



CONTRACTUAL RISK TRANSFER MANUAL

for California Public Agencies

Edition 8.0 – January 2022



CALIFORNIA
J · P · I · A

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INTRODUCTION

Welcome to Edition 8 of the California Joint Powers Insurance Authority's ("Authority") *Contractual Risk Transfer Manual*.

This manual is provided exclusively for use by the Authority's member agencies ("Agency"). The Authority designed this manual for agency staff responsible for drafting agreement specifications. It includes reference material on contractual risk transfer, including indemnification and insurance specifications guidelines, and risk allocation and financing techniques. Although this manual provides considerable information on contractual risk transfer, it should not be construed as legal advice.

Accordingly, any policy, program, or procedure resulting from this manual should always be reviewed and approved as is customary by your agency, including the purview of any necessary legal or governing body authorities to ensure it meets the unique needs of your jurisdiction.

This reference material is to be considered proprietary and confidential and may not be disclosed to any person without the express, prior permission of the Authority; is for Authority member use only and does not apply in any criminal or civil proceeding; and should not be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third-party claims.

New in this edition

The manual contains numerous updates including new content and revisions to existing content. New content includes a limitation of liability discussion; sample design professional indemnity language; builder's risk and installation floater explanations and transportation pollution and pollution liability insurance to the construction agreement; risk transfer topics of controlled insurance programs, livestock and equestrian liability, railroads, unmanned aerial systems, dial-a-ride, AB 5 and AB 2257 – independent contractors; and live scan under frequently asked questions.

Revisions include updates under *other provisions and requirements* to proof of insurance, duration of coverage, notice of cancellation, additional insured status, pass through clause, and self-insured retention; umbrella or excess liability insurance; waivers of subrogation; separation of permits and facility use agreements; instructor agreement changed to independent contractor with additional requirements; public agencies agreements; cyber liability; environmental issues; bonds; participant waiver and release discussion and participant waiver; exemption from workers' compensation form; and modifications to the coverage analysis matrix.

Agreement templates related to chapters in the manual are available on the Authority's [website](#), in the Resources section under Library.

Hyperlinks

Click on words in blue font and underlined to be connected to another location in this document or to a website. If a hyperlink has expired, please send an email to info@cjpia.org. The manual will be updated and redistributed with corrected hyperlinks.



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Downloads

This manual can be downloaded. Advantages to downloading are the use of hyperlinks to the latest online information and to reference back and forth within the document. Alternatively, the latest version can be printed from the online PDF available on the Authority's [website](#). You will need to log in using your myJPIA username and password.

Remaining items

- 1) It is essential to include and disclose insurance requirements in all Requests for Proposals/Requests for Qualifications (RFP/RFQ). First, bid packets universally define a responsive bidder as one who meets all specifications. It is not possible to meet all specifications unless the insurance specifications are included. Second, most Agencies have municipal codes requiring the selection of the lowest cost responsive bidder. If a vendor is selected based on the lowest cost responsive bid only to discover they cannot meet the insurance requirements, or the cost of insurance no longer qualifies them as the lowest cost responsive bidder, then an unfair bidding process has been created, and the Agency exposes itself to potential liability.
- 2) It is generally not recommended the Agency sign a vendor-generated agreement. The most important question to ask is: "Who derives the greatest benefit from this activity?" Generally, vendors derive the greatest benefit because vendor-generated agreements protect the interests of the vendor, not the Agency. Vendor-generated agreements may contain unacceptable clauses, such as automatic renewal, limitation of liability, and right of first refusal, that severely increase the liability risk exposure to the Agency. If the vendor insists on using their agreement, it should be reviewed by the Authority and legal counsel before executing.
- 3) Confirm the individual signing the agreement on behalf of the Agency has the authority to bind/sign.
- 4) When dealing with sports associations, it is important to require specialized coverage in addition to general liability coverage as most general liability policies contain exclusions for sporting activities. Be certain to require the type of insurance that will protect the Agency from the unique exposures sports associations present.

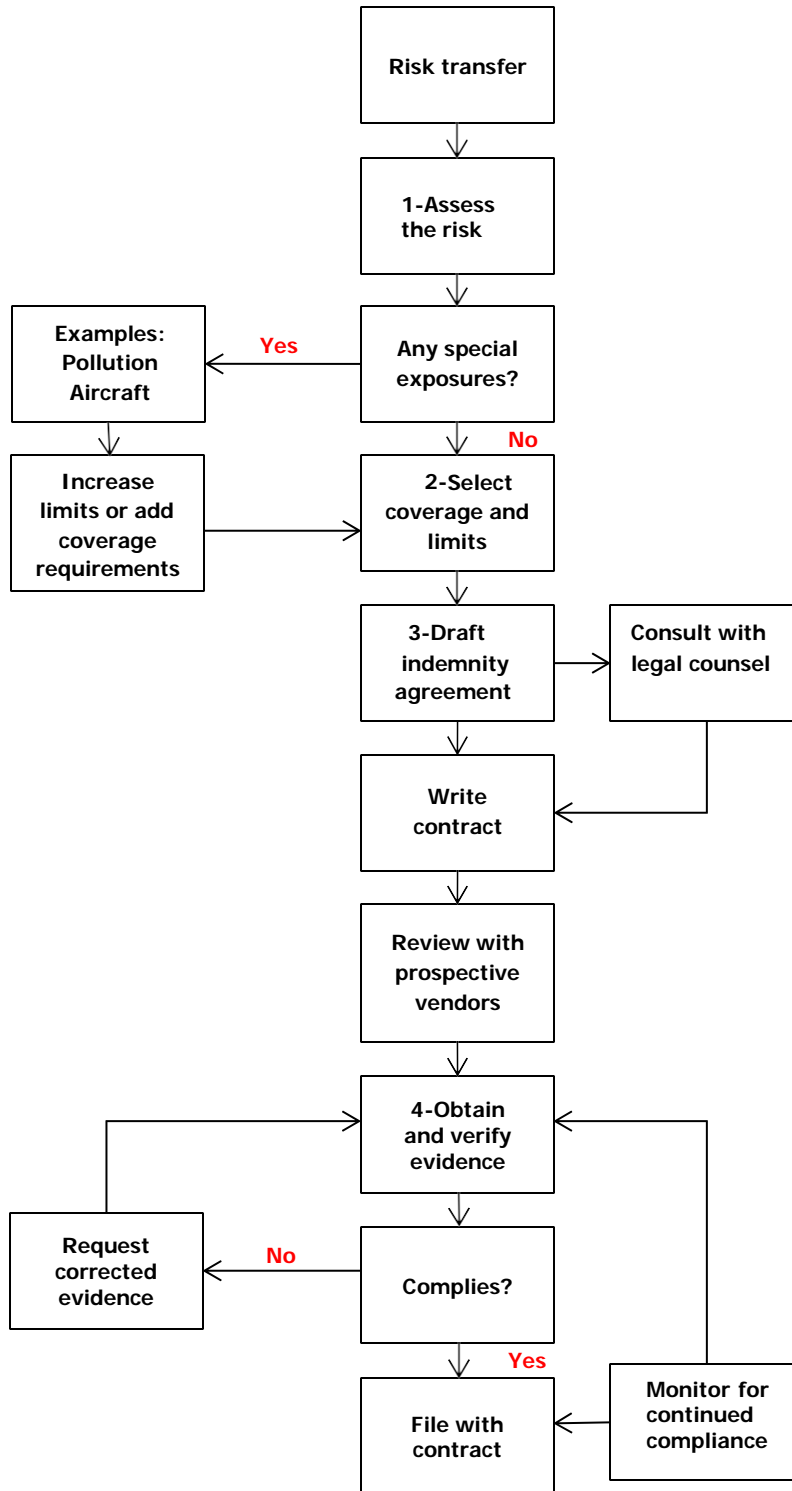
SECTION I: THE CONTRACTUAL RISK TRANSFER PROCESS

This section describes the basic contractual risk transfer process and compensation in the event of a loss. Before delving into the details, conceptualize the process by studying the diagram in Figure 1 on the following page.

Effective contractual risk transfer requires an understanding of the risks and appropriate insurance to cover them. It is important to complete each step in the process as outlined. Pay careful attention to the contractual language, conduct a review of the evidence forms, and meticulously maintain records.



The Contractual Risk Transfer Process



Step 1: Assess the risk

Risk analysis is one of the most critical parts of the risk allocation process. The risks must be identified before they can be managed and before insurance specifications can be determined. An analysis includes identifying the following:

- Who could get hurt, and how that could happen ([bodily injury](#), [personal injury](#))?
- What property could be damaged, and what could cause that loss ([property damage](#))?
- What [economic losses](#) could occur, and who could cause them?

Additional considerations include:

- Sources of common potential bodily injury claims, such as the use of vehicles, machinery or equipment, sidewalks (high frequency);
- Activities with risks of severe bodily injury or property damage, such as excavation, trenching, drilling, work at height, transit, etc. (high severity);
- The possibility of releasing any type of pollutant onto or into air, land, or waterways;
- Concentrations of people;
- Inherently dangerous activities, such as blasting, use of cranes, fireworks, work on roadways; and
- Work on systems (computers, communications, etc.) that could disrupt a business or its operations.

Time pressures often prohibit comprehensive risk identification and analysis. Fortunately, many projects involve the same or similar risks. The person responsible for the contractual risk allocation should determine the degree of investigation and analysis required. A thoughtful analysis should be attempted using some of the checklists and other tools suggested in this manual. The analysis can be enhanced by discussions with the other party to the agreement, the agency personnel responsible for the agreement, and the agency's risk manager.

In addition to identifying what could happen, a [risk analysis](#) should include an estimate of the potential cost of a loss. Knowing the potential cost is essential to determining an appropriate limit of insurance.

Step 2: Select coverage and limits

Each situation is unique. When determining insurance specifications, a common error is relying on [boilerplate](#) specifications, which may result in failure to protect against a major risk. Some agencies choose to attach insurance specifications to agreements as appendices. This practice makes it easier to use the correct specification for a given agreement and for the other party to detach the appendix and provide the specifications to their insurance broker for compliance.

Note: If indemnity and insurance specifications are in the same section, a relationship may be implied. This is notable because some courts have found that when the insurance specified in the agreement is intended primarily to back up the indemnity agreement, any fault found with



the indemnity agreement may also void the insurance requirements.

Types

Most contracts require general liability, automobile liability, and workers' compensation insurance. Depending on the type of agreement and the circumstances, other [insurance coverage types](#) may also be appropriate. Figure 2 shows the basic types of insurance usually required by type of agreement.

Agreement type	General liability	Auto liability	Professional liability	Workers' compensation	Property	Cyber
Vendor	X	?	?	X		?
Professional	X	?	X	X		?
Construction	X	X	?	X	?	
Lease	X	?		?	X	
Inter-agency	X	?			?	
Permit	X	?	?	?		

An "X" means the coverage is usually required. A question mark (?) means the coverage should be evaluated before including the requirement in the agreement. For example, a professional service consultant, such as an architect, may not need automobile liability insurance unless the consultant uses an auto to perform the work. When in doubt, require the coverage and make exceptions where warranted and permitted and in compliance with Agency policies and/or municipal codes.

Limits

[Limit](#) means how much in dollar terms. Selection of limits is a judgment call requiring an understanding of the risks arising from the activity and type of work involved. Ideally, the decision-maker(s) will have experience with insurance purchasing customs and practices in the industry in which the vendor works and have knowledge of what other agencies require for limits.

Some limits are easier to decide than others. Basic limits can be determined for most common types of agreements. For example, a \$1,000,000 limit for most liability coverages and statutory benefits for workers' compensation, but the limits required should always be based on the risks involved. Figure 3 below provides a basic starting point of appropriate limits by insurance coverage.

Coverage required	Limit(s) required
General liability	\$1,000,000 per occurrence, \$2,000,000 general aggregate. Construction contracts with manufacturers or suppliers should also include a \$2,000,000 products and completed operations aggregate limit.
Automobile liability	\$1,000,000 combined single limit per accident. Auto liability policies have no aggregate. Generally, the Agency should require commercial auto liability.



Professional liability	\$1,000,000 per claim, \$1,000,000 general aggregate.
Umbrella or excess liability	Used when limits greater than \$1,000,000 are appropriate for general, automobile, employer's liability.
Workers' compensation/Employer's liability	Workers' compensation: Statutory benefits as required by law . Employer's liability: \$1,000,000 per occurrence
Cyber liability	\$1,000,000 per occurrence, \$2,000,000 general aggregate.
Property insurance	Replacement cost for tenant's improvements and betterments, or if the lessee is responsible for the all-risk insurance on the property. If the agreement is for a construction project, the owner may require the contractor to buy builder's risk insurance on a completed value basis.

The application of limits is affected by the words used, such as per occurrence, per accident, or per claim. It is important to use the correct term for the coverage required. Figure 4 below explains how these terms are used.

Type of policy	Limits basis	Usage
General liability, workers' compensation, cyber liability	Per occurrence	Applies to each occurrence regardless of number of claims made if each arose from the same accident or event.
Auto liability	Per accident	Applies to each accident regardless of number of claims-made if each arose from the same accident or event.
Professional liability	Per claim	Applies to each separate claim.
Employer's liability	Each accident, Each employee	Each accident applies to bodily injury by accident. Each employee applies to bodily injury by disease.

Most liability policies contain an [aggregate limit](#), which may be the same as, or a multiple of, the per occurrence limit.

How high should a limit be? It depends. An informed judgment should consider such factors as those identified in [Step 1](#). As such, start with \$1,000,000 for most liability policies and raise these minimum requirements when higher risk activity is involved. It may be helpful to obtain a consensus on a reasonable limit. For example, in a construction agreement, the public works director or facilities manager, the construction manager, legal counsel, and the department using the finished project may all have a say in determining how much risk is involved and how much coverage is needed. A consensus helps avoid second-guessing and finger-pointing after the fact if a loss occurs and there is insufficient vendor-provided insurance. In the final analysis, the limits the Agency selects is a business decision.

There is a generally accepted norm of insurance limits carried by specific types of service



providers. This norm is often a range, albeit a fairly narrow one. For example, a reasonable range for general liability insurance (including excess liability) for small commercial construction contractors may be \$3,000,000 to \$5,000,000 in a metropolitan area. It makes the contractual risk transfer process easier if the specifications are not seriously out of step with the requirements imposed by similar agencies in the area. If possible, the Agency should be at the higher end of the range when establishing insurance limit requirements.

Furthermore, some agencies have developed a hierarchy of required limits based on project size. For example, projects under \$1,000,000 may require a \$1,000,000 liability limit. Projects over \$5,000,000 may require a \$3,000,000 liability limit, and so forth. There is no clear correlation between the project amount and liability exposures. Nevertheless, for a larger project, it may be easier to impose larger limit requirements for the following reasons:

- Larger projects tend to attract larger companies as bidders; larger companies often purchase higher liability limits as a business practice.
- If a bidder does not already have higher liability limits, a larger project yielding a larger profit may justify purchasing higher limits for the period required in the agreement.

A [coverage analysis matrix](#) is provided to assist with determining the types and limits of coverages to require.

Other provisions and requirements

Insurance specifications should include terms and conditions clarifying the parties' intent of how the insurance applies. Samples of such terms and conditions appropriate to specific agreements are located in [Section 3: Sample Agreement Provisions](#).

If the vendor fails to meet the terms and conditions, the Agency has remedies to enforce compliance as follows:

- Withholding payment until compliance,
- Purchase of the required coverage with a charge back to the other party,
- Suspension of the work, or
- Cancellation of the agreement.

The contract may also provide other legal remedies.

Step 3: Draft indemnity agreement

The [indemnity agreement](#) is the other party's promise to pay for losses arising out of the contracted activity under certain conditions. Insurance is the mechanism to finance the payment of that obligation. Every contract needs both an indemnity agreement and insurance specifications. Indemnity agreements should be drafted and approved by legal counsel.

Once the agreement is prepared, the insurance requirements and indemnification should be reviewed for accuracy by the Agency and then legal counsel before it is authorized. Appendices H and I include a [Request for Proposal \(RFP\) and Contract Sample Routing Form](#) and a [Contract](#)



[Review and Transmittal Form](#) respectively to manage an internal review process.

Step 4: Obtain and verify compliance

Basics of compliance verification

Compliance with contractual insurance specifications is most commonly provided on an ACORD form. ACORD stands for Association for Cooperative Operations Research and Development, a global nonprofit standards organization serving the insurance industry. For casualty (liability and workers' compensation) insurance, the [ACORD - 25 Certificate of Liability Insurance](#) is used, and for property insurance, the ACORD - 26 Certificate of Property Insurance.

A distinguishing characteristic of the ACORD form is the ACORD name on it. ACORD licenses the use of its forms. Part of the license requirement is to use the current form. Insurance brokers may deny requests to use older forms as it could violate their licensing agreement. Nevertheless, you may see an obsolete ACORD form from insurance brokers whose software or forms inventory is not updated.

Some insurers use their own form usually similar to the ACORD form. Review such forms carefully as they may contain restrictions or may not meet all of the specifications. The appendix includes a [reference guide](#) to assist with reviewing the form and provides information the Agency needs to enforce compliance.

A [certificate of insurance](#) is a snapshot of insurance policies issued as of the date on the certificate. It is prepared by the broker or agent, not by the insurance company. Only in very rare cases does the agent or broker have authority to bind the insurance company contractually.

As is stated clearly on ACORD forms, the certificate of insurance is for information only and conveys no status or rights to the certificate holder. To confirm the Agency's additional insured status, the Agency should request the additional insured endorsement or verify the policy automatically includes the Agency as an additional insured without undue restrictions by requesting a copy of the policy.

Note: Self-insured entities, such as the State of California or universities, tend not to issue individual certificates of insurance. Such entities may develop their own coverage document to illustrate the self-funded coverage terms, limits, and retention levels maintained for their coverage programs.

Enforcement

Agreements should include means to compel the other party to comply with its terms. Examples include:

- Prohibiting services to begin until satisfactory evidence of compliance is received.
- Withholding payment for services until satisfactory evidence of compliance is received.
- Terminating the contract unless satisfactory evidence of compliance is provided within a specified time period.
- Prohibiting a new tenant to enter the premises until satisfactory evidence of compliance is



received.

- Taking steps to evict a tenant who fails to provide satisfactory evidence of compliance upon request.
- Taking actions to repossess or foreclose on property used as collateral for the loan.
- Purchasing insurance protection and charging it back to the other party.

Tendering claims

Do not rely on the other party to tender claims to the insurer on the Agency's behalf. As an insured under the other party's liability policy, the Agency has the same rights as the other party. A targeted tender letter to an insurer specifically states the additional insured wishes to invoke its coverage rights under the policy. Such a letter may tell the insurer that despite the existence of other coverage, the additional insured wishes to use only this specific coverage. The tender letter should be sent as soon as the Agency becomes aware of a potential claim that might be covered by the policy. There is no penalty for tendering too early, but there can be penalties for not doing so in a timely manner.

Some insurers endorse their policies to require an insured to tender claims to all available sources of insurance. Since the policy requires compliance with all policy specifications as a condition of coverage, this tactic puts the additional insured in a difficult position. This is why it is important to place a condition in the agreement that coverage available to the additional insured shall be [primary](#) and [non-contributory](#).

For agencies whose sole source of liability coverage comes from a self-insurance pool, California case law stipulates that such group self-insurance is not insurance. Therefore, any provision in a policy, under which the Agency is an additional insured, requiring submission of claims to all available insurers is irrelevant.

Insurance specification rules to live by

- Recognize the vendor's insurance program is based on their business needs, and the Agency's requirements may disrupt their program to meet the Agency's needs.
- Be cognizant of overly rigid specifications.
- Hidden costs may exist in contractual risk transfer. The Agency may be paying for unnecessary or inappropriate coverage.
- Do not equate contractually transferred risk with free insurance.
- Stay abreast of the industry by not using outdated terminology or requiring outdated forms.
- Require an additional insured endorsement for liability policies.
- Require specific insurance types and limits, but in general, do not accept self-insurance.
- Require a [separation of insureds](#) provision but do not require a [cross-liability](#) endorsement on liability policies.
- Review evidence of insurance and monitor continued compliance.



SECTION 2: INDEMNITY AGREEMENTS, WAIVER OF SUBROGATION, PROTECTED CONTRACTS

It is essential to consult with legal counsel when drafting indemnity agreements. Neither this section nor any other part that speaks to indemnity should be considered legal advice. More information on [indemnification](#) is available in the appendix.



Indemnity Agreements

What is indemnification?

In the contractual setting, indemnity means an agreement to compensate a party (indemnitee) after a loss. The party agreeing to indemnify (indemnitor) assumes financial responsibility to pay for the loss and may assume additional responsibility, such as settling claims and defending the indemnitee. By agreeing to such a provision, the indemnitor waives its right to be judged in court on negligence principles alone.

An indemnity agreement is a contractual obligation voluntarily assumed by one party toward another. The indemnitor becomes liable under contract for the obligation assumed regardless of insurance availability. An indemnity agreement is the principal instrument by which the Agency transfers risk to the vendor. Insurance is the financial instrument that responds on behalf of the indemnitor in the event of a loss. Every contract should include both an indemnity provision and insurance specifications.

Although the Agency may be indemnified, it does not transfer the tort liability to the indemnifying party. For example, suppose a person is injured because of work on the agency's project and the vendor has agreed to indemnify the Agency. If the injured party sues the Agency, the Agency will tender to the vendor for defense and payment of any damages. If the vendor cannot or refuses to pay, and the injured person is awarded a judgment against the Agency, the Agency is liable to that person. The Agency could be compelled to pay the injured party and then pursue the vendor for reimbursement. Always require insurance because insurance should be a reliable financial mechanism.

