not present itself to third parties as having such power unless expressly instructed to do so in writing.

- 1.3 The Agent guarantees the Player that it has the FIBA Agent authorisation, a copy of which is given to the Club on signature (**Appendix 1**) ***[for international transfer only]***, as well as cantonal and federal authorisations for the placement of persons in Switzerland, in compliance with the Federal Law on Employment Services and its implementing ordinances. The Agent must provide the Player and the club with which the player wishes to conclude an employment contract ("the Club") on request with a copy of its authorisations; if the Agent does not carry out his activity on a regular basis and therefore does not need authorisations of the cantonal labour office of his place of work and of the SECO, it guarantees by signing this agreement that his authorisations are not necessary in his particular case and that he has obtained confirmation of the above on the basis of a legal advice.

Comments by Swiss Basketball:

Only agents or agent companies whose registered office is in Switzerland are entitled to participate in transfers aimed at concluding an employment contract with a player in Switzerland.

Agents who carry out this activity on a regular basis are subject to the LSE and its subsequent orders, the LSE and the OEmol-LSE, among other things, and are subject to authorisation from the cantonal employment office where they carry out their professional activity. If they secure deals for players from abroad, they must also have a permit from the Secretariat for Economic Affairs (SECO).

Agents who regularly engage in this type of activity (Art. 2 LSE) are those who advertise as such be it through a website, by distributing business cards or using letterheads to promote their activity as agents, or those who (even without advertising) are involved in at least 10 contracts per year in Switzerland (Art. 2 OSE; LSE Guidelines, § 19)

In addition, international transfers, i.e. the hiring of a player (Swiss or foreign) licensed with a foreign federation, are only permissible for agents authorised by FIBA (FIBA Rules, Book 3, ch. 295). When applying for a release letter, the club must communicate the name(s) of the agent(s) who were involved in the transfer of the player, in one capacity or another, together with a copy of the contract(s) of all agents

involved (FIBA Rules, Book 3, ch. 297).]

- 1.4 The Agent shall provide the following services to the Player: ... **[search for an employer club and negotiation of the contract]**

*[to be agreed according to the Club's needs and the Agent's qualifications and scope of services; the following merely provides an indication of services commonly provided by agents to players; in any case, it is recommended to describe in detail the services to be provided, and to **separate management services from placement services**]*

- 1.5 The Agent shall obey the lawful instructions of the Player, exercise reasonable care and skill in the performance of this Agreement, use best efforts to seek out and advise the Player in a timely manner and generally promote the Player's interests.

1.5.1 Management services [optional]

The Agent shall in addition provide advice and support to the Player in connection with any and all issues arising in the context of the Player's contractual obligations as a professional basketball player. To the extent so instructed by the Player, the Agent may also represent the Player vis-a-vis third parties in relation to such issues. In particular, these management services encompass the following (if applicable, in coordination with qualified professionals such as lawyers, tax advisors etc.):

- Advice on the Player's career path, including the time after retirement as a professional basketball player;
- Advice on and negotiation of any contracts related to the exploitation of the Player's image rights, e.g. sponsorship agreements;
- Assistance in obtaining qualified advice on legal issues, where needed, e.g. in relation to contracts or disputes;
- Assistance in obtaining qualified advice on any financial issues, including questions relating to taxes, insurance, pension;
- Support in case of difficulties encountered with the Player's club, e.g. default in salary payments;
- Support in relation to any medical issues that the Player may be facing;
- Liaison with public authorities, e.g. in respect of visa or working permit issues; and
- Assistance with respect to housing and other amenities.

1.5.2 Placement services

The Agent shall introduce the Player to any basketball club that might be interested to retain the Player's services, shall then negotiate on behalf of the Player the relevant player contract to be signed by the Player and will subsequently liaise and deal in the Player's interest with the club on all matters of interest for the Player in connection with the Player's engagement with the club.

The Agent will provide all relevant information pertaining to the Player in such a way

that the Club can determine whether or not to engage the Player. The Agent will assist the Player in negotiating favourable terms and conditions for the Player.

- 1.6 At all times, the Agent shall avoid any conflicts of interests, in accordance with the FIBA Internal Regulations governing Player Agents (hereinafter the "FIBA Agent Regulations"). Whenever any conflict of interest arises, the Agent shall disclose them to the Player and remedy the conflict immediately. In particular, the Agent shall not represent or advise any player with which it negotiates a contract on behalf of the Player.

2 Compensation

- 2.1 For the management services **[optional]** to be provided according to clause 1.5.1 above, the Player shall pay to the Agent a monthly amount of ... subject to the submission of a proper invoice.

- 2.2 For the placement services to be provided according to clause 1.5.2 above, the Player agrees to pay to the Agent, for any contract procured by the Agent and signed by the Player, a commission of ... % of the Player's base net salary for the first year of the contact **[not to exceed 5% of the gross value of the first year of the contract]**.