General and auto liability insurance policies usually provide [contractual liability coverage](#), although indirectly through an exception to an exclusion. This coverage provides protection to the insured for liability assumed in a contract through an indemnity agreement. However, this is a protection primarily for the insured, as opposed to the indemnitee. In fact, the coverage may be used to defend the insured against the indemnitee. Therefore, it is essential to be an indemnitee and additional insured. This provision does not apply to professional liability insurance or workers' compensation insurance.

The ISO endorsement, *Amendment of Insured Contract Definition* (CG 24 26), modifies the policy's definition of insured contract and narrows the scope of contractual liability coverage. It is recommended the general liability specification include a requirement that contractual liability coverage shall not be amended.

The indemnity agreement is almost always broader than the insurance. While the indemnity agreement may contain a few qualifiers narrowing the scope of application, the insurance policy includes numerous exclusions, limitations, and restricting definitions. It is conceivable the indemnity agreement will obligate the indemnitor to pay for losses excluded by insurance. Therefore, the party drafting the indemnity agreement should carefully consider its intent.

The indemnity agreement must contain wording that will [trigger](#) coverage under the indemnitor's insurance policies and provide for certain contingencies. For example: general liability insurance policies provide defense coverage for an indemnitee during litigation provided the agreement



specifically requires it. Furthermore, if defense is not required and the indemnitee sustains a judgment and tenders the loss to the indemnitor, any defense expenses included in the tender will be considered damages, eroding the policy limits. If treated as a defense obligation as required by the agreement, such costs are *in addition to* policy limits, increasing coverage for all.

Indemnify, hold harmless, defend

Many clauses are a combination of – indemnify, hold harmless and defend.

Indemnify. An agreement by which the indemnitor agrees to compensate the indemnitee after a loss.

Hold Harmless. An agreement (sometimes referred to as a liability waiver or release of liability) by which the indemnitor agrees to respond to certain legal liabilities of the indemnitee, absolving (hold harmless) the indemnitee from responsibility.

The most commonly used types of clauses, differentiated by the extent of the liability they transfer, are:

Limited form. Where the indemnitor holds the indemnitee harmless for suits arising out of the indemnitor's sole negligence. The indemnitee is protected when it is held vicariously responsible for the actions of the indemnitor.

Intermediate form. Where the indemnitor holds the indemnitee harmless for suits alleging sole negligence of the indemnitor or negligence of both the indemnitor and indemnitee.

Broad form. Where the indemnitor holds the indemnitee harmless for suits against the indemnitee based on the sole negligence of the indemnitor, joint negligence of the indemnitor and indemnitee, or the sole negligence of the indemnitee. This form is unenforceable in some states.

Defend. An agreement by which the indemnitor is obligated to defend, finance a defense, or reimburse the indemnitee for defense against any claim brought against it.

Restrictions on indemnity

California has legislation and case law limiting the use of indemnity agreements. The major California statutes on indemnity are found in [California Civil Code Sections 2772-2784.5](#), which pertain to construction.

Section 2782(a) prohibits indemnification for the sole negligence or willful misconduct of the indemnitee (called promisee in the statute). One of the most restrictive sections, 2782(b), applies specifically to public entities and to provisions "contained in, collateral to, or affecting any construction contract." The statute prohibits indemnification for the *active negligence* of the public agency in such contracts. Active negligence is the want of care in performing an act, as distinguished from passive negligence, which is the failure to act when obligated to do so. Active negligence occurs when someone has personally participated in an affirmative act of negligence, known about, or complied in negligent acts, or failed to perform a precise duty which he or she agreed to perform.



California Civil Code Section 2782.8 restricts the indemnification of public agencies in contracts for design professional services. Essentially, the statute says that public agencies can be indemnified only for claims arising out of, pertaining to, or relating to the design professional's negligence, recklessness, or willful misconduct.

[California Civil Code Section 1668](#) makes unlawful certain types of contracts. These include contracts that exempt anyone from the responsibility for their own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent.

Limitation of liability language

The Agency should always attempt to use an agency agreement template approved by legal counsel. Where this is not possible, either due to the lack of availability of an appropriate template for the services to be provided or because of pushback from the vendor or contractor, agency staff should be vigilant for Limitation of Liability ("LoL") language. LoL provisions are often separate from any indemnification clause and seek to limit the vendor or contractor's liability to the value of the contract. The following is an example of limitation of liability language:

- a. *In no event shall consultant be liable for any: (i) indirect, economic, special, incidental, exemplary, consequential, and punitive damages; or (ii) damages for lost profits, revenue, or earnings, lost or corrupted data, delays or failure to transmit or receive any data, business interruption, failure to realize expected savings and cost of substitute software or services (including deliverables).*
- b. *Notwithstanding anything to the contrary in this agreement, in no event shall the aggregate liability of consultant to city for any damages, losses or costs of any kind arising out of or related to this agreement exceed the amounts received by consultant from city for the services delivered (including deliverables) under the relevant order. This liability cap is consultant's total potential liability in the aggregate and shall not in any manner be exceeded, no matter how many claims, counterclaims, causes of action, suits, or demands may be asserted.*
- c. *The limitations, exclusions and disclaimers set out in this agreement shall apply: (i) whether an action, claim or demand arises from a breach of warranty or condition, breach of contract, tort (including negligence), strict liability, statutory liability or any other theory of liability; (ii) whether or not such damages could reasonably be foreseen or their possibility has been disclosed to consultant; and (iii) to consultant, as well as its affiliates, successors, suppliers, officers, directors and employees.*

LoL provisions are especially prevalent in technology contracts. Cloud computing technology is being used to provide services to the public and manage processes such as permit issuance, human resource management, etc. Often, software vendors refuse to negotiate or modify the LoL language leaving the Agency to decide whether to accept the language or walk away.

There are approaches Agencies can take to make this language more palatable:

- Insert language making clear the LoL provision does not affect indemnity language found elsewhere in the agreement. This can be accomplished by inserting language at the beginning



of the LoL provision similar to: “*Except as provided in section(s) [indemnity section].*”

- Insert language limiting the vendor or contractor’s liability to coverage available through any required insurance policies and to the policy limits. This achieves the goal of limiting the vendor’s or contractor’s liability to coverage available through their various insurance policies and ensuring there is coverage for most third-party claims arising out of the agreement.

While these approaches may not succeed 100% of the time, they represent a reasonable compromise to ensure that risk under the control of the vendor or contractor is appropriately transferred, while also addressing the vendor or contractor’s concerns of being exposed to potentially unlimited liability.

Finally, as with any activity, the Agency should undertake a risk analysis to determine what types and limits of insurance should be required. Information technology contracts will usually require cyber liability insurance. Refer to the cyber liability section for further information.

Indemnity rules to live by

- Check the statutes. California law limits the scope and breadth of indemnity agreements in several ways, especially in construction and design professional contracts.
- Be cognizant of overreaching to force onerous burdens on the indemnitor.
- Consider the cost of the transfer. It may cost more to transfer the risk than to retain it.
- Consider the risk management capabilities of the parties to avoid one party assuming a risk it cannot handle.
- Seek legal advice when drafting indemnity agreements.
- Remember indemnity agreements may shift the ultimate financial burden but not the responsibility; the Agency may still be liable.
- Avoid overusing or using too aggressively. Harsh requirements increase the likelihood of noncompliance or misrepresentation of compliance.

Transfer and allocation of risk should have some logical basis; otherwise, unintended results may occur.

Waiver of Subrogation

What is a waiver?

A **waiver** is the voluntary relinquishment or surrender of some known right or privilege. Waivers ensure the intended responsible party (indemnitor) covers the loss, the intended protected party (indemnitee) is protected from the loss, and insurers are prevented from subrogating.

Subrogation means *the assignment to an insurer by terms of the policy or by law, after payment of a loss, of the rights of the insured to recover the amount of the loss from one legally liable for it.* [Source: IRMI]

“Subrogation is a doctrine of equity intended to compel the ultimate payment of a debt by the one who in justice, equity, and good conscience should pay it. For example, a property insurer that has indemnified its insured is usually subrogated to any rights the insured may have against the third party that is actually responsible for the loss. The theory behind this principle is that absent repayment of the insurer, the insured would be unjustly enriched by virtue of recovery from both the insurer and the wrongdoer. More frequently, in the absence of such double recovery by the insured, the third party would emerge free from liability despite its legal obligation in connection with the loss.” [Wielinski, Patrick; Woodward, Jeffrey; and Gibson, Jack; Contractual Risk Transfer, International Risk Management Institute, 2011]

A waiver of subrogation can preclude recovery in several ways. One way is mentioned above wherein the insurer can voluntarily waive or surrender its rights by issuing a waiver of subrogation endorsement to the policy. An endorsement is provided when an indemnitee requires it as a contract condition.

Another way is when an insurer waives its recovery rights by granting the policy's named insured the power to waive their own recovery rights. If the insured has no recovery rights, the insurer cannot “stand in the shoes” of the insured to exercise a non-existing right.

Most property and liability insurance policies contain a clause stating the insured must do nothing *after* loss to impair the insurer's right to subrogate. The wording implies that if the insured does something *before* a loss, such as waiving its recovery rights, the insurer will not subrogate. Courts have supported this interpretation, and thus, it is generally accepted that if an insured waives its recovery rights in a contract, the insurer cannot subrogate against the party that obtained the waiver.

An exception to this type of protection is workers' compensation as the right belongs to the worker, not the named insured employer. Neither the employer nor the worker can waive that right. Therefore, the waiver of subrogation endorsement should be obtained from the indemnitor's workers' compensation insurer in favor of the Agency.

Regarding general liability, an insurer may not subrogate or recover from a third party for a loss caused by the third party and paid for by the insurer against its own insured. When the Agency is named an additional insured, it should be safe from the general liability insurer's subrogation. As a result, it is recommended that the contract's specifications require the vendor's general liability insurer expressly waive subrogation by endorsement against the additional insured. It is recommended the Agency obtain the waiver of subrogation when the contracted activity is particularly hazardous or critical.



Protected Contracts

Indemnification agreements do not have to support the principle of transferring the risks, nor do contracts have to include indemnification provisions for other provisions to be legal and enforceable. The Agency may desire to assume the tort liability of a third party for claims and damages arising from contracted services. The liability a member assumes in contracts is not automatically covered under the Authority's Memorandum of Coverage – Liability Program (MOC - LP). Coverage for third-party tort liability a member assumes under the provisions of written contracts is conditional. The MOC - LP conditions for coverage are explained within the definitions of both protected contract and limited protected contract.

Protected contract means a written agreement satisfying all of the following:

- A. The agreement pertains to the member's operations and by the contract terms the member assumes the tort liability of another to pay damages because of bodily injury or property damage to a third person or organization;
- B. The agreement is entered into prior to the bodily injury or property damage for which a claim is made; and
- C. The agreement, including its value, is reported by the member and approved by the Authority through issuance of an evidence of coverage letter prior to the bodily injury or property damage and the value is added to the member's annual payroll for use in any retrospective deposit or annual contribution computation.

A protected contract may cover an architect, engineer, or surveyor for their role as a public official, except for the application of paragraphs B.(i) and B.(ii) below. Protected contracts may apply to contract public works directors, building officials, planning directors, city managers, chief executives, city attorneys, city prosecutors, redevelopment directors, or other contracted public officials for occurrences arising out of their official duties, but this coverage applies only to the named contract public official and does not extend to other individuals within the contractor's firm.

A protected contract does not include any part of any contract or agreement:

- A. That indemnifies any person or organization for injury or damages caused by or arising out of the ownership, operation, maintenance, or use of any aircraft, airport, or watercraft;
- B. That indemnifies an architect, engineer, or surveyor. This exclusion does not apply in the instance where an individual is under an exclusive contract as a contract public official solely for the benefit of the member (i.e., no work is performed by the person for any other person or entity), for injury or damage arising out of:
 - (i) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; or
 - (ii) Giving or failing to give directions or instructions, if that is the primary cause of the injury or damage;
- C. Under which the protected party, if an architect, engineer, or surveyor, assumes liability for injury or damage arising out of the protected party's rendering or failing to render



professional services, including those listed in B. above and supervisory, inspection, or engineering services; or

- D. That indemnifies any person or organization for damages by fire, explosion, or water damage to premises rented or loaned to the member.

Limited protected contract means a written agreement, contract, or permit in which:

- A. The member assumes the tort liability of another to pay damages because of bodily injury or property damage to a third party in one of the following:
- (i) Easements or license agreements;
 - (ii) Leases of real or personal property;
 - (iii) Encroachment permits;
 - (iv) Special events sponsored by the member; or
 - (v) Use of facilities, equipment, real or personal property by the member;
- B. The member assumes the tort liability of another to pay damages because of bodily injury or property damage to a third party for an activity not named in paragraph A. directly above, and upon its review of the agreement, Authority staff has determined at its sole discretion that any risks assumed in the agreement do not significantly increase the member's risk exposure, and an Evidence of Coverage letter has been issued by the Authority; or
- C. The member is obligated to provide evidence of coverage for a third party to participate in a funding program administered by another government or evidence of coverage required by bond indentures entered into by the member if Authority staff has determined in its sole discretion that any risks assumed in the agreement do not significantly increase the member's risk exposure, and an Evidence of Coverage letter has been issued by the Authority; and which is entered into prior to the bodily injury or property damage for which a claim is made.

A limited protected contract does not include any part of any contract or agreement that indemnifies any person or organization for injury or damages caused by the sole negligence of such person or organization, or that cannot be included in a protected contract.

A limited protected contract also does not include any part of a contract or agreement that indemnifies the owner or operator of a railroad.



SECTION 3: SAMPLE AGREEMENT PROVISIONS

This section provides sample indemnity provisions and sample insurance specifications for the following types of agreements:

- Vendor
- Professional Service
- Construction
- Leases
- Between Public Agencies
- Permits
- Facility Use
- Purchase Orders
- Independent Contractor

Vendor Agreement

Characteristics

Vendor agreements encompass a wide variety of services and may be the most common type of agreement used by the Agency. Suppliers, delivery services, office equipment repair technicians, and some types of inspectors are just several examples. This category does not include [construction](#) nor [professional services](#).

Sample indemnity language

Vendor shall indemnify, defend, and hold harmless the Agency, and its officers, employees, and agents ("Agency indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable attorney's fees and costs of litigation ("claims"), arising out of the Vendor's performance of its obligations under this agreement or out of the operations conducted by Vendor, including the Agency's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the Agency. In the event the Agency indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Vendor's performance of this agreement the Vendor shall provide a defense to the Agency indemnitees or at the Agency's option reimburse the Agency indemnitees their costs of defense, including reasonable attorney's fees, incurred in defense of such claims.

Sample insurance specifications

Without limiting Vendor's indemnification of Agency, and prior to commencement of work, Vendor shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the types and amounts described below and in a form that is satisfactory to Agency.

General liability insurance. Vendor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Vendor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Vendor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Umbrella or excess liability insurance. *[If required to meet higher limits].* Vendor shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:



- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- “Pay on behalf of” wording as opposed to “reimbursement”;
- Concurrency of effective dates with primary policies.

Should Vendor obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, and employer’s liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

Workers’ compensation insurance. Vendor shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000).

Vendor shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.

Other provisions or requirements

Proof of insurance. Vendor shall provide certificates of insurance and required endorsements to Agency as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by Agency’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency for the contract period and any additional length of time required thereafter. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Vendor shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Vendor, their agents, representatives, employees, or subconsultants.

Primary/non-contributing. Coverage provided by Vendor shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency’s own insurance or self- insurance shall be called upon to protect it as a named insured.

Agency’s rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by Agency will be promptly reimbursed by Vendor or Agency will withhold amounts sufficient to pay premium from Vendor payments. In the alternative, Agency may cancel this Agreement.



Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Vendor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Vendor of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Vendor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

Notice of cancellation. Vendor agrees to oblige its insurance agent or broker and insurers to provide the Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Vendor's insurers are unwilling to provide such notice, then Vendor shall have the responsibility of notifying the Agency immediately in the event of Vendor's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Vendor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.



Pass through clause. Vendor agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Vendor (hereinafter collectively “subcontractor”), provide the same minimum insurance coverage and endorsements required of Vendor. Vendor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Vendor’s subcontractor cannot comply with this requirement, which proof must be submitted to the Agency, Vendor shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor’s scope of work and services, with limits less than required of the Vendor, but in all other terms consistent with the Vendor’s requirements under this agreement. This provision does not relieve the Vendor of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Vendor with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Vendor under this agreement given the limited scope of work or services provided by the subcontractor. Vendor agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to Agency for review.

Agency’s right to revise specifications. The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Vendor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Vendor, the Agency and Vendor may renegotiate Vendor’s compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. Vendor shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Vendor’s performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Vendor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

Professional Service Agreement

Characteristics

Agreements to provide such services have an exposure in common: a potential for [economic loss](#) resulting from errors or omissions of the professional service provider. Some examples are:

- An architect or engineer who makes a calculation error resulting in construction of a building that is structurally unsafe and must be retrofitted or demolished.
- A real estate consultant who fails to perform due diligence in identifying prior uses of a property resulting in a recommendation to purchase property that needs major clean up or is restricted from the use the Agency intends.
- A legal counsel who misses a filing deadline resulting in a judgment adverse to their client's interest.

Although other types of losses are possible, for example, bodily injury resulting from failure of a structurally unsafe building, economic losses are the most common and protection against such losses is what makes professional liability policies different from other types of liability insurance.

Professional liability policies are almost always [claims-made](#). Thus, the insurance specifications must require that coverage applies to the earliest date for which the professional may be performing services for the Agency and must continue for a reasonable time after the service has been completed. Especially in design professions, errors in the work may not manifest until sometime after the work has been completed.

There are two ways to maintain the claim reporting requirement. Which one applies depends on the type of coverage provided: occurrence or claims made.

[Occurrence](#) means coverage applies to losses that occur during the policy period, regardless of when reported. For example, if a buried pipe is damaged during construction and the resulting property damage from the leak is not discovered until after the project has been completed or after the policy in effect at the time of loss has expired, the policy effective at the time of loss applies. Most liability policies are occurrence based; however, pollution liability policies can be either occurrence or claims-made.

[Claims-made](#) coverage applies to claims made during the policy period in effect at the time the claim is made, regardless of when the event triggering the claim took place. Thus, if someone trips and falls at a project site that was designed and constructed five years ago, the policy in effect at the time the claim is submitted applies, not the policy that was in effect when the design and construction took place. Application of coverage can be extended to periods prior to the policy inception by use of a [retroactive date](#) or similar concept. Since claims could be made shortly after inception of a new policy arising out of events that occurred near the end of the prior policy, insurers must accommodate their insureds somehow. For most claims-made policies that are renewed annually, the retroactive date reaches back to the inception of the first policy in the series. Thus, if an architect has been with the same insurer for ten years, coverage under the current policy likely will extend back to the inception date of the first policy. Nearly all professional liability insurance policies are written as claims-made.



Professional liability insurance policies do not cover liability assumed under contract unless the named insured would have been liable even without the contractual agreement. Thus, if the indemnity agreements require the professional service provider to indemnify the Agency even in the absence of liability on the part of the professional, the other party's insurance policy will not respond. There must be some negligence on the part of the professional for coverage to apply. In addition to the coverage restriction for assumed liability, the Agency must also deal with the limitations imposed by [statute](#).

Sample indemnity language

Below are sample indemnity clauses for both professional service consultants (e.g., arborists, attorneys, playground auditors, real estate agents) and design professionals. As outlined in California Civil Code Section 2782.8, design professionals include licensed architects, licensed landscape architects, registered professional engineers, and licensed professional land surveyors.

For professional service consultants:

Indemnity and defense

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Agency and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of services under this agreement. Consultant's duty to indemnify and hold harmless Agency shall not extend to the Agency's sole or active negligence.

Duty to defend

In the event the Agency, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this agreement, and upon demand by Agency, Consultant shall defend the Agency at Consultant's cost or at Agency's option, to reimburse Agency for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by Consultant's negligent acts, errors or omissions. Payment by Agency is not a condition precedent to enforcement of this provision. In the event of any dispute between Consultant and Agency, as to whether liability arises from the sole or active negligence of the Agency or its officers, employees, or agents, Consultant will be obligated to pay for Agency's defense until such time as a final judgment has been entered adjudicating the Agency as solely or actively negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees, and costs of litigation.

For design professional consultants:

Indemnification and defense for professional services

To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless Agency and any and all of its officials, employees, and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs, and expenses, including attorney's



fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by Agency in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury, or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant's percentage of fault, the parties agree to mediation with a neutral third-party to determine the Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the Agency.

For all other liabilities

Notwithstanding the foregoing and without diminishing any rights of Agency under *Indemnification and Defense for Professional Services*, for any liability, claim, demand, allegation against Agency arising out of, related to, or pertaining to any act or omission of Consultant, but which is not a design professional service, Consultant shall defend, indemnify, and hold harmless Agency, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney's fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the Agency, except for the sole or active negligence of, or willful misconduct of the Agency.

Sample insurance specifications

Sample insurance specifications for professional service agreements:

Without limiting Consultant's indemnification of Agency, and prior to commencement of Work, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than 1,000,000 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy



inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.

Other provisions or requirements

Proof of insurance. Consultant shall provide certificates of insurance and required endorsements to Agency as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by Agency's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency for the contract period and any additional length of time required thereafter. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Consultant, their agents, representatives, employees, or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

Agency's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by Agency will be promptly reimbursed by Consultant or Agency will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Agency may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.



Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide the Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the responsibility of notifying the Agency immediately in the event of Consultant's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Consultant (hereinafter collectively "subcontractor"), provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in



conformity with the requirements of this section. However, in the event Consultant's subcontractor cannot comply with this requirement, which proof must be submitted to the Agency, Consultant shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor's scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this agreement. This provision does not relieve the Consultant of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Consultant with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Consultant under this agreement given the limited scope of work or services provided by the subcontractor. Consultant agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to Agency for review.

Agency's right to revise specifications. The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the Agency and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. Consultant shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

Construction Agreement

Characteristics

Construction agreements have these common characteristics:

- High risk activity
- Contractor control of the risk
- Multiple levels of contracts (subcontractors, sub-subcontractors)
- Restrictions on the type of indemnification, imposed by statute
- High levels of litigiousness
- Builders' risk (course of construction) or installation floater coverage

At its core, builder's risk coverage is nearly identical to an installation floater. The critical difference lies in the scope of what is insured.

Builders' risk insurance is a form of property insurance that protects the construction site against loss or damage caused by various perils, such as fire, wind, hail, vandalism, theft, collapse, etc. It is designed to cover loss or damage to buildings and construction materials while in the course of construction.

Installation floaters are designed to cover loss or damage to material and equipment to be installed in an "existing building." This is an option for a contractor's performing a specialized job installing equipment or materials on an existing building, for example, a contract to replace the plumbing/fixtures in the bathroom of an existing building.

If the project does not involve new or major reconstruction, an installation floater may be acceptable at the option of the Agency. Usually, coverage will end as soon as the covered materials are installed. However, the Agency can request the coverage extend until the subcontractor has been paid or the installed materials become part of a larger structure.

It is essential for these and other reasons to construct indemnity agreements and insurance specifications in construction contracts carefully.

For these and other reasons, it is especially important to carefully construct indemnity agreements and insurance specifications in construction contracts.

Sample indemnity language

Statutory [restrictions on indemnity](#) in construction contracts was discussed previously. Below is sample indemnity language taking into account some of those limitations.

Contractor shall indemnify, defend with legal counsel approved by Agency, and hold harmless Agency, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with



Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the Agency. Should conflict of interest principles preclude a single attorney from representing both Agency and Contractor, or should Agency otherwise find Contractor's attorney unacceptable, then Contractor shall reimburse the Agency its costs of defense, including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the Agency (and its officers, officials, employees, and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless, or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of Agency under any provision of this agreement, Contractor shall not be required to indemnify and hold harmless Agency for liability attributable to the sole or active negligence of Agency, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where Agency is shown to have been actively negligent and where Agency's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of Agency.

Sample insurance specifications

Most contractors will use vehicles during the project and should have automobile liability insurance. Builder's risk (course of construction) and installation floaters may be optional and can be arranged either by the general contractor or by the Agency. Consideration should be given to the appropriateness of limits required based on the size of the project and risks associated with the construction-related activities.

Without limiting Contractor's indemnification of Agency, and prior to commencement of Work, Contractor shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

General liability insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, and a \$2,000,000 completed operations aggregate. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage



for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Umbrella or excess liability insurance. *[If required to meet higher limits].* Contractor shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- "Pay on behalf of" wording as opposed to "reimbursement";
- Concurrency of effective dates with primary policies.

Should Contractor obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for Contractor's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

Contractor shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.

Contractor's pollution liability insurance. Coverage shall provide for liability arising out of sudden, accidental, and gradual pollution, and remediation. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for remediation of the site in the event of an environmental contamination event arising out of the materials, supplies, products, work, operations, or workmanship.

Transportation pollution liability insurance. Coverage shall be in an amount not less than \$5,000,000 combined single limit per accident and shall include Pollution Liability (CA9948) and MCS-90 Endorsements. The policy shall provide coverage for transportation of pollutants/contaminants to and from the job site and the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

Builder's risk (course of construction). Upon commencement of construction and with approval of Agency, Contractor shall obtain and maintain builder's risk (course of construction) for the entire duration of the project until only the Agency has an insurable interest. The



builder's risk coverage shall include the coverages as specified below.

The named insureds shall be Contractor and Agency, including its officers, officials, employees, and agents. All Subcontractors (excluding those solely responsible for design Work) of any tier and suppliers shall be included as additional insureds as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to Agency. The policy shall contain a provision that all proceeds from the builder's risk policy shall be made payable to the Agency. The Agency will act as a fiduciary for all other interests in the Project.

Policy shall be provided for replacement value on an "all risk" basis for the completed value of the project. There shall be no coinsurance penalty or provisional limit provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) Ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) Ocean marine cargo coverage insuring any Project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site or any staging area. Such insurance shall be on a form acceptable to Agency to ensure adequacy of terms and sublimits and shall be submitted to the Agency prior to commencement of construction.

Note: For projects with construction values of \$50,000,000 or less, the Authority's property insurance program may be able to provide coverage. Coverage is first party coverage and does not provide coverage to contractors. There is no premium charge until the job is completed (unless Earthquake coverage is purchased) and a Permit to Occupy has been issued. Even for larger projects, the Agency may want to provide this coverage. In such cases, you may wish to discuss this matter with your Authority risk manager.

Installation floater. If required by the Agency or not covered by builders' risk (course of construction) coverage, Contractor shall obtain an installation floater for the value of the property and covering the portion of the work to be constructed, installed, altered, or repaired by Contractor. The installation floater policy must include coverage for the fixtures, materials, supplies, machinery, and equipment used in or incidental to the construction project as well as property kept off-site or while in transit. Coverage must include property of others in the Contractor's care, custody, or control. In addition to Contractor, the Agency and all subcontractors shall be named as additional insureds on the policy with coverage extending through the final completion date.

Other provisions or requirements

Proof of insurance. Contractor shall provide certificates of insurance and required endorsements to Agency as evidence of the insurance coverage required herein. Insurance



certificates and endorsements must be approved by Agency's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency for the contract period and any additional length of time required thereafter. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Contractor shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Contractor, their agents, representatives, employees, or subconsultants. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. Agency and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

Primary/noncontributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

Products/completed operations coverage. Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The Agency, its officials, officers, agents, and employees, shall be included as additional insureds under the Products and Completed Operations coverage.

Agency's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by Agency will be promptly reimbursed by Contractor or Agency will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, Agency may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed



officers, agents, officials, employees, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Contractor of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

Notice of cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide the Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Contractor's insurers are unwilling to provide such notice, then Contractor shall have the responsibility of notifying the Agency immediately in the event of Contractor's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Note: Many agencies specifically note ISO policy endorsement: ISO form 20 10 85 (Additional Insured Endorsement – Owners, Lessees or Contractors) when drafting construction contracts. This is an obsolete endorsement (1985) to the ISO Commercial General Liability policy which provided coverage to the additional insured for the “ongoing and completed operations” of the Contractor/Vendor. There is no ‘equivalent’ to this endorsement. Currently, to obtain coverage for the “ongoing and completed operations” of the Contractor/Vendor, two ISO forms are required to provide coverage: CG 20 10 (ongoing operations) & CG 2037 (completed operations). If the Contractor/Vendor's insurer does not use standard ISO forms, rather than request the “equivalent” of ISO form 20 10 85, request that “coverage be at least as broad as” coverage provided by ISO's Owners, Lessees, or Contractors Additional Insured Endorsement for the ongoing and completed operations of Contractor/Vendor.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.



Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Contractor (hereinafter collectively "subcontractor"), provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Contractor's subcontractor cannot comply with this requirement, which proof must be submitted to the Agency, Contractor shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor's scope of work and services, with limits less than required of the Contractor, but in all other terms consistent with the Contractor's requirements under this agreement. This provision does not relieve the Contractor of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Contractor with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Contractor under this agreement given the limited scope of work or services provided by the subcontractor. Contractor agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to Agency for review.

Agency's right to revise requirements. The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor a ninety (90)-day advance written notice of such change. If such change results in substantial additional cost to the Contractor, the Agency and Contractor may renegotiate Contractor's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. Contractor shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

Leases

Characteristics

A lease is among the most frequently entered forms of agreement, along with an insurance policy. In a lease agreement, a tenant takes possession of all or part of a premises from the owner. Usually, the owner makes the tenant contractually responsible for losses that occur on the premises. Leases often contain very broad indemnity agreements.

In most leases, the owner provides property insurance, and the tenant provides liability insurance. When the property includes substantial tenant improvements, the lease may require the tenant to insure those improvements. In a few cases, such as triple net leases, the tenant is responsible to provide property insurance.

Responsibility for damage. Be watchful for return of premises clauses that hold the tenant responsible to return the premises in the same condition as received barring normal wear and tear. Such clauses can make the tenant responsible for total loss of the facility. If the lease is silent on responsibility for damage, the owner is responsible.

Liability. Generally, a tenant is responsible for liability arising out of its use of the premises, while an owner may be responsible for losses due to failure to maintain premises, depending on how the contract addresses the matter. Tenants are often asked to indemnify the owner for losses arising out of premises use. If the tenant maintains the premises, it may be reasonable for the tenant to assume this responsibility. However, if the owner controls certain elements of premises maintenance, the tenant should not be responsible for negligent maintenance it cannot control.

Insurance. Usually, the owner will ask the tenant for evidence of liability insurance. If employees work at the premises, the owner may also require evidence of workers' compensation insurance. Fire insurance is negotiable, but the contract should specify who provides it. More often, the owner carries fire insurance, except in triple net leases. If the tenant provides fire insurance, exact coverage specifications should be detailed in the agreement. The tenant should avoid vague or difficult-to-insure requirements.

Breach. An indemnity agreement or other provision may require the tenant to hold the owner harmless from claims arising from a breach of the lease terms. Most insurance policies either exclude breach of contract specifically or cover only claims neither expected nor intended by the insured. This assumed liability might be uninsurable.

Subrogation. A mutual waiver of subrogation prevents the insurer of either the tenant or owner from subrogating against the other party after a loss. Nearly all fire policies allow this waiver. Without a waiver, the party not responsible to buy fire insurance will need fire legal liability insurance. This matter should be covered one way or the other.

Tenant's improvements. The lease should specify which party insures tenant's improvements and betterments. The tenant should make sure it is protected in this area. If the owner buys fire insurance, the tenant should obtain a copy for review to assure tenant improvements are covered. Otherwise, the tenant may be exposed to an uninsured loss of its investment in its business property to operate in the leased facility, unless the tenant buys personal property coverage.



Pollution. Pollution has become a major issue in industrial leases. Either the landlord or the tenant, or both, could be liable for cleanup under CERCLA and other federal acts. Leases should allocate costs for cleanup, place restrictions on use of the premises, account for previous pollution, and describe insurance specifications. However, because of the periodic difficulty in obtaining this type of insurance, tenants should avoid responsibility to provide coverage that may be impossible to obtain.

Sample indemnity language

This sample assumes the Agency is the owner and leases property to a tenant.

Except for the sole negligence of Agency, Lessee shall defend, indemnify and keep and hold Agency, including Agency's officers, employees and agents, their successors and assigns, harmless from any and all costs, liability, damage or expense (including costs of suit and fees and expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of Lessee, sustained in, on or about the demised premises or arising out of Lessee's use or occupancy thereof, as a proximate result of the acts or omissions of Lessee, its employees and agents, or its contractors, licensees, invites or subtenants, their successors and assigns or arising out of the condition of the property. Agency shall, by appropriate, written notice to Lessee, advise Lessee as soon as practicable regarding any potential liability of Lessee under this Section.

Sample insurance specifications

Sample insurance specifications for leases in which the Agency is owner follows:

Without limiting Tenant's indemnification of Agency, and prior to commencement of Lease, Tenant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

General liability insurance. Tenant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. *[Optional]* Tenant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Tenant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Workers' compensation insurance. Tenant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Tenant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation



endorsement in favor of Agency, its officers, agents, employees, and volunteers.

Property insurance. Upon commencement of construction of tenant improvements and betterments, or installation of equipment, with approval of Agency, Tenant shall obtain and maintain insurance on tenant's improvements and betterments. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy.

Commercial property insurance *[Optional for long-term leases of an entire premises]* covering the leased premises, fixtures, equipment, building, all property situated in, on, or constituting a part of the premises and any improvements. Coverage shall be at least as broad as the Insurance Services Offices broad causes of loss form CP 10 20 and approved of in writing by Agency. Coverage shall be sufficient to insure 100% of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, 100% rents coverage, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. Agency shall be included as an insured and as loss payee on any such insurance. Agency shall not be liable for any business income or other consequential loss sustained by lessee. Agency shall not be liable for any loss of lessee's personal property even if such loss is caused by negligence of Agency, Agency's employees, or agents.

Boiler and machinery insurance with limits of not less than actual replacement cost for all property and improvements, encompassing explosion and breakdown. Lessee shall obtain and deliver to Agency, along with copies of all policies of insurance required here, a joint loss endorsement for property and boiler and machinery policies. The Agency is to be added as insured to boiler and machinery coverage. Lessee also agrees to provide builder's all-risk insurance using an inland marine form during the period of any major alteration or improvement, using the broadest form available. Agency shall be named as loss payee under all first party coverages.

Other provisions or requirements

Proof of insurance. Tenant shall provide certificates of insurance and required endorsements to Agency as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by Agency's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency for the contract period and any additional length of time required thereafter. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Tenant shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Tenant, their agents, representatives, employees, or subconsultants.

Primary/noncontributing. Coverage provided by Tenant shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and



umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self- insurance shall be called upon to protect it as a named insured.

Agency's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by Agency will be promptly reimbursed by Tenant or Agency will withhold amounts sufficient to pay premium from Tenant payments. In the alternative, Agency may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Tenant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Tenant hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Tenant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Tenant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Tenant maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

Notice of cancellation. Tenant agrees to oblige its insurance agent or broker and insurers to provide the Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Tenant's insurers are unwilling to provide such notice, then Tenant shall have the responsibility of notifying the Agency immediately in the event of Tenant's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.



Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. Tenant agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Tenant (hereinafter collectively "subcontractor"), provide the same minimum insurance coverage and endorsements required of Tenant. Tenant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Tenant's subcontractor cannot comply with this requirement, which proof must be submitted to the Agency, Tenant shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor's scope of work and services, with limits less than required of the Tenant, but in all other terms consistent with the Tenant's requirements under this agreement. This provision does not relieve the Tenant of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Tenant with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Tenant under this agreement given the limited scope of work or services provided by the subcontractor. Tenant agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to Agency for review.

Agency's right to revise specifications. The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Tenant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Tenant, the Agency and Tenant may renegotiate Tenant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. Tenant shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Tenant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.



Additional insurance. Tenant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection.

Tenant's personal property, fixtures, equipment, inventory, and vehicles are not insured by Landlord against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause.



Agreements between Public Agencies

Characteristics

Agreements between public agencies can range from a contract for services (police, fire, public works, etc.) to be provided by one agency to another to joint ventures (e.g., summer swim programs with municipal and school district sponsors). Although the activity involves more than one public agency, that does not change the basic risks, which still must be identified and measured.

Two elements are especially significant in agreements between public agencies. First, most participate in some type of self-insurance program, either through a pool or an individual self-insurance plan. Second, in many joint ventures, mutual indemnification may be appropriate.

These factors mean that each agency will need to accept the other's self-insurance in lieu of requiring specific commercial coverage and the indemnity agreement will need special care. The criteria on which to judge the indemnification include the questions of who has control and who benefits most.

Joint-use agreements are between an agency and school or park district for shared use of the district's fields. It is essential to clarify in the agreement who is responsible for what, such as, field inspection and maintenance. These types of mutual hold harmless agreements, while necessary, can be plagued with issues should a loss occur. It is recommended that agencies define a resolution process to address disputes, such as agreeing to meet periodically to review concerns, claims, and report on issues regarding the fields.

Memorandum of understanding. Other types of agreements involving multiple public agencies include a memorandum of understanding (MOU). Agencies entering into an MOU for the shared use of an employee can be fraught with concerns if they are not negotiated in the beginning of the development stage. Again, determine up front which agency is going to be responsible for what actions or loss exposures.

The agency that employs the individual in question is legally responsible for their workers' compensation claims and this should not be taken on by the other agency. However, the cost of workers' compensation claims and appropriate reimbursement can be negotiated into the agreement. Perhaps the liability costs will be split, or a certain portion or entire cost of a workers' compensation loss is charged to the agency who was responsible for overseeing the employee at the time the injury occurred. Fair and equitable distribution of the loss should be the goal to help maintain these valuable relationships between organizations.

Should an agency perform a service for the other agency for monetary compensation and has control over the work (for example, providing helicopter support service to police) that agency generally should indemnify the other. If both agencies benefit, such as when a recreation program is sponsored jointly on the property of one of the agencies, mutual indemnification may be appropriate. Agencies entering into an agreement with other public agencies should consult with legal counsel.



Sample indemnity language

Below is a sample mutual indemnity agreement used between an educational institution and a sponsor of a career fair (names have been changed) and could be used between two public agencies.

Now, therefore, Other Entity and Agency agree to the following:

Other Entity shall be responsible for all damages to persons or property that occur as a result of Other Entity's or its officers, agents, employees, independent contractors, and volunteers' fault or negligence in connection with Other Entity's participation in the Activity. Further, Other Entity shall indemnify and save harmless the Agency, its officers, agents, employees, independent contractors, and volunteers from all claims, suits, or actions of every name, kind, description, brought for, or on account of, injuries to or death of any person or damage to property arising from or related to the fault or negligence of Other Entity, its officers, agents, employees, independent contractors, and volunteers in connection with the Activity.

Agency shall indemnify and save harmless Other Entity, its officers, agents, employees, independent contractors, and volunteers from all claims, suits, or actions of every name, kind, description, brought for, or on account of, injuries to or death of any person or damage to property arising from or related to the fault or negligence of the Agency, its officers, agents, employees, independent contractors, and volunteers in connection with the Activity.

Sample insurance specifications

Most California public entities are self-insured or members of liability self-insurance pools. Agencies providing services to your Agency should also provide evidence of coverage and additional insured endorsements consistent with, but modified as warranted, the language of the insurance requirements and specifications set forth for other service providers, and as outlined in this manual.

Permits

Characteristics

Permits provide authorization for the permittee(s) to encroach or enter a right-of-way to perform a specified activity, such as, constructing, altering, repairing, or improving facilities. Such a permit is not a property right nor can it be transferred or assigned to another party.

Encroachment permits may allow construction activity, signs, or obstructions to visibility on roadways. Encroachment may interrupt businesses, resulting in business income claims. An example could be excavation or demolition that resulted in debris or other obstructions that prevented access to a business parking lot. Encroachment may also result in roadway accidents.

Right-of-entry permits usually are issued in relation to some type of construction. A construction contractor may need access to property to stage the work for surveying, or just to move vehicles closer to a job site. In some cases, the work is performed on the site for which the permit is issued as, for example, when relocating utilities. In such cases, the risks are most often the same as or similar to those found in any other construction project.

One of the principal differences in a right of entry permit is that the party issuing the permit and requiring indemnification is not the beneficiary of the result and has no other contractual relationship with the party indemnifying. For example, if a plant owner allows a construction contractor employed by the Agency to use part of the plant property for parking vehicles and equipment for a construction project on agency property, the plant owner gets no benefit unless the plant charges for the privilege.

As a result of the different relationship between the parties, right-of-entry permits often have very forceful insurance specifications and indemnity provisions. Often these can be negotiated. In some cases, however, the property owner can be truculent. In the case of public works projects, such parties often grant access only because they must, and have little desire to be cooperative.

When obtaining right-of-entry permits, the Agency should be careful not to assume unlimited liability, although it usually is the agency's contractor that must obtain the permit. If issuing a right-of-entry permit, the Agency should protect its interests as it would in other types of construction contracts; after careful risk analysis and attention to indemnity and specifications for insurance.

Sample indemnity language

Permittee shall indemnify, defend, and hold harmless Agency, its officers, employees, and agents from any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to any person or persons or damage to property arising at any time during and/or arising out of or in any way connected with Permittee's authorized activities under the terms of this permit unless solely caused by the gross negligence or willful misconduct of Agency, its officers, employees, or agents.

It is expressly understood and agreed between the parties to this Permit that this is an agreement and permit for access to and for certain events to occur or work to take place on agency property. This Agreement and permit are not a construction contract or an agreement for

design professional services as those terms are defined or used under Title 12 of the California Civil Code (§§ 2772 et. seq.).

Sample insurance specifications

General liability insurance. Permittee shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, and a \$2,000,000 completed operations aggregate. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

Automobile liability insurance. Permittee shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Permittee arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Umbrella or excess liability insurance. *[If required to meet higher limits].* Permittee shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer’s liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- “Pay on behalf of” wording as opposed to “reimbursement”;
- Concurrency of effective dates with primary policies.

Should Permittee obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, and employer’s liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

Workers’ compensation insurance. Permittee shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000).

Permittee shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.

Other provisions or requirements

Proof of insurance. Permittee shall provide certificates of insurance and required endorsements to Agency as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by Agency’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency for the contract period and any additional length of time required thereafter. Agency



reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Permittee shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Permittee, their agents, representatives, employees, or subconsultants.