[Comment by Swiss Basketball: Under Swiss mandatory law and notwithstanding FIBA Agent Regulations the maximum total commission for securing a deal charged to the player is 5% of the first total gross annual salary (Art. 20 LSE and Art. 3 para. 2 OSE), plus VAT. If the employment contract lasts more than one year, the agent may only charge a commission of up to 5% of the first annual salary, but not 5% of the total value of the annual salaries, nor charge 5% in subsequent years.]

- 2.3 Such commission shall become due and payable as follows, subject to the provision of a proper invoice (including VAT):

- ... by ... [term]
- ... by ... [term]
- ... by ... [term]

[Comment by Swiss Basketball: it is recommended to agree with the Agent on instalments and avoid paying the entire amount in case of earlier termination].

- 2.4 The Player will pay the remuneration to the Agent provided in particular that the Player (i) obtains the authorization to work in Switzerland and (ii) that the Player state of health has been assessed and validated by the Club in accordance with the procedure laid down in the employment contract.

- 2.5 [optional; alternative method of payment proposed]

Alternative proposed by FIBA:

The Player by signing this contract that the Club will pay the remuneration to the Agent on his/her behalf as part of the Player's remuneration. For all legal and tax purposes, the Player remains directly liable vis-à-vis the Agent until the remuneration is paid in

full.

[Comment by Swiss Basketball: the commission paid to the agent on behalf of the player is part of the Player's salary and is subject to compulsory social security contributions in Switzerland and, if applicable, to Swiss withholding tax]

- 2.6 If the Club or the Player terminates the employment contract earlier than agreed for whatever reason, the Agent shall lose his entitlement to its commission for the unfulfilled term of the contract, which shall be calculated pro rata temporis to the duration of the employment contract completed by the Player.
- 2.7 The remuneration stipulated in clauses 2.1 [optional] and 2.2 above shall be the entire compensation for all the services to be provided by the Agent according to this Contract. The Agent shall not be entitled to reimbursement of any expenses unless otherwise agreed in writing. The agent shall not receive any compensation for loss of earnings in accordance with Art. 418m para. 2 CO.
- 2.8 The Agent shall bear and pay the taxes and duties due when his commission is paid.

[Comment by FIBA: different remuneration schemes are possible. However, it is recommended to agree on separate remuneration components for management services, which are to be provided on a constant basis, and placement services, which are provided only when the Player seeks to sign a new employment contract.]

3 Term and Termination

This contract may be terminated at any time by either Party.

[Comment by Swiss Basketball: A contract between a player and an agent may be terminated at any time (LSE Guidelines, p. 43), in contrast to the 30-day period provided for in the FIBA Rules, Book 3, § 320, which gives way to mandatory Swiss law; see also FIBA Rules, Book 3, c. 317a). Indications to the contrary in a contract are void.]

4 No exclusivity

Exclusivity is excluded by this contract. This means that the Player may freely contact other agents and that the agent is free to enter into contracts with other clubs and players, subject to conflicts of interests.

[Comment by Swiss Basketball: Clauses in a contract between an agent and a player providing for exclusivity in favour of an agent are void and have no effect (Art. 8 para. 2 let. a LSE).]

5 Entire Agreement

This Contract is the entire agreement between the parties in relation to its subject-matter. Any amendments and/or additions to this Contract shall be made in writing; the foregoing shall also apply to any amendment to this clause 5.

6 **Hold Harmless**

The Agent shall indemnify and save harmless the Club, its officers, agents, employees from all claims, suits, or actions of any kind resulting from the Agent's failure to comply with the requirements set forth in Clause 1.3.

7 **Confidentiality**

The Parties agree to keep confidential the contents of this Contract and any matters related thereto. However, any duties of disclosure under the FIBA Agent Regulations or the applicable law remain unaffected.

8 **Data Protection**

8.1 The Player consents that all personal data concerning to him/her (provided by him/her or anyone else, before or after the date of the signature of this Contract) may be held and processed (for collection, retention, use, modification, communication, archiving, destruction) by the Agent, including for the following purposes:

- any questions relating to or in relation with his/her employment contract, including those associated with their career;
- any questions relating to compliance with internal rules, regulations, and procedures applicable;
- any questions relating to or in relation with compliance with any law, regulation, including with FIBA.

8.2 The Player consents in particular that the Agent discloses her/his name to FIBA and that FIBA publishes the contractual relationship between the Player and Agent on FIBA's website.

9 **FIBA Internal Regulations governing Agents and applicable law**

9.1 The Parties agree that their relationship under this contract, in particular their respective rights and duties, shall be governed by the FIBA Agent Regulations as amended from time to time. In particular, the Parties agree to be entitled to and bound by the respective rights and duties provided for in the FIBA Agent Regulations.

9.2 This Agreement shall in a suppletive manner be governed by the laws of Switzerland, in particular Articles 418a ff of the Swiss Code of Obligations.

9.3 The mandatory provisions of Swiss law shall take precedence over the FIBA Regulations which are contrary to them.

10 **Arbitration**

10.1 Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President.

- 10.2 The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of parties' domicile. The language of arbitration shall be English.
- 10.3 The arbitrator shall decide the dispute ex aequo et bono.

For the Club :

[Full name of authorized representatives]

The Agent

Enclosures