Primary/non-contributing. Coverage provided by Permittee shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

Agency's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by Agency will be promptly reimbursed by Permittee or Agency will withhold amounts sufficient to pay premium from Permittee payments. In the alternative, Agency may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Permittee or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Permittee hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Permittee acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Permittee of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a



waiver of any type. If the Permittee maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Permittee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

Notice of cancellation. Permittee agrees to oblige its insurance agent or broker and insurers to provide the Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Permittee's insurers are unwilling to provide such notice, then Permittee shall have the responsibility of notifying the Agency immediately in the event of Permittee's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. Permittee agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Permittee (hereinafter collectively "subcontractor"), provide the same minimum insurance coverage and endorsements required of Permittee. Permittee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Permittee's subcontractor cannot comply with this requirement, which proof must be submitted to the Agency, Permittee shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor's scope of work and services, with limits less than required of the Permittee, but in all other terms consistent with the Permittee's requirements under this agreement. This provision does not relieve the Permittee of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Permittee with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Permittee under this agreement given the limited scope of work or services provided by the subcontractor. Permittee agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to Agency for review.

Agency's right to revise specifications. The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Permittee ninety (90) days advance written notice of such change. If such change results in



substantial additional cost to the Permittee, the Agency and Permittee may renegotiate Permittee's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. Permittee shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Permittee's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Permittee shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.



Facility Use Agreement

Characteristics

Facility use agreements are issued to individuals, groups, or businesses (“facility users”) requesting to use an agency’s facilities for activities or events independent from the agency’s operations. The facility use can involve any sort of risk from the mundane (book club) to the severe (festivals, fairs, block parties). Additionally, if the event involves the sale or serving of alcohol, the risk increases significantly.

Facility use agreements. All facility users must agree to indemnify and hold harmless the Agency and provide evidence of insurance to financially support the indemnity agreement. The Agency should have established requirements for insurance coverages and limits, including terms and conditions. The risk analysis approach should be initiated for each event/activity to determine the appropriate lines of coverage and limits to require from the facility user.

Usually, there are different facility use agreements for agency buildings and property and fields and/or sports complexes for sports teams/leagues.

Considerations. Typically, general liability insurance and an additional insured endorsement are required. However, additional insurance types should be requested when the event or activity involves autos, watercraft, participation in athletic events, minors, or vulnerable populations (including signed waivers), the sale or consumption of alcoholic beverages, or other separately insurable factors.

Events involving the sale or consumption of alcoholic beverages create unique risk concerns. Alcohol increases risk because of its behavioral effects. As such, the Agency may require professional security personnel to be present. Factors to consider include, but are not limited to, the number of attendees, the amount and type of alcohol, location of the event, and potential for crowd control issues. The Agency may consider establishing rules and procedures, such as guest drink limitations; setting mandatory service start and cut-off time; limiting the type of alcohol to beer, wine, malt beverages, or wine coolers; prohibiting the serving or consumption of hard liquor; and requiring the Facility User to use a professionally licensed and insured caterer or a third party to furnish or serve the alcohol. A temporary Alcoholic Beverage Control (ABC) liquor license may be required. The Agency should determine if an ABC license is required and, if so, issue the permit once the Facility User has obtained the license.

General liability insurance policies may exclude liability arising from the sale, distribution, or manufacturing of alcohol. The Agency should require liquor liability insurance. When liquor is served without charge, “host liquor liability” coverage is adequate. This coverage is automatically provided through general liability insurance, or through the Authority’s special event insurance program (an additional premium is charged if alcohol is served). Host liquor liability insurance is generally for businesses that occasionally serve alcoholic drinks, such as caterers and event organizers. When liquor is sold at an event, full liquor liability insurance is required.



Sample indemnity language

Renter shall indemnify, defend, and hold harmless Agency, and its officers, employees, and agents from and against any and all causes of action, claims, liabilities, obligations, judgments, losses, costs, expenses, or damages, including liability for injuries or illnesses to any person or persons or damage to property arising at any time during and/or arising out of or in any way connected with Renter's use or occupancy of the Facility and adjoining property, unless solely caused by the gross negligence or willful misconduct of the Agency, its officers, employees, or agents. In the event Agency indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Renter's use or occupancy of the Facility and adjoining property, Renter shall provide a defense to the Agency indemnitees, or at the Agency's option, reimburse the Agency indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

Sample insurance specifications

General liability insurance. Renter shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Agency reserves the right to require additional lines of insurance, such as:

Automobile liability insurance. Renter shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Renter arising out of or in connection with the facility use, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Sexual abuse/molestation insurance. Renter shall procure and maintain sexual abuse and molestation liability coverage in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate. This coverage may be part of commercial general liability coverage, professional liability coverage, or a separate policy.

Liquor liability insurance. Renter shall maintain full liquor liability insurance coverage in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate.

Workers' compensation insurance. Renter shall maintain workers' compensation insurance (statutory limits) and employer's liability insurance (with limits of at least \$1,000,000). Renter shall submit to Agency, along with the certificate of insurance, a waiver of subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.

Cyber liability insurance. Renter shall procure and maintain cyber liability insurance with limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate.

Athletic participant's medical expense. Sports associations or events with athletic participants shall provide evidence of athletic participant's medical expense coverage to respond



to athletic participant's injuries. This coverage may be part of commercial general liability coverage.

Other. If Renter contracts with a third-party service provider (e.g., caterer), Renter will require the service provider to procure and maintain at its sole cost and expense comprehensive general liability insurance in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and if applicable, liquor liability coverage in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, or other lines of coverage Agency requires. Both Agency and Renter shall be endorsed as additional insureds.

Other provisions or requirements

Proof of insurance. Renter shall provide certificates of insurance and required endorsements to Agency as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by Agency's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency for the contract period and any additional length of time required thereafter. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Renter shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property or financial loss which may arise from or in connection with the Renter's use or occupancy of facility and adjoining property.

Primary/non-contributing. Coverage provided by Renter shall be primary, and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance policies shall include or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Renter or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Renter hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its vendors.

Notice of cancellation. Renter agrees to oblige its insurance agent or broker and insurers to provide the Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Renter's insurers are unwilling to provide such notice, then Renter shall have the responsibility of notifying the Agency immediately in the event of Renter's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials,



employees, agents, and volunteers shall be additional insureds under such policies.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by Agency.

Enforcement of agreement provisions (non estoppel). Renter acknowledges and agrees that any actual or alleged failure on the part of Agency to inform Renter of non-compliance with any requirement imposes no additional obligations on Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features, or limits contained in this section, are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all-inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Renter maintains higher limits than the minimums shown above, Agency requires and shall be entitled to coverage for the higher limits maintained by Renter. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Agency.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

Agency's right to revise specifications. Agency reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Renter at least thirty (30) days advance written notice of such change. However, Agency reserves the right to give less than thirty (30) days' notice if Agency first becomes aware of an issue and needs to change the amounts and types of insurance within thirty (30) days of the scheduled event.

Additional insurance. Renter shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its use or occupancy of the Facility and adjoining property.

Timely notice of claims. Renter shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Renter's use or occupancy of the Facility and adjoining property, and that involve, or may involve, coverage under any of the required liability policies.



Purchase Orders

Characteristics

Agreements for services or products are sometimes transacted through the use of purchase orders. Some agencies may use purchase orders for emergency work; however, this is not recommended. Depending on the service or product, the specifications from other agreements may be more appropriate, such as, [vendor](#), [professional service](#), or [construction](#).

A problem with indemnity provisions in purchase orders arises in attempting to obtain coverage from the seller's liability insurer. Exclusions or limitations in the policy may eliminate coverage for an assumed liability. For example, damage to the insured's product itself is usually excluded, as well as product recall.

Sample indemnity language

Seller shall indemnify, defend, and hold harmless the Agency and its officials, contractors, agents, volunteers, and employees from and against any and all liability and expenses including defense costs and legal fees and claims for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury or property damage arising out of the performance of the work hereunder, or by any negligent act or omission of the Seller and of the Seller's subcontractors, vendors, or suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of the Agency.

The indemnity shall survive expiration or termination of the Order or final payment thereunder. This indemnity is in addition to any other rights or remedies which the Agency may have under the law or under the contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, the Agency may, at its sole discretion, reserve, retain, or apply any monies due to the Seller under the contract for the purpose of resolving such claims, provided however that the Agency may release such funds if the Seller provides the Agency with reasonable assurance of protection of Agency's interests. The Agency shall, in its sole discretion, determine whether such assurances are reasonable.

Sample insurance specifications

Usually, only general liability insurance is required. Automobile liability and workers compensation insurance may be required if the seller will deliver the product to the agency's property. In such cases, it may be more appropriate to use the [vendor agreement](#) specifications.

General liability insurance. Seller shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Agency, its officers, officials, agents, employees, and volunteers shall be added as additional insureds on the policy.



Independent Contractor Agreement

Characteristics

Agencies may utilize the services of independent contractors at times. [Independent contractors](#) are not considered Agency employees; are free from Agency control and direction in connection with the performance of their duties; and retain exclusive discretion in how to perform their duties. In terms of risk, these agreements may closely resemble vendor agreements.

Regarding insurance requirements, some lines of coverage may not be necessary. For example, as an independent contractor with no employees, workers' compensation and employer's liability is not required by the state; however, the independent contractor should complete the [Exemption from Workers' Compensation Form](#). Additionally, if the independent contractor is using their own auto, the requirement may be satisfied by providing proof of their personal auto policy.

Different departments may utilize independent contractors, and agreements should be customized to address the unique circumstances presented by each independent contractor's scope of work. For example, many agencies retain the services of independent contractors in parks and recreation, where they are often used in the roles of instructors or coaches to support recreational and enrichment classes. The Agency should require a [participant waiver](#) from all attendees during the registration process when offering these programs. Risk arising from these activities can vary widely. Depending on the type of activity offered, the Agency may require additional insurance coverage or higher coverage limits. For example, aquatic classes may warrant limits of \$3,000,000 per occurrence, \$6,000,000 general aggregate.

Fingerprints, Criminal Background Check, and TB Test Requirements

The Legislative Counsel of California has opined that authorization exists for any city or district (Agency) to screen an independent contractor to determine whether the person has been convicted of certain offenses if the independent contractor will have supervisory or disciplinary responsibility over a minor. Agencies have such authority to either carry out the Live scan or require the independent contractor to obtain one. This should be a provision in the agreement between the Agency and the independent contractor. The process used to access this information is Live scan fingerprinting.

Independent contractors working with vulnerable populations must comply with the TB testing requirements outlined in Section 5163 of the California Public Resources Code and confirm they have received a negative TB skin test reading.

Sample indemnity language

Independent Contractor shall indemnify, defend, and hold harmless the Agency, and its officers, employees, and agents ("Agency Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable attorney's fees and costs of litigation, arising out of the Independent Contractor's performance under this Agreement or out of the operations conducted by Independent Contractor, including the Agency's active or passive negligence, except for such loss or damage arising from the sole



negligence or willful misconduct of the Agency. In the event the Agency Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Independent Contractor's performance of this Agreement, the Independent Contractor shall provide a defense to the Agency Indemnitees or at the Agency's option reimburse the Agency Indemnitees their costs of defense, including reasonable attorney's fees, incurred in defense of such claims.

Payment by Agency is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Independent Contractor and Agency, as to whether liability arises from the sole negligence of the Agency or its officers, employees, or agents, Independent Contractor will be obligated to pay for Agency's defense until such time as a final judgment has been entered adjudicating the Agency as solely negligent. Independent Contractor will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees, and costs of litigation.

Sample insurance specifications

Without limiting the Independent Contractor's indemnification of Agency, and prior to commencement of work, the Independent Contractor shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

General liability insurance. Independent Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Sexual abuse/molestation insurance. Independent Contractor shall procure and maintain sexual abuse/molestation liability coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage may be provided as part of commercial general liability coverage, professional liability coverage, or as a separate policy.

Automobile liability insurance. Independent Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Independent contractor arising out of or in connection with the facility use, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Umbrella or excess liability insurance. *[If required to meet higher limits].* Independent Contractor shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- “Pay on behalf of” wording as opposed to “reimbursement”;
- Concurrency of effective dates with primary policies.

Should Independent Contractor obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, and employer’s liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

Workers’ compensation insurance. Independent Contractor shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000).

Other provisions or requirements

Proof of insurance. Independent Contractor shall provide certificates of insurance and required endorsements to Agency as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by Agency’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Agency for the contract period and any additional length of time required thereafter. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Independent Contractor shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Vendor, their agents, representatives, employees, or subconsultants.

Primary/non-contributing. Coverage provided by Independent Contractor shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency’s own insurance or self-insurance shall be called upon to protect it as a named insured.

Agency’s rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by Agency will be promptly reimbursed by Independent Contractor or Agency will withhold amounts sufficient to pay premium from Independent Contractor payments. In the alternative, Agency may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of



Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Independent Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Independent Contractor hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Independent Contractor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Independent Contractor of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Independent Contractor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Independent Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

Notice of cancellation. Independent Contractor agrees to oblige its insurance agent or broker and insurers to provide the Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Independent Contractor's insurers are unwilling to provide such notice, then Independent Contractor shall have the responsibility of notifying the Agency immediately in the event of Independent Contractor's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Independent Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.



Pass through clause. Independent Contractor agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Independent Contractor (hereinafter collectively “subcontractor”), provide the same minimum insurance coverage and endorsements required of Independent Contractor. Independent Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Independent Contractor’s subcontractor cannot comply with this requirement, which proof must be submitted to the Agency, Independent Contractor shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor’s scope of work and services, with limits less than required of the Independent Contractor, but in all other terms consistent with the Independent Contractor’s requirements under this agreement. This provision does not relieve the Independent Contractor of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Independent Contractor with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Independent Contractor under this agreement given the limited scope of work or services provided by the subcontractor. Independent Contractor agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to Agency for review.

Agency’s right to revise specifications. The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Independent Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Vendor, the Agency and Independent Contractor may renegotiate Independent Contractor’s compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. Independent Contractor shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Independent Contractor’s performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Independent Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

SECTION 4 – OTHER RISK TRANSFER TOPICS

This section provides additional information on topics frequently discussed with Authority members:

- Cyber liability
- Environmental issues
- Livestock and equestrian liability
- Controlled Insurance Programs
- Railroads
- Unmanned Aerial Systems
- Dial-a-Ride
- AB 5 & AB 2257 – Classifying independent contractors
- Bonds
- Participant Waiver and Release
- Compliance red flags



Cyber Liability

What does a cyber liability policy cover? Most notably, cyber liability policies cover an agency's liability for a data breach in which personally identifiable information (PII) is exposed or stolen. PII refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal information that can be linked to a specific individual. It can be defined as follows: PII means any individual's name in combination with any one or more of the following:

1. Social security number;
2. Driver's license number or any other state identification number;
3. Non-public medical or healthcare data including protected health information (PHI*);
4. Any account number, or credit card number in combination with any required password, access or other security code that would permit access to the financial account; or
5. Non-public personal information as defined in any privacy regulation.

*PHI generally refers to demographic information, medical history, tests and laboratory results, insurance information and other data that is collected by certain entities (e.g., healthcare providers, insurers, and their business associates) to identify an individual and determine appropriate care. HIPAA provides specific rules under which these entities may collect, share, or disclose PHI.

Broadly speaking, cyber policies may be broken down into two coverage types: first-party and third-party liability.

First party coverage may include an agency's expenses to retain crisis management services that may include forensics, notification requirements, and credit monitoring needs after a breach; regulatory fines and penalties; direct targeted intentional attacks; unintentional transmitting of a virus or malware; business income loss due to network interruption; re-creation of data lost due to a network interruption; extortion monies and associated expenses arising out of a criminal threat to release sensitive information or bring down a network.

Third party coverage may include loss arising out of the Agency's failure to protect sensitive personal or corporate information in any format; intellectual property infringement of copyright or trademark; invasion of privacy, libel, slander, plagiarism, or negligence arising out of the content on the organization's internet website.

These coverages may be referred to as Cyber Security and Privacy Liability insurance and are typically bundled into one policy or purchased as two separate policies.

Contracting for information technology services.

Cyber Security and Privacy Liability insurance is recommended for vendors providing hardware, pre-packaged software or portal access, technology or IT consultants, systems analysts, website designers, online services and content providers, cloud-based providers, computer programmers, and software consultants, system installation or software personnel.

Cyber Technology Errors and Omissions insurance is recommended for vendors or consultants,



including colocation (shared hosting centers), cloud services, managed dedicated servers, programmers, and other IT professionals. It covers liability arising from errors in the performance of or failure to perform services, allegations of negligence, or breach of contract and the cost of the vendor's legal defense and damages awarded in a civil lawsuit.

Sample insurance specifications

Review the scope of work to determine the coverages needed, limits, and coverage period. Consider higher limits if a potential disruption of operations exists or based on the information impacted.

Cyber security and privacy liability. Consultant shall procure and maintain insurance with limits of \$1,000,000 per occurrence/loss, \$2,000,000 general aggregate, which shall include the following coverage:

- a. Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including but not limited to personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, etc.
- b. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks.
- c. Liability arising from introducing a computer virus into or otherwise causing damage to vendor (first-party) or customer's (third party) computer, computer system, network, or similarly related property and the data, software, and programs.
- d. Liability arising from professional misconduct or lack of the requisite skill required for performing services defined in the contract or agreement.
- e. Costs associated with restoring, updating, or replacing data.
- f. Costs associated with a privacy breach, including notification costs, customer support, forensics, crises management, public relations consulting, legal services of a privacy attorney, credit monitoring, and identity fraud resolution services for affected individuals.

If coverage is maintained on a claims-made basis, consultant shall maintain such coverage for an additional three (3) years following termination of the contract.

Cyber technology errors and omissions. Consultant shall procure and maintain insurance with limits of \$1,000,000 per occurrence/loss, \$2,000,000 general aggregate, which shall include the following coverage:

- a. Liability arising from the unauthorized release of information for which an entity has the legal obligation to keep private, such as personally identifiable information (PII) and protected health information (PHI).
- b. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks.
- c. Liability arising from the failure of technology products (software and hardware) required under the contract for Consultant to properly perform the intended services.



- d. Claims alleging the failure of computer security that result in the transmission of malicious code, deletion, destruction or alteration of data, or the denial of service.
- e. Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.
- f. Liability arising from the rendering, or failure to render, professional services.
- g. Defense costs in regulatory proceedings (state and federal) involving a violation of privacy laws or intellectual property rights.
- h. Crisis management and other expert services.

If coverage is maintained on a claims-made basis, the Consultant shall maintain such coverage for an additional three (3) years following termination of the contract.



Environmental Issues

Characteristics

Some contracts involve environmental risks, such as when a construction contractor removes or subcontracts the removal of hazardous materials as part of demolition or renovation agreements. In such cases, pollution liability insurance should be required. If the risk also involves professional services (e.g., environmental consultants), the agreement should include professional service liability provisions.

Contracts involving exposure to pollution liability require careful attention. Many highly specialized liability insurance policies have been developed for specific types of liability risks, such as asbestos removal, hazardous waste hauling, and waste disposal. While general liability policies include some protection for pollution incidents caused by contractors on other's property, the coverage is usually limited and inadequate.

If the potential for accidental release of pollutants exists (e.g., excavation near known pipelines), contractor's pollution liability insurance is appropriate. Contractor's pollution liability (CPL) is offered on a claims-made or occurrence basis that provides third-party coverage for bodily injury, property damage, defense, cleanup, and related defense costs as a result of pollution conditions (sudden/accidental or gradual) arising from contracting operations performed by or on behalf of the contractor.

If contaminants potentially exist at the site, cleanup costs must be covered by an Agency/owner-purchased pollution legal liability (PLL) insurance policy, sometimes referred to as environmental impairment liability insurance. PLL is insurance coverage for liabilities associated with environmental damage or pollution and covers release events and conditions at or emanating from covered/listed locations. PLL offers coverage for accidental pollution from normal operations, pollution arising from products of the business, and other similar mishaps that result in environmental harm.

PLL provides coverage for environmental risks associated with the ownership/lease of property or operation of a facility or site. PLL applies to virtually every industry that owns, leases, acquires, or divests real estate. Should an agency lease a property or facility, especially those entering into long-term lease agreements for locations such as malls, gas stations, equestrian centers, etc., PLL should be required from the lessee. Coverage may include transportation of hazardous materials or wastes; however, many coverages are add-ons, and if transportation loading and unloading is not included in the PLL policy, then transportation pollution liability insurance may be necessary.

As mentioned above, when a contract involves the delivery of fuels or other chemicals, hauling of hazardous material, or hazardous waste removal, the pollution liability endorsement (CA9948) provides coverage for cleanup expenses due to an accident, including damages arising out of the discharge of pollutants which are in, upon, owned, being transported by, loaded or unloaded from a covered auto. MCS-90 is an endorsement attached to the auto liability policy of certain regulated motor carriers to ensure federally mandated coverage is in place (e.g., environmental restitution coverage, required liability limits).



Sample indemnity language

Consult with legal counsel to determine applicable revisions that may be required for specific projects exposures.

Pollution Indemnification

Contractor must defend with counsel reasonably acceptable to Agency, indemnify, protect, and hold harmless the Agency, its officers, officials, employees, and volunteers (hereinafter "Indemnitees") from and against all claims, damages (including but not limited to special, consequential, natural resources, and punitive damages), injuries, costs, (including without limitation all response, remediation, and removal costs), losses, demands, claims, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorneys' fees for the adverse party, and expenses (including without limitation attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of Contractor, its officers, directors, employees, subsidiaries, or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any Pollutant, Contaminant, Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, or other waste that Contractor has generated, collected, stored, transported, or disposed, arising out of or in connection with Contractor's performance of work. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(e); Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq.; and California Health and Safety Code Section 25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and will survive the end of the term of this Agreement. The liability of the Contractor is not limited to the limits of the policies of insurance provided.

Sample insurance specifications

Contractor's pollution liability insurance. Coverage shall provide for liability arising out of sudden, accidental, and gradual pollution, and remediation. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for remediation of the site in the event of an environmental contamination event arising out of the materials, supplies, products, work, operations, or workmanship.

Pollution legal liability insurance. Coverage shall be in an amount no less than \$5,000,000 per claim and in the aggregate. Coverage shall be extended a minimum of three (3) years beyond the term of the contract and such insurance shall contain all standard extensions customary for such policy and shall cover prior acts. For water franchise agreements, coverage shall include product liability for potable water with no lead exclusion.



Commercial auto or transportation pollution liability insurance. Coverage shall be in an amount not less than \$5,000,000 combined single limit per accident and shall include Pollution Liability (CA9948) and MCS-90 Endorsements. The policy shall provide coverage for transportation of pollutants/contaminants to and from the job site and the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.



Livestock and Equestrian Liability

Characteristics

Agency exposure to such liability may include leasing public lands for purposes of grazing cattle or other livestock, or equestrian centers offering riding classes or training operated by outside groups. For these exposures, it is essential to transfer the risk.

Livestock liability insurance provides coverage for owners or animal keepers who are found legally responsible for their animals causing bodily injury or property damage to third parties, for example, a cow or horse that escapes from its enclosure and causes an automobile accident. Additionally, depending on the number of livestock, the Agency should require [pollution legal liability insurance](#) due to the potential for air, land, or water pollution caused by the disposal of animal waste. Lastly, if livestock is being transported, automobile liability insurance should be required.

For equine operations, to the extent the general liability policy does not include coverage, equine general liability insurance should be required. Additionally, the policy shall include coverage for on-premises activities; for example, guided trail, carriage, or pony rides, therapeutic riding, petting zoos.

Sample insurance specifications

Livestock:

General liability insurance. Vendor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Livestock liability insurance. Vendor shall maintain commercial livestock general liability insurance in an amount not less \$2,000,000 per occurrence, \$4,000,000 general aggregate.

Automobile liability insurance. Vendor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Vendor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, trucks and trailers, to include loading and unloading, in an amount not less than \$2,000,000 combined single limit for each accident.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Workers' compensation insurance. Vendor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).



Vendor shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.

Equestrian:

General liability insurance. Vendor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Commercial equine general liability insurance. Vendor shall maintain commercial equine general liability insurance in an amount not less \$2,000,000 per occurrence, \$4,000,000 general aggregate and provide on-premises coverage for independent trainers or instructors while acting within the scope of their duties.

Special events insurance. Coverage shall be procured in advance of special events, such as horse shows or clinics, to include protection for the caretaker, show officials, and Agency.

Care, custody, and control insurance. Vendor shall maintain insurance in an amount not less than \$200,000 per horse, \$500,000 general aggregate, insuring against damages resulting from the death, injury, illness, or theft of non-owned horses in the care, custody, and control of caretaker

Automobile liability insurance. Vendor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Vendor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, trucks and trailers, to include loading and unloading, in an amount not less than \$2,000,000 combined single limit for each accident.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Workers' compensation insurance. Vendor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Vendor shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.



Controlled Insurance Programs

Controlled insurance programs (CIP) are when one party procures insurance on behalf of all, or most, parties performing work on a construction project. When the party procuring the insurance is the contractor, the program is known as a Contractor Controlled Insurance Program (CCIP). When the party procuring the insurance is the owner (Agency), the program is known as an Owner Controlled Insurance Program (OCIP).

These types of insurance programs are also known as “wrap-ups” because several lines of insurance coverage are “wrapped up” into one program. The lines of coverage typically included in the program are commercial general liability, workers’ compensation, and umbrella liability. Other lines of coverage may also be included in the program, such as, pollution liability, builder’s risk, and professional liability.

Some key attributes of a controlled insurance program are:

- Higher limits of insurance coverage
- Elimination of contractor mark-ups
- Minimizes claims disputes between contractors since there is generally only one insurance carrier
- Prevents project delays
- Encourages participation of smaller local contractors in the bidding process increasing the selection pool
- Potential to provide coverage through statute of repose, 10 years
- Tend to offer savings over the traditional insurance approach

Another key attribute of a controlled insurance program is the inclusion of loss control. Most programs include pre-construction drug-screening and monthly safety audits. The results of the safety audits are presented to the contractor with a deadline to correct the safety hazards to prevent injuries, losses, or claims.

Railroads

Repairs or maintenance of agency-owned property may require the Agency to access a railroad's right-of-way (ROW), for example, to repair agency fences or clean-up trash. Railroad companies require railroad protective liability (RPL) coverage prior to accessing its right-of-way. RPL coverage protects the railroad company from liability it may incur arising from work on or near its ROW. In other words, this coverage protects only the railroad company, not the Agency. Thus, the Agency may be exposed to an uninsured risk when accessing the railroad's right-of-way.

While an agency may be able to purchase an RPL policy to fulfill its obligation in order to obtain the permit to perform the work, a gap liability policy to protect the Agency is unavailable in the marketplace. The rationale is that an insurance carrier does not want to provide coverage protecting the Agency for an exposure the Agency does not manage or control. Furthermore, there is no provision for additional insureds on a railroad protective liability policy. Therefore, the Agency should perform a risk analysis to determine if the Agency will self-insure the risk or transfer the risk to a third-party contractor to perform the services.

Unmanned Aerial Systems (UAS)

Characteristics

Unmanned Aerial Systems (UAS), commonly referred to as drones, include the aircraft/drone, the pilot/operator, the navigation equipment, the system collecting or transmitting data, the pilot/operator, the navigation equipment, the system collecting or transmitting data, and the control station. The purpose of a drone has expanded over time. It has become useful in many types of operations, including public safety (crime scene investigation, search, and rescue), public works (facility inspections), disaster response, research, and instruction.

The risk of using a drone includes bodily injury, property damage, personal injury (invasion of privacy), and mid-air collision.

Establish policies and procedures before implementing the use of a drone, including guidelines for the collection, storage, use, and destruction of data collected by the drone, adherence to Federal Aviation Administration (FAA) rules and regulations, and risk mitigation strategies, such as preflight procedures.

Sample insurance specifications

The UA owner/operator shall procure and maintain insurance coverage at least as broad as:

Aviation liability insurance, including bodily injury, property damage, products and completed operations with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. If coverage is provided as part of a General Liability policy, then:

General liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate for bodily injury, personal and advertising injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Workers' compensation insurance. Vendor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Vendor shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.

UA owner/operator shall submit to Agency the certificate of insurance along with an endorsement providing that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies. UA owner/operator shall also submit a Waiver of Subrogation endorsement in favor of the Agency, its officers, agents, employees, and volunteers.



Dial-a-Ride

Characteristics

Dial-a-Ride is a door-to-door shared-ride transportation service offered to qualified senior citizens, and residents who are unable to independently use public transportation for trips to medical, dental, and non-medical locations within a certain geographical boundary. Shared-ride means other riders with different destinations may be traveling in the same vehicle; therefore, routing is not necessarily direct. The service may be provided using a mixed fleet of vehicles and may include other factors, such as accommodating passengers using mobility aids, service animals, and passengers traveling alone who cannot wait alone at their destinations. Such transportation services include management and operation responsibilities.

Sample insurance specifications

General liability insurance. Provider shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Sexual abuse/molestation insurance. Provider shall procure and maintain sexual abuse/molestation liability coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage may be provided as part of commercial general liability coverage, professional liability coverage, or as a separate policy.

Automobile liability insurance. Provider shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Provider arising out of or in connection with services to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$10,000,000 combined single limit for each accident. Minimum limit may increase depending on the vehicle's maximum number of passengers.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Workers' compensation insurance. Provider shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Provider shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees, and volunteers.



AB 5 & AB 2257 – Classifying Independent Contractors

On January 1, 2020, AB 5 went into effect, adding Section 2750.3 to the California Labor Code and amending Sections 606.5 and 621 of the Unemployment Insurance Code and Section 3351 of the California Labor Code. AB 5 codifies and clarifies the ABC test from the California Supreme Court case, *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903.

On September 4, 2020, AB 2257 went into effect, modifying AB 5 by repealing Section 2750.3 and adding Sections 2775 through 2787 to the Labor Code. AB 2257 did not change the ABC test implemented by AB 5. Instead, AB 2257 separated and expanded the extensive list of exemptions contained in Section 2750.3 previously. With this restructuring, the Legislature sought to clarify which worker relationships are subject to the ABC test.

The ABC Test

The ABC test establishes three criteria that must be satisfied to classify a person as an independent contractor. The ABC test *presumes* that all persons engaged in providing services for the Agency are employees of the Agency unless the Agency demonstrates all three (3) of the following are true:

1. The person is free from the control and direction of the Agency in connection with the performance of the work, both under the contract for the performance of the work and in fact;
2. The person performs work that is outside the usual course of the agency's business; and
3. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

How to understand the ABC Test:

- A. Part A involves the right to control and direct the performance of the work. The Agency's degree of control cannot be the typical control and direction it exercises over its employees. Depending on the nature of the work and arrangement between the parties, the Agency need not control the precise manner or details of the work to be found to have maintained the necessary control it ordinarily possesses over its employees.
- B. Part B involves the type of work performed. The work performed should be outside the usual course of the agency's business. Contracted persons providing services in a role comparable to an agency's existing employee are likely to be considered working in the usual course of the agency's business.¹

¹ Courts analyzing this "B" prong have considered whether the individual services are necessary or merely incidental to the Agency's business, based on (i) a commonsense observation of the nature of the entity's business; or (ii) an analysis of whether, in economic terms, the individual's work was necessary to the business' success. Courts have also considered whether the hiring entity continuously uses the individual's services, and how the hiring entity describes its business (on websites and in advertisements, for example). See *Vasquez v. Jan-Pro Franchising International, Inc.* (923 F.3d 575, 597 (9th Cir. 2019)).

- C. Part C involves substantiating that the person has an established independent business. The Agency must demonstrate that the person is customarily engaged independently in a trade, occupation, or business. The person's business operations must be in existence at the time the work is performed. The fact that it could come into existence in the future is not sufficient. (See *Garcia v. Border Transportation Group, LLC* (2018) 28 Cal.App.5th 558, 574.) If the person relies on a single employer, they are likely to be considered an agency employee.

ABC Test Exceptions

There are exceptions and situations where the ABC test will not apply.

- A. Where the Legislature or the Industrial Welfare Commission (IWC) has defined the employment relationship in a specific way, in such cases, the particular language contained in the IWC wage orders, the Labor Code, or Unemployment Insurance Code will remain in effect.
- B. Where a court determines the ABC test cannot apply. In this situation, the Borello test, described below, will apply.
- C. Where a contractual relationship meets one or more of the statutory exemptions found in AB 2257. The most notable exemption, Section 2776, sets forth twelve factors that, when met in full, exempts a contracting relationship between two businesses, including a public agency, from the ABC test. Other exemptions apply to specific occupations and industries, including physicians and surgeons, dentists, podiatrists, psychologists, veterinarians, lawyers, accountants, and other professionals not likely relevant to the Agency. However, contractual relationships meeting AB 2257 exemptions must still satisfy the Borello test (*Borello & Sons v. Department of Industrial Relations*, 48 Cal.3d 341).

The Borello Test

The Borello test requires consideration of all potentially relevant facts – no single factor controls the determination. It centers on whether the Agency has control over the means and manner of performing the contracted work and involves secondary factors that, when considered together, allow for a determination that a person is an independent contractor. The questions to consider:

- 1) Whether the person performing services is engaged in an occupation or business distinct from that of the Agency;
- 2) Whether the work is a regular or integral part of the agency's business;
- 3) Whether the person supplies their instrumentalities, tools, and the place for the person to perform the work;
- 4) Whether the person has invested in the business, such as in the equipment or materials required by their task;
- 5) Whether the service provided requires a specialized skill;



- 6) The occupation type, and whether the work is performed under the Agency's direction or without supervision;
- 7) The person's opportunity for profit or loss depending on their managerial skill;
- 8) The length of time for which the services are performed;
- 9) The degree of permanence of the working relationship;
- 10) The method of payment, whether by time or by the job;
- 11) Whether the person hires their employees;
- 12) The Agency's right to fire at will or whether a termination gives rise to an action for breach of contract; and
- 13) Whether the person and the Agency believe they are creating an employer-employee relationship.

ABC Test vs. Borello Test

The ABC test provides a fixed set of standards that must be met to overcome the presumption that workers are employees. In contrast, the Borello test focuses on the totality of the circumstances to determine whether there is sufficient evidence of control of the process and work performed for a worker to qualify as an independent contractor.

References and Resources:

[CA DIR Independent Contractor v Employee FAQ](#)

[CA Legislative Info - Assembly Bill No. 5 \(AB 5\)](#)



AB 5 Independent Contractor Checklist

Use the checklist below to determine whether a consultant is an independent contractor.

The ABC Test Checklist

		Yes	No
A	Will the prospective independent contractor be free from the Agency's control and direction in connection with the work performance, both under the contract and in fact?		
B	Will the prospective independent contractor perform work that is outside the usual course of the Agency's business?		
C	Is the prospective independent contractor customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed?		

If the answer to any of these questions is no, the person will not qualify as an independent contractor unless they qualify for an AB 2257 exception and satisfies the associated requirements. Proceed to the Borello test.

The Borello Test Checklist

		Yes	No
1.	The person performing services is engaged in an occupation or business distinct from that of the Agency.		
2.	The work is a regular or integral part of the Agency's business.		
3.	The person has invested in the business, and they supply their instrumentalities and tools necessary to perform the work.		
4.	The service performed requires a specialized skill.		
5.	The person will not receive training, supervision, or instruction other than having the scope of work or results desired conveyed.		
6.	The person's opportunity for profit or loss depends on them.		
7.	The service performed is not on a regular and continuing basis.		
8.	The person is compensated by time or by the job.		
9.	The person can hire employees to perform the service.		
10.	The Agency can terminate the person without incurring liability.		
11.	The person and the Agency do not believe they are creating an employer-employee relationship.		

If the answer to any of these questions is no, the person will not qualify as an independent contractor.



Bonds

Characteristics

Bonds are a pledge by a third-party surety to ensure the obligations of the bonded party (called the “principal”) are met. Surety bonds are a guarantee of performance; they are not insurance nor contractual risk transfer nor do they protect against loss. Surety bonds do not protect the Agency (called the “obligee”) against damage to property or liability claims from third parties. The surety agrees to perform the principal’s obligation to the obligee if the principal is unable to do so.

The focus of this section pertains to bonds required in construction contracts. The two most common types are:

- A **payment bond** is the surety’s pledge to pay subcontractors if the construction contractor fails to do so. The reason the Agency wants this protection is to avoid a claim by the subcontractor against the Agency for money owed by the general contractor and to avoid having the subcontractor place a lien on the project. Payment bonds are required for public works - [California Civil Code Section 9550](#).
- A **performance bond** is the surety’s pledge to provide funds or arrange a substitute if the principal defaults on its performance obligations.

Sample insurance specifications

Payment and performance bonds

Within the time period set forth in the contract documents and prior to commencing the work on the project, the contractor shall file with the Agency good and sufficient labor and material payment bond and performance bond in the amount of one hundred percent (100%) of the contract sum covering performance of the work other than the professional design services portion of the work. The performance bond and payment bond shall be in the form required by the contract documents. The amounts of the payment bond and performance bond shall be increased as, when and in the amount of any change orders that are executed increasing the contract sum, the contractor shall, upon request by the Agency, provide evidence of such increases. Should the payment bond or performance bond or any surety on such bond become or be determined by the Agency to be insufficient, it shall be replaced within ten days by a bond that fully complies with the requirements of this paragraph. No further payments to the contractor for the work performed shall be made or due until the contractor has fully complied with the requirements of this paragraph.

Other provisions and requirements

Duration. The payment bond shall remain in effect until acceptance of the work and payment of all stop notices and claims by the contractor or the subcontractors, of any tier, have been satisfied. The performance bond shall remain in effect and assure faithful performance of all the contractor’s obligations under the contract documents, including, without limitation, all obligations that survive final completion or termination, such as, but not limited to, the contractor’s warranty, commissioning, and indemnity obligations.



Surety. At the time the contract is signed and at all times thereafter until final payment has been made by the Agency, the surety on the payment and performance bond shall be an admitted surety and the surety on the performance bond shall be licensed in the State of California, in good standing with the California Department of Insurance, and having an AM Best Insurance Rating of not less than A-VI.

Premiums. The premiums for all bonds are included in the contract sum and shall be paid by the contractor. It is California law that the premium (cost) of the bond should appear in the right-hand corner of the original bond, so the obligee knows the true cost of the bond.

Obligee. The payment bond and performance bond shall each name the Agency as obligee. This can be a requirement if the Agency is paying for the subcontract bonds, which is usually not the case.

No exoneration. Changes, change orders, unilateral change orders, field orders, modifications and adjustments to the contract sum or contract time shall in no way release or exonerate the contractor or its surety from their obligations, and notice thereof shall be waived by the surety. The foregoing provision shall be included in the terms of the payment bond, performance bond and any bonds obtained by the subcontractors.

Communications. The Agency shall have the right to communicate with the contractor's sureties with respect to matters that are related to the contractor's performance of its obligations under the contract documents. The contractor shall be provided with a copy of all such written communications. Such communications shall not create, or be interpreted as creating, any contractual relationship between the Agency and the surety. The name, address and phone number of the surety contact should be required in the bond; this makes communication easier for the obligee and to know how to submit a claim.

No limitation. The requirements shall be without limitation to any other obligations the contractor may have under applicable law to provide bonding for the benefit of and to assure payment to the subcontractors or subconsultants performing the work for the project.

It is recommended the Agency use the [checklist](#) when reviewing bonds and verify the bond ratings utilizing the following resources.

The [Treasury listing](#) shows all insurance companies cleared by the federal government to issue bonds at a specific bond limit. It is not recommended to accept a bond where the penal sum of the bond is in excess of the Treasury limit.

AM Best Rating – Many owners set an [AM Best Rating](#) threshold. The recommended professional standard is AM Best A-V or better.

The [California Department of Insurance](#) shows the insurance company profile for all admitted carriers.

Other statutory provisions regarding bonds can be found in the [California Code of Civil Procedure, Title 14, Chapter 2](#).



Participant Waiver and Release

Characteristics

A release of liability is especially important for participants in an agency-sponsored event. These include fairs, promotional events, recreation programs, and other public gatherings. A release should contain certain elements to avoid liability successfully, including the following:

- A specific acknowledgment of the risks involved in the activity.
- A clear release of the Agency for liability arising out of any injury or property damage.
- An exception for gross negligence of the party being released (Agency).
- An agreement to indemnify and hold harmless the Agency.
- A signature and date.

The use of electronic liability waivers and releases, especially for recreation-type programs, is becoming more prevalent in public agencies. It is recommended to establish effective procedures for obtaining liability waivers when registration takes place via the internet. Procedures should include functions consistent with the use of paper materials, such as proper acknowledgment of the activity's risks. In some cases, the Agency may still decide to have the participant or participant's parent or guardian sign liability waivers on the first day of the activity to ensure proper acknowledgment of the risks.

Types of signatures

A **wet-ink** signature is created when an individual physically signs a paper document with an ink pen. Before June 30, 2000, this type of signature was considered the legal standard.

A **scanned document** signature is created when a physically signed document is scanned, faxed, or sent as an email attachment. The document is converted into an electronic record in the form of a picture or PDF.

A **digital** signature embeds a personal key infrastructure (PKI) into the signing process to identify both the party requesting the signature and the party signing. PKI generates two keys, one public and one private, to identify the signatory uniquely. For the signature to be valid, both the requester and the signatory must register a digital certificate issued through a certificate authority linking the signatory and signature.

An **electronic** signature is defined in the "Electronic Signatures in Global and National Commerce Act" (E-Sign Act) signed into law on June 30, 2000. An electronic signature is "an electronic sound, symbol, or process that is attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." The E-Sign Act provides electronic signatures the same legal standing as wet-ink signatures. It establishes that a contract or transaction record may not be denied legal effect or ruled unenforceable simply because it is in electronic form.

The E-Sign Act explicitly outlines four (4) components that standardize how an electronic document must be handled to carry full legal authority. The components are:



1. Consent: The individual signing an electronic document must explicitly consent to do so. In the event the individual does not consent, a non-electronic option must be available.
2. Intent: The signer must clearly understand their intent to sign the document. The process by which the individual signs the document must be clear and understood from beginning to end.
3. Verification: The person signing must be the same person whose signature appears on the dotted line.
4. Auditability: Each party involved in the electronic agreement must easily access each step of the e-signature process at any time.

To protect the legal acceptability of a non-wet-ink signature, the signature collecting process should be secure, contain anti-fraud technology components, and have a fully auditable trail.

Managing the process

- Designate a department (e.g., risk management), and someone within that department to be responsible for collecting and safekeeping the forms.
- Communicate the process to all staff.
- Store for safekeeping in one central location. Cloud storage is recommended where records can be maintained indefinitely.

A [sample waiver and release](#) is located in the appendix and also available on the Authority's website.

Compliance “Red Flags”

Evidence (certificate) of coverage red flags

- A date on the form not within the last seven (7) days.
- Evidence of erasures, white-out, photocopying, or any other tampering with the document indicating lack of authenticity.
- Missing contact information for the producer.
- Incorrect named insured.
- Certificate holder (Agency) not properly identified.
- Missing signature (electronic or signature images are acceptable).

Endorsement red flags

The contract insurance specifications will require specific Insurance Services Office (ISO) forms that meet the intent of the contract in providing protection to the Agency; however, some insurers do not use ISO forms. Examine such forms carefully to assure the required coverage has not been removed by carefully crafted wording. Some endorsements provide the coverage requested and then restrict or limit the scope of the coverage. The 2013 ISO endorsements edition includes a limitation of payment to the limit in the policy or the limit required by the contract, whichever is less. Thus, if the contract asks for \$1,000,000 limits, the Agency receives up to \$1,000,000 protection, even if the policy limit is higher. It is important the contract states that whatever limits are offered by the policy are available to cover the Agency (see sample [Requirements not Limiting](#) language). Furthermore, the language above requires the contract be signed and executed prior to loss, another potential problem area.

Completed operations limitations

This insurance does not apply to “bodily injury” or “property damage” caused by “the work” included in the “products completed operations hazard” unless you are required to provide such coverage for the additional insured by a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought and then only for the period of time required by such contract or agreement and in no event beyond the expiration date of the policy.

The language above limits the length of the completed operations coverage, which applies to claims after work in a construction contract has been completed. It also requires the contract be in effect during the policy period. Considering completed operations claims can occur long after construction, this restriction is unacceptable. If the loss occurs after the contract has been fulfilled but under a subsequent renewal of this policy, there would be no completed operations coverage for the additional insured.



Restrictions on defense and indemnity

The language below places obligations on the additional insured in obtaining defense and indemnity and requires the additional insured to bring in other available coverage. The following language would defeat any attempt at a "[targeted tender](#)":

- a) Give us prompt written notice of any occurrence or offense which may result in a claim and prompt written notice of "suit."
- b) Immediately forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with policy conditions.
- c) Tender the defense and indemnity of any claim or "suit" to any other insurer which also insures against a loss we cover under this endorsement. This includes, but is not limited to, any insurer which has issued a policy of insurance in which the additional insured qualifies as an insured. For purposes of this requirement, the term "insures against" refers to any self-insurance and to any insurer which issued a policy of insurance that may provide coverage for the loss, regardless of whether the additional insured has actually requested that the insurer provide the additional insured with a defense and/or indemnity under that policy of insurance.
- d) Agree to make available any other insurance that the additional insured has for a loss we cover under this endorsement.

This language also attempts to make an agency's self-insurance responsive to a claim even though California law states that coverage from a self-insured pool is not "insurance" for purposes of applying "other insurance" clauses in policies.

Primary and non-contributory limitations

The language below would attempt to make the additional insured coverage available to the Agency either excess over the Agency's insurance available or contributory.

Any coverage provided by this endorsement to an additional insured shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought specifically requires that this insurance apply on a primary or non-contributory basis. When this insurance is primary and there is other insurance available to the additional insured from any source, we will share with that other insurance by the method described in the policy.

This language would make the additional insured subject to sharing limits or worse, possibly make the additional insured's excess policy primary, defeating the intent of the risk transfer.

APPENDICES

Appendix A - Risk Analysis Questionnaire

This is a very simplified risk analysis questionnaire designed to help the user think about the possible financial consequences of loss associated with an activity. This process should lead to logical conclusions about appropriate insurance limits and coverage specifications.

Activities

- Are crowds likely to be involved? Will the public have access to the activity area? (Higher limits)
- Is there exposure to disease, structure failure, crowd panic, fire, or other potential catastrophe? (Higher limits, safety requirements)
- Will there be property in the course of construction? (Builder's risk)
- What types of vehicles will be used, if any? Do they carry passengers? (Auto liability, higher limits)
- Will the project involve:
 - Operations in an area with possible mercury, polychlorinated biphenyl (PCB), asbestos, methane gas, or other toxic/hazardous material? (Pollution liability)
 - Generation or remediation of hazardous waste? (Pollution liability)
 - Use of explosives, demolition equipment, e.g., wrecking balls? (Higher limits, watch for exclusions)
 - Excavation or construction in public streets? (Permits, higher limits)
 - Utility support? (Higher limits, safety requirements)
 - Night work? (Higher limits, safety requirements)
 - Work near bodies of water? (Pollution liability)
 - Access to property not owned by or under the Agency's control? (Compliance with right of entry requirements)
 - Tunneling, pile driving, crane work, or similar activities? (Higher limits, watch for exclusions)
 - Work near a school or park or crowded area? (Higher limits)
 - Operations involving open flame or other fire hazard? (Higher limits)
 - Use of aircraft or watercraft? (Aircraft or watercraft liability)
 - Operations near docks, wharves, or over navigable waters? (United States Longshore & Harbor [USL&H], maritime coverages)
 - Work within 50 feet of a railroad? (Railroad protective)
 - Professional services? (Errors and omissions, professional liability)

Products

- What is the potential for injury resulting from use or misuse of the product? (Products liability)
- Could injury result from latent defective or poor design? (Professional liability, products liability)
- Does the product have any potentially toxic properties? Is a Safety Data Sheet (SDS) required? (Products liability, safety requirements)

Contractor/vendor

- Who will be performing these activities?
- Will subcontractors be used?
- What is the contractor/vendor's experience in this specific type of contract?
- How long has the contractor/vendor been in business?
- What is the contractor/vendor's safety track record? (Check motor vehicle records, willful and serious violations, lawsuits)
- Does the contractor/vendor have any open claims against their insurance policy(ies)?
- Is the contractor/vendor having difficulty obtaining the required insurance coverage and limits?
- Does the contractor/vendor have an illness and injury prevention program, site specific safety plan, written safety policy or similar written documents? Obtain a copy and review.

Time element

- Is there a potential for delay? If so, what are the potential additional costs or lost revenues? (delay coverage, business income, extra expense, loss of rents)

Limits

- What is the most common limit for each type of coverage for this type of contract?
- Are there factors identified above that would justify higher overall limits for this contract?

Appendix B - Insurance Coverage Types

Coverage	What it covers	When to require	Sample wording
General liability	<p>Bodily injury, property damage liability, personal injury, advertising injury. Includes liability:</p> <ul style="list-style-type: none"> a) Arising out of the ownership, maintenance, or use of real property b) Arising out of operations away from the business premises by employees or agents of the insured c) Assumed by contract d) Arising out of the products manufactured, distributed, or sold e) Arising out of operations that have been completed away from the premises 	<p>Always. This is the most basic of coverages and should be required in every contract. All organizations (and individuals) have these exposures.</p>	<p>Vendor shall provide Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, or the exact equivalent with limits of no less than \$1,000,000 per occurrence for all covered losses and \$2,000,000 general aggregate.</p>
Workers' compensation/ employer's liability	<p>Provides statutory benefits for employment-related injury or illness not otherwise compensable by other statute (such as those for Harbor workers and Longshoremen). Includes medical expenses and indemnity (for lost wages). Employer's liability applies in rare cases where workers' compensation does not, such as under certain statutory conditions.</p>	<p>When vendor has employees. California Labor Code section 1860 requires a clause in public works contracts stating contractor must secure payment of compensation to employees. Section 1861 requires contractor certification in public works contracts.</p>	<p>Vendor shall provide Workers' Compensation and Employer's Liability Insurance on a state-approved policy form providing benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.</p>

Coverage	What it covers	When to require	Sample wording
Automobile liability	Provides liability coverage for use, ownership, or maintenance of an auto. Automatically includes as an insured any party who is liable for the conduct of an insured. "Insured" includes the owner and permitted operators and other liable parties. Auto policies often include coverage for physical damage to the vehicle. Generally, however, that risk is not the Agency's concern.	When the vendor will use autos in the work. If no autos are used the requirement may be omitted. When in doubt, err on the side of caution. If the contractor owns no vehicles but may use vehicles of others, coverage may be provided through a "non-owned auto" endorsement to the general liability policy. Sometimes the only coverage available will be "personal" auto liability such as when a sole proprietor uses their personal auto or truck on the job. In such cases you have to accept such coverage and be prepared to lower limit requirements if the risk is not major.	Vendor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto endorsement to the CGL policy.
Umbrella or excess liability	Either type lies above primary liability insurance and increases the limit available. Umbrella is more common and usually applies over several coverages, (General, Auto, and Employer's Liability). Excess is often "monoline" (applying over one specific type of coverage). Umbrella insurance will "drop down" (after payment of a self-insured retention of usually \$10,000 or \$25,000) and cover losses after exhaustion of primary coverages or when the primary coverages do not apply (if umbrella coverage is broader than primary).	When the general liability limit specifications are more than \$1,000,000, the vendor usually will need excess or umbrella liability insurance to satisfy the limits. Specifications should not be too restrictive but should assure the upper-level policy is as broad as the primary policies.	Umbrella or excess liability policies with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions: a drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer; "pay on behalf of" wording as opposed to "reimbursement"; concurrency of effective dates with primary policies. Should an excess liability policy be obtained and maintained, such policy shall be excess over commercial general liability, automobile liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

Coverage	What it covers	When to require	Sample wording
Fire legal liability	Covers liability for damage to property in the "care, custody or control of the tenant. Coverage is usually automatic in CGL, but limit is low.	Usually not the best way to handle the risk. Property coverage is a better solution.	Lessee shall provide fire legal liability insurance in an amount no less than \$1,000,000.
Garage keeper's legal liability	Provides coverage for autos in care, custody, or control of garage owner.	When renting to an auto facility or tenant who provides valet parking.	Vendor shall provide garage keeper's legal liability insurance with a limit of no less than the value of all vehicles in custody.
Professional liability/errors and omissions liability	Provides coverage for acts, errors, or omissions, often referred to as "economic" damages, i.e., coverage is not intended to cover bodily injury or property damage caused by ordinary negligence, but to cover damages in the form of other costs, such as to fix a job done wrong.	When the vendor provides a professional service requiring special skills and knowledge. <u>Note:</u> this coverage is usually "claims-made."	Consultant shall provide evidence of professional liability insurance on a policy form appropriate to consultant's profession. Limits shall be no less than \$1,000,000/claim.
Pollution legal liability	Can cover environmental damage, clean up, or spills (sudden and accidental). Considerable variety among more than thirty different policy forms.	When there is a pollution risk arising out of the vendor's activities, seek assistance on evaluating and specifying coverage.	Coverage shall be in an amount no less than \$5,000,000 per claim and in the aggregate. Coverage shall be extended a minimum of three (3) years beyond the term of the contract and such insurance shall contain all standard extensions customary for such policy and shall cover prior acts. For water franchise agreements, coverage shall include product liability for potable water with no lead exclusion.

Coverage	What it covers	When to require	Sample wording
Aircraft liability	Covers bodily injury and property damage resulting from operation, use, maintenance, etc. of aircraft.	When aircraft may be used in the activity contemplated in the contract. Generally, you should consult with a professional insurance advisor when requiring this coverage.	Vendor shall provide Aircraft Liability insurance with a minimum limit of \$10,000,000 per accident and aggregate covering liability for bodily injury (including death), passenger liability and property damage liability. If Contractor or Subcontractor leases or charters aircraft with crew and/or pilot, non-owned aircraft liability insurance will be acceptable but must be provided prior to use of aircraft.
Watercraft liability	Covers bodily injury and property damage resulting from operation, use, maintenance, etc. of watercraft.	When watercraft may be used. General liability policies will cover liability for use of watercraft if under a certain size (usually 26 feet). Jones Act or USL&H coverage may also be needed.)	Vendor shall provide liability insurance providing for injury to persons or damage to property arising out of the use, maintenance, or operation of watercraft. Limits shall be no less than \$1,000,000 per accident. (See Ocean Marine insurance).
Liquor liability	Covers liability arising out of the sale of alcoholic beverages. Different from host liquor liability, which is provided automatically in the CGL.	When an event provides for a cash bar or other sale of liquor.	Vendor shall provide liquor liability insurance with a limit of no less than \$1,000,000 per occurrence.
Jones Act	Provides a remedy in damages for injury or death of seaman or members of the crews of vessels caused by the negligence of their employer.	When the vendor will employ sea-based maritime workers. Consult professional assistance in such cases.	Vendor shall provide evidence of compliance with the requirements of the Jones Act.
United States Longshore and Harbor	Covers indemnity and medical expense due to occupational injury for maritime workers on navigable water (other than members of a crew of a vessel). Federal statute.	When vendor will have employees working on docks or near waterways. Consult an advisor.	Vendor shall provide evidence of compliance with requirements of the United States Longshore and Harbor Act.

Coverage	What it covers	When to require	Sample wording
Ocean marine insurance	Any of a variety of insurance policy forms covering either liability or property (or both) exposures.	When the indemnitor will do work on or near water.	Consult an insurance advisor.
Federal Employers Liability Act	Provides an exclusive remedy for railroad workers injured or killed due to the negligence of their employers.	When the other party to the contract will employ railroad workers.	Vendor shall provide evidence of compliance with the requirements of the Federal Employers Liability Act.
Railroad protective liability	A "protective" policy that covers both liability and property damage on behalf of a railroad. Usually paid for by a contractor or property owner, who gets no coverage.	You don't require this policy. The railroad requires a policy as a condition for entry on railroad property to do work.	The railroad on whose property the contractor needs to work will set specifications.
Crime (fidelity)	Covers loss due to theft, embezzlement, fraud, and other crimes. Public officials often are covered for their faithful performance, which goes beyond fidelity and covers oversight failures and other causes leading to financial loss.	When the vendor will handle agency money or have access to it.	<p>Vendor shall maintain Fidelity Bond coverage or Commercial Crime insurance which shall be written on a "loss sustained form" or "discovery form" with limits of not less than \$1,000,000 per occurrence for Employee Dishonesty, Fraud, Depositor Forgery, Money Orders & Counterfeit money, Fraudulent Fund Transfers, and Theft by Electronic Means. Said policy shall also include coverage for Money & Securities – On and Off Premises – including transportation by messenger, Fraudulent Instruction, Robbery and Burglary with limits of not less than \$100,000 per occurrence. The Agency, its officers, employees, and agents shall be named as Loss Payees. If the policy is written on a "discovery form," it must include an extended reporting period of not less than one (1) year.</p> <p><i>Note: For commercial crime policies, the limit is usually not aggregated, applying separately to each and every loss. The Fraudulent Instruction, Robbery and Burglary with limits of not less than \$100,000 per occurrence reference is a minimum threshold; the limit may be increased based on an evaluation of assets potentially at risk under the contract.</i></p>

Coverage	What it covers	When to require	Sample wording
Property insurance	Covers physical damage to one's own property or property in one's care, custody, or control, arising out of certain perils.	"Fire" insurance (by whatever name including "all risk" property) may be required of tenants in certain circumstances (tenants' improvements and betterments).	Tenant shall provide a policy of "all risk" coverage for improvements and betterments for the full replacement value of the property. The policy shall contain the following provisions: (1) Agency shall be loss payee; (2) the insurer shall waive all rights of recovery against Agency.
Business interruption	Covers income loss and extra expense due to business interruption caused by an insured property peril.	Usually only when the indemnitee is concerned about continued payment of rent or continued operations of a tenant.	Lessee shall purchase business income extra expense or similar coverage as part of a commercial property insurance policy or under a separate form sufficient to cover rental payments in the event of business interruption.
Builder's risk	Covers physical damage to property in the course of construction.	In construction contracts when the owner does not have coverage for property under construction. Most agencies simply add the project to their regular property coverage. The Authority offers the option to add this property to its coverage program.	Course of Construction insurance shall provide "all risk" coverage for the completed value of the project. Policies shall contain the following provisions: (1) Agency shall be named as loss payee; and (2) the insurer shall waive all rights of recovery against Agency.
Boiler and machinery	Covers property damage resulting from steam boiler explosion. Also covers equipment breakdown. Includes liability protection for bodily injury or property damage.	Seldom. When a tenant or contractor will have control of boilers or machinery makes sense. Usually, Agency arranges.	Consult an advisor.

Coverage	What it covers	When to require	Sample wording
Cyber security & privacy liability	Covers liability and property losses resulting from data breaches including but not limited to viruses, or denial of service attack, and the theft, unauthorized access, dissemination or use of confidential information, personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, etc.. and the cost of customer notification, credit monitoring, legal defense, regulatory fines, and penalties.	For vendors providing hardware, pre-packaged software or portal access, technology or IT consultants, systems analysts, website designers, online services and content providers, cloud-based providers, computer programmers and software consultants, system installation or software personnel.	See Cyber Liability section.
Cyber technology errors & omissions liability	Covers liability arising from errors in the performance of or failure to perform services, allegations of negligence, or breach of contract and the cost of legal defense and indemnification.	For vendors or consultants, including colocation (shared hosting centers), cloud services, managed dedicated servers, programmers, and other IT Professionals.	See Cyber Liability section.
Sexual abuse/molestation	Bodily injury or emotional harm arising from sexual abuse or molestation or from the breach of duty of an insured to prevent sexual abuse (e.g., negligent hiring or supervision).	Student transportation vendors, independent contractors, facility users, or service providers having frequent or extended contact with children, the disabled or the elderly.	Vendor/facility user shall procure and maintain sexual abuse/molestation liability coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage may be provided as part of General Liability coverage, Professional Liability coverage, or as a separate policy.

Appendix C – Insurance Compliance

ACORD 25 Compliance Checklist

- Are all names (insurer, insured, additional insured, etc.) correct?
- Is/are the insurer(s) acceptable (AM Best rating of A-: VI or better)?
- Are all required coverages (GL, Auto, WC) indicated?
- Is general liability insurance on an “occurrence” basis?
- Are workers' compensation benefits statutory?
- Does auto coverage, if required, meet specifications (i.e., “any auto”)?
- Are policies current?
- Do policies extend to contract completion?
- Do primary and excess (or umbrella) policies have concurrent dates?
- Do policy limits and aggregates meet the minimum specifications in the contract?
- Are any liability self-insured retentions indicated?
- Is the description of operations, locations, vehicles, etc., correct?
- Is the form an original or does it look like a copy (any evidence of changes)?
- Is the date in the upper right corner recent (within 7 days)?
- Is the certificate signed by an appropriate party?
- Is the certificate holder (the Agency) identified properly with correct address?

Insurance Requirements Instruction Form

Contractor shall provide its insurance broker(s)/agent(s) with a copy of the attached insurance requirements and request they provide Certificates of Insurance complete with copies of all required endorsements and/or applicable policy language to:

Agency information (certificate holder and/or additional insured):

Name: _____

Address: _____

Contact person: _____

Phone number: _____

Email: _____

Description of operations/location(s)/vehicles:

Dates of required coverage: _____

Special Instructions: _____

*Sample instructions for the contractor to be included as an attachment with the applicable insurance requirements.



Sample compliance letter/checklist

AGENCY LETTERHEAD

Date

Vendor
Street
City, State, Zip

RE: Compliance with Agency Insurance Requirements

The documents you have submitted in compliance with [NAME] contract are being returned to you for the following reasons:

Need [original] [certified] copy of [certificate] [endorsement] [policy]

- Need original signature
- Additional insured name is incorrect
- Description of [operations] [location] is incorrect
- Limits not as specified
- Deductible or SIR not approved
- Coverage not as specified (see detail below)
- Forms not as specified (see detail below)
- Insurer does not meet minimum requirements
- Policy expired or about to expire
- Primary or noncontributing language not as specified
- Does not meet required cancellation notice provisions
- Other (details): _____

Please address the items checked above and return to Agency as soon as possible. Notice to proceed cannot be issued until the above items are corrected.

For further information contact: _____



Appendix D - Sample Forms

The following forms are provided, in order, in this appendix. The insurance industry forms are believed to be the most current available.

ACORD 25 - Certificate of Liability Insurance and Reference Guide

This is the most commonly used form for providing a “snapshot” of coverage in effect.

Common endorsements

These endorsements are designed to work with the Commercial General Liability insurance policy form CG 00 01, published by the Insurance Services Office (ISO). The form’s usage is mostly self-explanatory; for example, the Managers or Lessors of Premises (CG 20 11) form is designed to protect landlords; the State or Political Subdivisions – Permits form is designed to protect governmental entities issuing permits for various uses; and so forth.

- CG 20 10 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization
- CG 20 11 Additional Insured – Managers or Lessors of Premises
- CG 20 12 Additional Insured – State or Political Subdivisions – Permits
- CG 20 13 Additional Insured – State or Political Subdivisions – Permits Relating to Premises
- CG 20 26 Additional Insured – Designated Person or Organization
- CG 20 33 Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Construction Agreement with You
- CG 20 37 Additional Insured – Owners, Lessees, or Contractors – Completed Operations
- CG 20 38 Additional Insured - Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in Construction Agreement
- CG 20 39 Additional Insured - Owners, Lessees or Contractors – Automatic Status When Required in Written Construction Agreement With You (Completed Operations)
- CG 20 40 Additional Insured - Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in Written Construction Agreement (Completed Operations)
- CG 24 04 Waiver of Transfer of Rights of Recovery Against Others to Us
- CG 24 53 Waiver of Transfer of Rights of Recovery Against Others to Us - Automatic
- CG 20 01 Primary and Noncontributory-Other Insurance Condition
- CG 25 03 Designated Construction Project(s) General Aggregate Limit

Exemption from Workers' Compensation Form

Waiver, Release, Hold Harmless and Agreement Not to Sue



ACORD - 25 - Certificate of Liability Insurance and Reference Guide



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	2
	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	
INSURED		
1		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE 3 OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	4	5		6		EACH OCCURRENCE \$ 7 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPIOP AGG \$ \$
	AUTOMOBILE LIABILITY 8 ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ 9 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	10 UMBRELLA LIAB 11 OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below				Y/N	N/A	<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 12 E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	13						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

14 Attachments: Additional Insured / Waiver of Subrogation Primary, Non-contributory / Cancellation

CERTIFICATE HOLDER	CANCELLATION
15	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

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ACORD 25 (2014/01)

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Certificate of Liability Insurance Reference

1. Verify the Named Insured matches the contract.
2. Always check the [AM Best rating](#) for the insurance companies listed. The insurer number should be shown in the left column by the coverage description.
3. General liability coverage box should be checked "occurrence." The blank lines underneath should show any deductible or retention.
4. Box should either be checked or have a "Y" and an endorsement should be attached.
5. Box should either be checked or have a "Y" and an endorsement should be attached.
6. Verify the policy period shown covers the contract term. If not, have it reissued OR if the contract lasts beyond the expiration date, set up a reminder for a new certificate at renewal.
7. Limits should be at least \$1M per occurrence, \$2M general aggregate and \$1M products-completed operations aggregate.
8. Automobile liability coverage boxes should either be "ANY Auto" OR Owned, Hired, and Non-Owned OR Scheduled Autos, Hired and Non-Owned. Check the policy period the same as the general liability.
9. Limit should be at least \$1M combined single limit.
10. Either the Umbrella box or the Excess liability box should be checked. The limits should be as required in the contract.
11. Occurrence box should be checked.
12. Limit should be at least \$1M each accident, \$1M disease each employee and \$1M disease policy limit. The "per statute" box should be checked.
13. This line should be used for specialty liability coverages, such as professional liability.
14. All endorsements should be attached to the certificate.
15. Public agency information should match the contract.

Endorsements:

Additional Insured: Confirm the endorsement shows the Agency and all other persons required to be shown as insureds OR the endorsement says "any person or organization as required by written contract."

Primary, Non-Contributory: Same as the additional insured endorsement.

Waiver of Subrogation: Same as the additional insured endorsement.

Notice of Cancellation: Must show the Agency and proper address.



Common Endorsements

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations

Information required to complete this schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You):
Name Of Person(s) Or Organization(s) (Additional Insured):
Additional Premium: \$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE OR GOVERNMENTAL
AGENCY OR SUBDIVISION OR POLITICAL
SUBDIVISION – PERMITS OR AUTHORIZATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. In the preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or



b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Sample



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – AUTOMATIC STATUS WHEN
REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT
WITH YOU (COMPLETED OPERATIONS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

- A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you have performed operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured and included in the "products-completed operations hazard".
- However, the insurance afforded to such additional insured:
1. Only applies to the extent permitted by law; and
 2. Will not be broader than that which is required by the contract or agreement to provide for such additional insured.
- B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to:
- "Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 2. Supervisory, inspection, architectural or engineering activities.
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervising, hiring, employment, training or monitoring of others by that insured, if the occurrence which caused the "bodily injury" or "property damage" involved the rendering of or the failure to render any professional architectural, engineering or surveying services.
- C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:
- The most we will pay on behalf of the additional insured is the amount of insurance:
1. Required by the contract or agreement you have entered into with the additional insured; or
 2. Available under the applicable limits of insurance;
- whichever is less.
- This endorsement shall not increase the applicable limits of insurance.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT (COMPLETED OPERATIONS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you have performed operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for the additional insured described in Paragraph 1. above and included in the "products/completed operations hazard".

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

"bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.



C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

Sample



POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

Sample



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION) –
AUTOMATIC**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance Condition** and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

Sample



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and the limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for this designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.



- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

Sample



Exemption from Workers' Compensation Form

Agency Name: _____

Document Reference: _____
(bid, contract, job number, location, etc.)

Work to be performed on premises: _____Yes _____No

Nature of work to be performed: _____

Business Name: _____

Contact information (name, telephone, email): _____

Address: _____

Legal Form

	Sole Proprietor		Limited Partnership		General Partnership
	Corporation		Business Trust		Limited Liability Company
	Other:				

Acknowledgment:

_____(initial) I am the authorized representative of the Business mentioned above. I warrant that the Business has no employees other than the owners, officers, directors, partners, or other principals who have elected to be exempt from workers' compensation coverage under California law. I further warrant that I understand the requirements of Section 3700 et seq. of the California Labor Code concerning providing workers' compensation coverage for any employees of the Business.

_____(initial) I agree to comply with the code requirements and all other applicable laws and regulations regarding workers' compensation, payroll taxes, FICA, and tax withholding, and similar employment issues. Business agrees to hold the Agency harmless from any loss or liability, which may arise from the Business's failure to comply with any such laws or regulations.

_____(initial) Should the Business or its subcontractors hire employees to perform the work referenced above, the Business or its subcontractor(s) shall obtain workers' compensation insurance and provide proof of the coverage to the Agency.

_____(initial) I understand that this form constitutes a declaration by the Business against its financial interest, relative to any claims it should assert against the Agency under the California workers' compensation or labor laws and serves as an addendum to the agreement.

_____(initial) The Business will defend, indemnify, and hold harmless the Agency from all claims and liability, including workers' compensation claims and any liability that may be asserted or established by any party in the event the Business hires an employee in violation of this addendum.

Certification:

I certify under penalty of perjury under the laws of the State of California that the information provided on this exemption statement is true and accurate.

Signatures:

 Business Designee Signature

 Agency Signature

 Print Name & Date

 Print Name & Date



Waiver, Release, Hold Harmless and Agreement Not to Sue

I, _____ (FULL NAME), fully understand that my participation in the _____ (hereinafter "event/class") exposes me to the risk of personal injury, death, communicable diseases, illnesses, viruses, or property damage. I hereby acknowledge that I am voluntarily participating in this event/class and agree to assume any such risks.

I hereby release, discharge, and agree not to sue _____ for any injury, death, or damage to or loss of personal property arising out of, or in connection with, my participation in the event/class from whatever cause, including the active or passive negligence of _____ or any other participants in the event/class.

The parties to this agreement understand that this document is not intended to release any party from any act or omission of gross negligence, as that term is used in applicable case law and/or statutory provision.

In consideration for being permitted to participate in the event/class, I hereby agree, for myself, my heirs, administrators, executors, and assigns, that I shall indemnify and hold harmless _____ from any and all claims, demands, actions, or suits arising out of or in connection with my participation in the event/class.

I HAVE CAREFULLY READ THIS RELEASE, HOLD HARMLESS AND AGREEMENT NOT TO SUE AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT IT IS A FULL RELEASE OF ALL LIABILITY AND SIGN IT ON MY OWN FREE WILL.

Signature of Parent/Legal Guardian
(If under age 18)

Date

DECLARATION

I, _____, declare under penalty of perjury under the laws of the State of California that I am the parent or legal guardian of Minor. I further declare that I shall indemnify and hold harmless the _____ from and against any and all Claims resulting from, incident to, or arising out of Minor's participation in the event/class, any and all risks assumed by Minor and me above, and/or the breach of any promises, covenants, and/or representations made by me herein and/or in the above Release.

By: _____
Signature of Parent/Legal Guardian

Name: _____
Printed Name of Parent/Legal Guardian
*Insert name of Agency and/or Event Holder/Instructor



Appendix E - AM Best Rating System

Understanding Best's Financial Strength Ratings (FSR)

A Best's FSR can be assigned to an insurance company on an interactive or non-interactive basis. In both cases, the rating scale and descriptors are:	
SECURE	VULNERABLE
A++, A+ (Superior)	B, B- (Fair)
A, A- (Excellent)	C++, C+ (Marginal)
B++, B+ (Good)	C, C- (Weak)
	D (Poor)
	E (Under Regulatory Supervision)
	F (In Liquidation)
	S (Suspended)

Rating Modifiers may be assigned to Financial Strength Ratings.

Modifier	Descriptor	Definition
u	Under Review	Indicates the rating may change in the near term, typically within six months. Generally is event driven, with positive, negative, or developing implications.
pd	Public Data	Indicates rating assigned to insurer that chose not to participate in AM Best's interactive rating process (discontinued in 2010).
s	Syndicate	Indicates rating assigned to a Lloyd's syndicate.

Ratings from A to C also may be enhanced with a "++" (double plus), "+" (plus) or "-" (minus) to indicate whether credit quality is near the top or bottom of a category.

An Outlook is assigned to an interactive FSR to indicate its potential direction over an intermediate term, generally defined as 12 to 36 months. An Outlook can be:



Outlook	Definition
Positive	Indicates possible rating upgrade due to favorable financial/market trends relative to the current rating level.
Negative	Indicates possible rating downgrade due to unfavorable financial/market trends relative to the current rating level.
Stable	Indicates low likelihood of a rating change due to stable financial/market trends.

To enhance the usefulness of ratings, AM Best assigns each rated (A++ through D) insurance company a Financial Size Category (FSC). The FSC is based on adjusted policyholders' surplus (PHS) and is designed to provide a convenient indicator of the size of a company in terms of its statutory surplus and related accounts.

Many insurance buyers only want to consider buying insurance coverage from companies that they believe have sufficient financial capacity to provide the necessary policy limits to insure their risks. Although companies utilize reinsurance to reduce their net retention on the policy limits they underwrite, many buyers still feel more comfortable buying from companies perceived to have greater financial capacity.

Financial Size Category

Class	Adj. PHS (\$ Millions)	Class	Adj. PHS (\$ Millions)
I	Less than 1	IX	250 to 500
II	1 to 2	X	500 to 750
III	2 to 5	XI	750 to 1,000
IV	5 to 10	XII	1,000 to 1,250
V	10 to 25	XIII	1,250 to 1,500
VI	25 to 50	XIV	1,500 to 2,000
VII	50 to 100	XV	2,000 or greater
VIII	100 to 250		

The Not Rated (NR) Designation is assigned to companies that are not rated by [AM Best](#). The [California Department of Insurance](#) is a resource for verifying whether an insurance company is authorized or admitted to transact business in California.



Appendix F - Frequently Asked Questions

Q: Can you tell me whether the Agency is covered for?

A: Sometimes this is one of the hardest questions to answer. Anyone can read a coverage document and tell the questioner that, for example, bodily injury and property damage are covered under the policy. However, in a specific fact situation, policy provisions, conditions, exclusions, definitions, and prior case law need to be considered, among other things.

Recognize that unless the person has all this information readily available, a definitive answer may be impossible. Often this question is asked hypothetically, which makes a determination even harder because not all the facts can be known.

Q: Are volunteers covered?

A: Volunteers are covered under workers' compensation for injuries sustained in the course and scope of their volunteer work, if the Agency has passed a resolution extending coverage to them. Claims should be reported to the Authority, or to the agency's workers' compensation insurer.

Volunteers are protected from liability claims against them arising out of their volunteer work, provided the liability coverage document either includes them automatically or has been endorsed to include them. The Authority's memorandum of coverage includes volunteers in the definition of employee.

Q: How much insurance should we be requiring?

A: This is similar to the question "How high is up?" There is no one right answer. Naturally, you should get as much protection for the Agency as practical. Custom and practice play a big role here. The [coverage analysis matrix](#) is a starting point but can only be used along with good judgment and knowledge of the risk. Remember that the first, and perhaps most important, step in the risk transfer process is to identify and measure the risk.

Q: Do we have to get the endorsement? We are noted on the certificate.

A: The only way to become an insured under another party's liability policy is either by endorsement or by the contract if the other party's policy has a so-called "automatic additional insured" provision. The certificate clearly states it does not amend the policy.

If the vendor states their policy automatically includes the Agency and an endorsement is unnecessary, ask to see a copy of the policy provision in question. Otherwise, get an endorsement. This applies primarily to the general liability policy. Auto policies generally do include a provision making anyone who becomes liable for operation of the vehicle, an insured. The Agency should not be an additional insured on any other party's workers' compensation policy except under very unusual circumstances (e.g., temporary loan of employees, etc.) that are beyond the scope of this manual.

Q: Can you suggest a better way to keep the agency's contracts filed (organized)?

A: This manual is about contractual risk transfer. At most agencies, maintenance of documents is a city clerk function. In other agencies the responsibility may be elsewhere. Some agencies delegate



or decentralize the file maintenance activity. There is no one right way. Keeping track of insurance compliance documents may be improved by the use of software. The Agency can set up its own database. Some software vendors provide an automated service for this function.

Q: How do I get the vendor to provide the endorsement page?

A: Vendors should provide all required evidence of insurance prior to being allowed to commence work. If not possible, the system should provide that no vendor will be paid until all documentation has been submitted and approved.

Q: We want to build some low-income housing. Contractors are saying they cannot meet our insurance specifications, and if they can, their subcontractors cannot. Are there other options?

A: From time to time, the insurance market becomes tight, and coverage becomes scarce and expensive. If all the potential general contractor bidders are telling you the same thing, that they cannot get the coverage or that it is prohibitively expensive, then you should consider temporarily revising the limit requirements. Sometimes there are other alternatives, such as owner protective liability insurance or owner controlled insurance programs, described in the manual.

Since the only contract the Agency may have is with the prime contractor, not the subcontractors, the prime contractor must enforce a requirement for insurance from the subcontractors. Generally, subcontractors will not carry the limits of insurance that a general contractor will carry. In some cases, especially where the subcontractor is a specialist, such as a demolition contractor, the subcontractor may be a larger firm than the general contractor. Since the general contractor has just as much interest as the Agency does in getting protection from the subcontractor, it may be most practical to let the general contractor set the limits required of subcontractors, subject to a minimum of perhaps \$1,000,000 for liability policies.

Q: Our agency is working with a developer and a contractor to develop affordable housing. Which one should be required to provide insurance and how much?

A: Each should be required to provide insurance although the contract with the Agency may be only with one of these parties.

Q: The architect for our new library says their insurance broker cannot find coverage from an "admitted" carrier. What should we do?

A: An admitted carrier is one who is licensed to do business in the state and has submitted themselves to the regulation of the state insurance department. Admitted insurers also participate in state guaranty funds. Non-admitted carriers usually are regulated in other states, but they do not participate in the guaranty funds of those states in which they are not admitted.

The advantages of the guaranty funds are sometimes overestimated. While they provide some protection in the event of insurer insolvency, that protection is usually limited in the dollar amount. The claim payments may be delayed for significant periods of time. Even if the carrier is non-admitted, an insured can still pursue claim recovery in the case of a failed insurer in the carrier's home state, although in a weakened position.



There are some coverages that only non-admitted carriers will write. One of the reasons a carrier chooses not to apply for admission may be to retain the option for flexibility in drafting their coverage. All things considered, a strong non-admitted carrier usually is preferred to a weak admitted one.

Q: The manual says we should require the other party provide liability insurance that is “primary and non-contributory.” What does this mean, and why do we need it?

A: If a liability policy is “primary”, it responds first to a claim before other insurance, if available, must pay. You want the other party’s insurance to be primary because one of the principal purposes of contractual risk transfer is to avoid cost to your own program. If the other party’s insurance says it is “excess” over any other collectible insurance, it will not pay until the other insurance is used up. If the other insurer applied this condition to a loss involving the agency’s vendor, the Agency would have almost no protection at all from the risk transfer.

Fortunately, commercial general liability policies and auto policies usually are “primary.” You should include in the specifications this condition anyway, just to make sure. Some insurers use non-standard forms.

Even though a policy is primary, it may not be non-contributory. It may require some method of sharing in the loss with other primary policies. You do not want your coverage to be called upon to contribute because of such a clause. So, you should require that the other party’s insurance is also “non-contributory,” or better said, does not require contribution.

The easiest way to assure protection is to make certain the Agency’s own coverage contains a provision stating that it is excess over any coverage available to the Agency as an additional insured under another party’s policy. Current commercial general liability policies have this provision.

Q: I am being told by my vendor their insurance carrier will not issue the form our specifications require.

A: First, check the specifications against the latest form version. Examples of forms are included in this manual. If the latest form does not meet the Agency’s needs, ask the vendor to inquire of the insurer if equivalent forms are available. For example, many agencies ask for older versions of the CG 20 10 additional insured form for Owners, Lessees or Contractors. The reason is that older versions of the form did not exclude completed operations, while newer versions do. The solution is to use a current CG 20 10 endorsement along with a CG 20 37, which provides completed operations coverage for additional insured Owners, Lessees, or Contractors.

Q: What is a “blanket” form additional insured endorsement?

A: “Blanket” is a common term for “automatic” additional insured endorsements. Such an endorsement automatically provides additional insured status to any party requiring such status on the named insured’s liability policy as long as there is a contract between the two.

Q: Can we require indemnification for sole negligence?

A: You can require it, but it may be difficult to get coverage for the Agency’s sole negligence. In



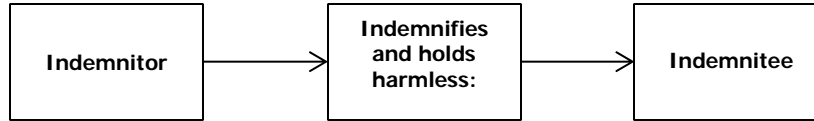
some circumstances, statutes may prohibit this. Increasingly, the courts look upon such requirements unfavorably.

Q: What is live scan, and who needs to get it?

A: Live scan fingerprinting systems capture fingerprints optically and electronically without the use of ink or paper forms.

Any vendor or service provider who will have a position of trust over vulnerable populations, including the elderly, dependent adults, and children.

Appendix G - Basics of Indemnification



Examples:	Contractor	<i>Assumes liability of</i>	Owner
	Consultant	"	Client
	Tenant	"	Landlord
	Subcontractor	"	Contractor

How the types of indemnity work:

In Case of:

Indemnitor's	and	Indemnitee's
1) sole or partial negligence		no negligence
2) partial negligence		partial negligence
3) no negligence		partial or primary negligence

Levels of Indemnification

Form Name	Explanation	How this type works
Limited	Obligates indemnitor only to the extent of its own fault, but often goes beyond the common law (each party responsible for its own negligence). For example, an employer normally would not be liable for injuries to its own employees because of the exclusive remedy doctrine applicable to workers' compensation. However, if the employer had assumed this liability in a contract and the employee sues the indemnitee, the employer becomes liable (contractually).	Indemnitor covers indemnitee 100% in case 1, in proportion to its own fault in case 2 and not at all in case 3.
Intermediate	Indemnitor assumes all liabilities of indemnitee except where injury or loss is due to the indemnitee's active negligence. Any amount of fault on part of indemnitor (or other party) obligates indemnitor to indemnify indemnitee for total amount of damages, subject to the same public policy provisions mentioned above.	Indemnitor covers indemnitee 100% in cases 1, 2 and 3, unless case 3 is sole negligence on indemnitee's part (or active negligence of public agency in a construction contract)
Broad	Transfers entire risk of loss from the indemnitee to indemnitor even if fault lies with indemnitee. The exception is for gross negligence and willful misconduct, as transferring these is against public policy and prohibited by statute. This prohibition is also true of liability for criminal acts. Courts are reluctant to allow transfer of liability for the sole negligence of another party, and in certain cases, such as construction contracts, such transfer is specifically prohibited by statute.	Indemnitor covers indemnitee in all cases, provided case 3 arises out of the work and no public policy issues or statutes (construction anti-indemnity for example) intervene.

Appendix H – Request for Proposal (RFP) & Contract Sample Routing Form

RFP NO.		TITLE	
REQUEST FOR RFP		BY (Print Name)	DATE
		City Clerk	
COMMENTS:			
Check as applicable:			
<input type="checkbox"/> SCOPE OF WORK	<input type="checkbox"/> PROPOSAL FORMS	<input type="checkbox"/> SIGNATURE DOCUMENT	<input type="checkbox"/> LENGTH OF TERM
<input type="checkbox"/> PAYMENT TERMS	<input type="checkbox"/> STAFF REPORT	<input type="checkbox"/> EXHIBITS	<input type="checkbox"/> ATTACHMENTS
RFP SCOPE OF WORK REVIEWS (print name, sign, date)			
<input type="checkbox"/> CITY MANAGER		<input type="checkbox"/> PARKS and RECREATION	
<input type="checkbox"/> PROJECT MANAGER		<input type="checkbox"/> PUBLIC WORKS	
<input type="checkbox"/> RISK MANAGER		<input type="checkbox"/> COMMUNITY DEVELOPMENT	
<input type="checkbox"/> PLANNING		<input type="checkbox"/> OTHER	
<input type="checkbox"/> FINANCE		ORIGINATOR	
COMMENTS:			
RFP CONTRACT REVIEWS (print name, sign, date)			
<input type="checkbox"/> CITY MANAGER		<input type="checkbox"/> PARKS and RECREATION	
<input type="checkbox"/> PROJECT MANAGER		<input type="checkbox"/> PUBLIC WORKS	
<input type="checkbox"/> RISK MANAGER		<input type="checkbox"/> COMMUNITY DEVELOPMENT	
<input type="checkbox"/> PLANNING		<input type="checkbox"/> OTHER	
<input type="checkbox"/> FINANCE		ORIGINATOR	
RFP EDITS MADE		NAME	SIGNATURE
RFP ISSUED		NAME	SIGNATURE
		DATE	



Appendix I – Contract Review and Transmittal Form

CONTRACT REVIEW AND TRANSMITTAL FORM

TYPE OF CONTRACT: Vendor Professional Service Construction Other: _____

- ◆ This form must be completed and attached to all contracts circulated for review and approval.
- ◆ The following items should be included in your submittal packet:
 - All exhibits and attachments referenced in the contract;
 - A bid/quote/summary form from competitive bid or RFP (formal/informal) process; and
 - With contract amendments, a copy of the original contract.

Name, department providing information: _____

Date: _____ Phone/extension: _____

Expiration Date of contract: _____

Required Materials:

- Three (3) copies of contract
- Insurance Certificate with required limits
- W-9 Form
- Bonds (payment, performance)
- Tax Identification Number:

NOTE: The following review/signature sequence is preferred; however, this sequence may be changed if circumstances warrant, and an appropriate written explanation is provided. The City Attorney's Office must always approve before the Mayor/City Manager signs the contract.

1. Originating Department (obtain all required documents and forward to risk manager):
Date received: _____ Date signed by vendor: _____
2. Risk Management/Finance Administration Review:
Comments: _____
Reviewed and approved by: _____ Date: _____
3. Agency Attorney Review (forward to agency manager's office):
Date received: _____ Date signed by vendor: _____
4. Agency Manager's Office (obtain mayor/board chair/manager's signature forward to agency clerk's office):
Date received: _____ Date signed by mayor/chair, manager: _____
5. Agency Clerk's Office (keep original and return copies to originating department for distribution):
Date received: _____ Date returned to Dept.: _____



Appendix J – Bonds Checklist

Checklist for Final Bonds

Principal:		Obligee:	
Bond Prepared By:		Date Reviewed:	
Bond Reviewed By:		Date Reviewed by Reviewer:	

Instructions: Bond preparer checks the box in the first column once item is verified as complete and correct. If not applicable to this bond, insert "N/A". The reviewer uses the second column for his/her review and completes above reviewer boxes.

Executed Final Bond		
Correct Bond Form Used		
Principal's Name/Address		
Surety's Name (check all surety names at the same time)/Address		
Bond Amounts		
Project Description		
Contract Date/Signed and Sealed Date		
Surety Seal Affixed		
Attorney-in-fact signed bond		
Duplicate/Triplicate		

Notary Acknowledgement (when required)		
Date		
Name of Notary		
Attorney-in-fact		
Seal of Notary		
Signature of Notary		

Power of Attorney		
Principal's Surety Company		
Attorney-in-fact		
Date		
Surety Corporate Seal		
Notary Date Current		

Additional Comments: _____

Special Requirements		
Admitted Carrier	<input type="checkbox"/>	<input type="checkbox"/>
Surety Company State of Incorporation	<input type="checkbox"/>	<input type="checkbox"/>
Certificate of Authority	<input type="checkbox"/>	<input type="checkbox"/>
Department of Insurance Authorization Printout	<input type="checkbox"/>	<input type="checkbox"/>
State of Job Location – Only Show Premium for CA Bonds	<input type="checkbox"/>	<input type="checkbox"/>
Written Approval or Under Line of Authority	<input type="checkbox"/>	<input type="checkbox"/>
Rates Used/Surcharged	<input type="checkbox"/>	<input type="checkbox"/>
Invoice Enclosed	<input type="checkbox"/>	<input type="checkbox"/>

Bond Number: _____

Description: _____

Bond Amount: _____

Premium: _____

Commission: _____

Approval: _____

Bill: _____

FEDEX Label: _____

Report to Surety: _____

DMS: _____



Appendix K – Coverage Analysis Matrix

For each required category of insurance, evaluate the risk exposure to determine the limits to require. The limits below are minimums and in millions. Refer to sample insurance specifications in the manual for limits basis (per occurrence, per accident, per claim, each accident/employee). This matrix is not all encompassing. Conduct a risk assessment, increase limits as necessary, and contact your Authority risk manager if you have questions.

Key: ✓ = Required; ✖ = Probably required; * = Aircraft liability; Crime insurance; Equine/Livestock liability; Sexual abuse & molestation liability (SAM); UAS liability; Marine operations/watercraft liability; HazMat liability; Excavation liability; Protection & indemnity liability

Activity Performed in Contract	General Liability	Automobile Liability	Workers' Compensation (Statutory) & Employer's Liability	Professional Liability	Builder's Risk	Pollution Liability	Special Coverage*	Cyber Liability
Aircraft; flyovers/airshows			✖				✓(10)-Aircraft	
Animals; care use of, maintenance of	✓(1)	✓(1)	✓					
Armed security services	✓(5)	✓(1)	✓	(5)				
Banking, credit, payroll services	✓(1)	✖(1)	✖				✓(1)-Crime	
Carnival ride operator	✓(5)	✓(1)	✓				✓(1)-SAM	
Chemical use; delivery, handling, transportation	✓(5)	✖(5)	✓			✓(5)		
Childcare	✓(5)	✖(1)	✓				✓(1)-SAM	
Construction or capital improvement projects	✓(5)	✓(5)	✓	✖(1)	✖Value	✓(1)		
Docks/wharves; use, ownership, or maintenance of	✖(5)	✖(1)	✖			✓(1)	✓(1)-Marine	
Drone operation	✓(1)	✖(1)	✖				✓(1)-UAS	
Electricity; use of, electrical work, repair	✓(5)	✖(1)	✓		✖Value			
Discharge of potentially hazardous materials	✓(5)	✖(1)	✓			✓(5)		
Explosives/fireworks	✓(5)	✖(5)	✓				✖(5)-HazMat	
Flammables; usage, storage, or transportation	✓(5)	✖(1)	✓				✖(1)-HazMat	
Food; service, sales, or catering	✓(1)	✖(1)	✓					
IT, cloud based/software services	✓(1)	✖(1)	✖	✓(1)				✓(1)
Marketing	✓(1)	✖(1)	✖	✓(1)				
Professional medical svcs., mobile health clinics fairs	✓(1)	✖(1)	✓	✓(1)				
Service work adjacent to or impacting roadways	✓(5)	✓(5)	✓					
Property management	✓(1)	✓(1)	✓	✓(1)				✓(1)
Plumbing/sewer maintenance or construction	✓(1)	✓(1)	✓		✖Value	✓(1)		
Professional services; architect, attorney engineer	✓(1)	✖(1)	✓	✓(1)				
Third-party special events; 5Ks, festivals, etc.	✓(5)	✖(1)	✓					
Trucking, street sweeping, solid waste hauling	✓(1)	✓(5)	✓			✓(5)		✓(1)
Transportation; fixed route, paratransit	✓(2)	✓(10)	✓				✓(1)-SAM	
Tree Inspection and maintenance	✓(5)	✓(2)	✓	✓(1)				
Tunneling; excavation, trenching, shoring	✓(10)	✖(1)	✓		✖Value		✖(5)-Excavation	
Watercraft; use, ownership, maintenance of	✖(1)	✖(1)	✖				✓(1)-P&I	

GLOSSARY

ACORD Form: A form developed by an insurance industry trade association (ACORD). ACORD publishes many different forms. However, the most commonly used form is the ACORD Form 25 - Certificate of Insurance, which provides a snapshot of information about liability and workers compensation insurance in force at the time the form is issued by an insurance **broker**.

Additional Insured: Those individuals or entities who are to be insured under a policy but who are not automatically included as insureds under the policy and must be added by **endorsement**.

Additional Named Insured: When there is more than one **named insured**, space limitations on standard policy declaration pages often make it necessary to list all named insureds other than the first or primary **named insured** on an **endorsement**. While there is some confusion as to what the term additional named insured means, there are specific disadvantages to being an additional named insured. For example, many of the exclusions apply only to the term *You*. *You* is usually defined as being the **named insured**. Therefore, if one is listed as an additional named insured in the policy, as opposed to being an additional insured, those exclusions applying to the **named insured** will then be applicable to the additional named insured. This could be a serious limitation in coverage for some additional insureds. Another disadvantage of being a **named insured** is the responsibility to pay premium and to assume payment of a **deductible** or **self-insured retention**.

Admitted Insurer: An insurance company licensed to do business in a given state. Unlicensed insurers may still provide insurance if accessed through the List of Approved Surplus Lines Insurers (LASLI). State law may require that to use a non-admitted insurer, the insured must first have been unable to find the coverage from an admitted insurer. In practice, this restriction is often circumvented.

Agent: One who has the authority to act for another. An insurance agent acts for an insurer by soliciting insurance buyers and providing them service on behalf of the insurer. See **Broker**.

Aggregate Limit: The maximum dollar amount that applies to any or all claims within a given period, such as one year, or within a policy period. Once the aggregate has been exhausted, the insurer has no further obligation to any insured for claims or suits that fall within this aggregate limit for the remainder of the policy period. For certain contracts, the Agency may be able to exercise the right to be informed of the remaining annual aggregate during a policy period.

Automobile Liability Insurance: Provides coverage for claims for **bodily injury** or property damage arising out of the use, operation, or maintenance of a motor vehicle. Usually, specifications are for commercial auto liability. Occasionally garage keeper's or truckers' insurance forms are required.

Blanket Additional Insured Clause: Also known as an automatic additional insured clause. Provides liability coverage for subcontractors you are contractually required to add to the policy and are added without any action required on your part.

Bodily Injury: Defined in most liability insurance policies as bodily injury, sickness or disease, including death. Although some legal contexts use the term personal injury to include bodily injury and other types of injury to a person, the insurance industry makes a distinction between bodily injury and **personal injury**.

Boilerplate: Any text that is or can be reused in new contexts or applications without being changed much from the original. The term has been adopted by legal counsel to describe those parts of a contract that are considered standard language.



Broker: One who solicits, negotiates, and services insurance policies on behalf of an insurance buyer. Compensation may be through commission paid by an insurer or through a fee paid by the buyer. From a practical standpoint, there is little or no difference between a broker and an **agent** in terms of providing insurance to a California insured.

Business Risks: Arising out of the conduct of one's business over which the business owner generally has some control. For example, the business owner faces a **risk** of declining profits due to loss of market share arising from lack of marketing effort. In general, business risks are not considered insurable.

Certificate of Insurance: Document providing evidence to the party to whom it is issued that certain types of insurance coverage and **limits** are being provided by the insurance companies named in the certificate for the period stipulated. However, certificates of insurance do not alter, extend, or amend the coverage of the policy itself and therefore, cannot be relied upon for anything other than a promise by the indemnitor or the party providing insurance that such coverage has been obtained. In the event coverage is not actually obtained or is inapplicable, the party providing the certificate can be sued for breach of contract, but it has no legal bearing on the insurance company named in the certificate in and of itself.

Claims-Made: A form of liability insurance that imposes restrictions regarding the timing of **occurrences** of claims and reporting of accidents and claims. This type of coverage is not widely used in **general liability** but is the norm for professional and errors and omissions liability insurance. Some vendors will buy this variety of **general liability** insurance, as opposed to occurrence-based coverage, to save money. For **general liability** insurance specifications, claims-made should be avoided.

Contractual Liability Insurance: Insurance covering the liability for claims against another party that the **named insured** has agreed to assume in a hold-harmless or indemnity provision of a contract.

Contractors Limitation Endorsement: Any **endorsement** attached to policies of contractors and construction-related entities imposing **limits** or exclusions on the policy's coverage with respect to one or more of the following exposures: explosion, collapse, and underground (XCU) hazard; care, custody, or control; contractual liability; damage to work (broad form property damage); professional liability; joint ventures; and wrap-ups (owner controlled insurance programs).

Cross-Liability: A claim wherein one insured sues another insured. Coverage hinges on the applicability of a cross-liability exclusion. Otherwise, the concept of **severability of interest** governs the extent to which protection may apply and provides for the terms of the policy to apply separately for each insured, except for **limits**.

Cumis Counsel: The term assigned to legal counsels who are provided to insureds by the insurance company separate and apart from the legal counsel hired by the insurance company to defend the insured. Cumis Counsel is appointed when the insurance company defends a claim under a reservation of rights, thus placing the insured in a position where the outcome of the case might defeat coverage. Because the outcome of the case and the way it is handled might defeat coverage, the insurance company is required to appoint or to allow the insured to appoint a legal counsel who will monitor the performance of the defense counsel to make sure that defense counsel is not beholden to the insurer and therefore likely to litigate the case in a manner that will ensure the defeat of all available coverage. Cumis Counsel should be knowledgeable in the issues of coverage and should be able to monitor the situation to ensure compliance by the defense counsel with the interests of the insured as they relate to coverage issues.



Deductible: A provision in an insurance policy whereby the insured is required to pay a specific amount or percentage of a loss. In liability policies, this amount usually is charged back to the insured after the insurer has paid the claim. In property policies, it is usually deducted from the insured's recovery.

Drop Down: A provision commonly found in **excess coverage** and **umbrella liability policies** whereby the policy, which would normally require the payment of the **limit** of the underlying coverage before applying, drops down to pick up coverage above a self-insured retention. Drop down can occur because the underlying **limits** have been exhausted by another loss, or because the umbrella policy covers a loss not covered under the primary policy.

Economic Loss: Monetary loss independent of **bodily injury** or **property damage**. Examples of economic loss could include a building, such as a city hall or library, that cannot be occupied because of an error made in the design of the ventilation system, or a delay in opening a toll road that causes a loss of toll revenues to the agency that owns the road.

Economic or Use Value: The value of the future income stream attributable to an item of property.

Endorsement: A document added to an insurance policy that modifies the policy in some way.

Excess Coverage: Insurance that provides additional **limits** above the **limits** of a primary policy. It is similar to umbrella coverage in liability insurance. However, excess liability coverage does not always provide defense coverage, and it does not **drop down** in the event the underlying policy does not apply to a given loss. Excess policies do, however, **drop down** over reduced or exhausted underlying **aggregate limits**.

Exculpatory Clause: Causes the entire **risk** associated with an activity to be borne by a single party. These clauses are found in documents that often are not considered to be contracts as such. Examples include a parking claim check or a notice in a hotel room limiting the innkeeper's liability to a guest. A common use among agencies is the language found in an activity permit, such as participation in a recreation activity.

Extended Reporting Period: An additional period beyond the policy expiration date of a **claims-made** policy during which claims reported by the insured arising out of losses occurring during the policy period will be covered. Some policies automatically include limited extended reporting period; others require payment of additional premium and election of the option within a defined time frame.

First Party Coverage: Coverage of the insured's own property, e.g., fire insurance on real and personal property and comprehensive and collision on motor vehicles, as opposed to coverage for liability to others (third party liability).

Following Form Coverage: A policy that follows the terms and conditions of the immediately preceding policy or the policy below it. The term is misleading in that very few forms are truly following form. Most policies claiming to follow form really only follow the terms and conditions of the underlying policy only to the extent that those terms do not conflict with the terms of the higher-level policy. Most following form policies contain many of their own terms and conditions.

General Liability: A form of insurance against claims for **bodily injury**, property damage, personal injury, and advertising injury.

Hold Harmless: A clause whereby one party agrees to hold the other party blameless or harmless from liability.



Indemnification Clause: An agreement by which one party agrees to indemnify another by assuming the liability of that person or agency. In doing so, the party agreeing to assume the liability, the indemnitor, must agree to indemnify and defend the indemnitee in the event of a claim or suit or other event resulting in monetary or other types of damages or liability.

Insurance Services Office (ISO): An organization comprised of a number of insurance companies that provides research, advisory, rating, actuarial, statistical, and other services relating to property and casualty insurance, including development of policy forms, rates, premiums, and related services for monoline and multiple line coverages.

Limit: The maximum an insurer will pay for a loss less any deductibles or self-insured retention.

Manuscript: A custom or specially developed policy usually geared toward the need of a specific insured.

Named Insured: The person or organization named as such in the declarations of the policy. The named insured has the duty to pay premium, receives notices from the insurer, including cancellation or non-renewal notices, and is subject to certain policy restrictions that do not apply to other insureds. See **additional insured**.

Negligence: The failure to exercise care towards others that a reasonable or prudent person would do in the circumstances. Applies both to actions taken (active negligence) or the failure to act (passive negligence).

Non-Contributory (or non-contributing): Contribution is a situation in which two insurance policies apply to the same loss. Each policy likely contains an 'other insurance' clause that defines how the policy will share costs with the other applicable policy. By requiring the vendor's insurer agree that the agency's coverage is non-contributory, the agency avoids attempts by the vendor's insurer to obtain contribution from the agency's coverage by invoking the other insurance clause.

Non-Owned Auto Endorsement: Coverage provided through an **endorsement** to the **general liability** policy for liability arising out of the use, operation, or maintenance of autos not owned by the **named insured**. The endorsement is applied when the insured owns no autos and therefore cannot buy an automobile liability policy.

Occurrence: A form of liability coverage (occurrence-based) that covers claims arising out of events happening during the policy term, even if the claim is made at a date after the policy period.

Penal Sum: Similar to an insurance policy limit, the penal sum represents the maximum amount a surety company will pay under a bond. The amount of the penal sum is typically stated as a percentage of the underlying contract price. The required percentage will vary based on the type of the bond.

Personal Injury: Injury of a non-physical nature, such as defamation, false imprisonment, or wrongful eviction.

Primary Layer: Refers to the first layer of coverage, whether provided by a self-insured layer, a primary policy, or an **excess policy** (or sometimes more than one policy).

Primary Policy: Refers to the first policy providing coverage applicable to a loss and may be above a self-insured retention, in contrast to a **primary layer**.



Products and Completed Operations: Included in general liability forms, coverage applies to liability arising out of the product or completed operation once the product or completed operation has left the insured's control. Depending on the nature of a business, it will either produce a product (such as a manufacturer) or complete an operation (such as a construction contractor) that will eventually leave the control of the insured. There are limitations and frequent attempts by insurers to restrict the coverage even further through **endorsements**.

Professional Liability Insurance: Coverage designed to protect professionals (e.g., physicians) and quasi-professionals (e.g., real estate **brokers**, etc.) against liability incurred as a result of errors and omissions in performing professional services. Although there are a few exceptions, most professional liability policies cover economic losses suffered by third parties, as opposed to **bodily injury** and property damage, which are typically covered under **general liability** policies.

Property Damage: Damage to or the destruction of public or private property, caused either by a person who is not its owner or by natural phenomena. Property damage caused by persons is generally categorized by its cause: neglect (including oversight and human error), and intentional damage. Intentional property damage is often malicious. Property damage caused by natural phenomena may be legally attributed to a person if that person's neglect allowed for the damage to occur.

Property Insurance: Covers damage to property caused by perils as defined in the policy. There are two common types of property insurance: 1) specified perils in which perils, such as fire and windstorm, are identified in the policy and insured against; and 2) all risk, or risks of loss, in which all perils not specifically excluded are insured against.

Retroactive Date: Date on a **claims-made** liability policy that marks the beginning of coverage for claims. If a retroactive date is shown, no claim will be covered if the date of loss occurred before the retroactive date.

Retrospective Rating: An insurance rating method used to arrive at the rate and premium for a specified coverage period based on the loss experience of a prior period.

Risk: Uncertainty. There are two general categories of risk: 1) pure, no chance for gain; and 2) speculative, which offers the opportunity for gain or loss depending on the circumstances. An example of a pure risk is if an agency experiences a fire on its property, it stands to lose financially in the event its real or personal property is damaged or destroyed; theoretically, no financial gain is possible. An example of speculative risk is an investment pool that can provide the opportunity for financial gain or financial disaster.

Severability of Interest: Liability policies are designed to apply separately to each insured as though a separate policy had been issued, except as to **limits**. This means, for example, if one insured commits an assault and battery, which is excluded from coverage, coverage will still be available for the employer and other employees and individuals insured under the policy. Because the policy is several in nature and applies separately to each insured, the acts of one insured will not act to exclude coverage for all other insureds.

However, there are exceptions to this rule. Some forms do not use the standard **ISO** format. Even the **ISO** form in some areas uses the term any insured as opposed to the insured in their exclusions. When an exclusion applies to any insured as opposed to the insured, coverage is excluded for all insureds in the event that the complained conduct takes place. This is an alteration of the severability concept of all liability policies, and it is not one that is brought to the attention of insureds.

Self-Insured Retention (SIR): The amount of loss for which an insured agrees to be responsible before the insurer begins to participate in the loss. The insured usually is responsible for handling claims within the SIR limit.



Subrogation: An assignment of the rights of one party to another in collecting a debt or claim. In insurance, the term generally refers to the insurance company's right, after paying a claim to the insured, to pursue recovery from a third party that has caused the loss.

Third Party Liability Coverage: Protection provided when an insured causes injury or damage to some person or organization who in turn files a claim or suit against the insured. The insured in this case is the first party, the insurer is the second party, and the claimant is the third party. Included within the category of third-party liability coverages are general, umbrella and excess, automobile, aircraft and watercraft, public official, law enforcement, and professional, including emergency medical technician coverage.

Trigger: An event, action, activity, or other cause that effectuates coverage under a policy. Common triggers are **occurrences**, offenses, and claims.

Umbrella/Excess Policy: Umbrella policies are often lumped together and categorized with excess policies. While both umbrella and excess policies are excess over the **primary layer** of coverage, there are distinctions. An umbrella policy has four distinct functions:

1. It provides coverage in excess of reduced or exhausted underlying **limits**. In the event the underlying primary policy does not apply for any reason, assuming it was scheduled and maintained; the umbrella policy will **drop down** and apply as though it were a primary policy subject to a self-insured retention.
2. It provides **limits** excess of the underlying layer and underlying **limits**.
3. It provides drop-down coverage.
4. It generally provides coverage broader than that available in the underlying policy.

An excess policy provides coverage above the underlying limit of the primary policy(ies). It is important to note that while the excess policy increases the limits of coverage in the underlying policy, it does not broaden the scope of coverage provided in the primary layer. The excess policy is triggered when the limits of the underlying or primary coverage are exhausted by the payment of claims, suits and/or judgments. Excess policies can be written on a stand-alone or following form basis. A stand-alone policy has its own insuring agreement, terms, conditions, and exclusions. A following form policy integrates the same terms, conditions, and exclusions of the underlying or primary policy.

A true follow form excess policy is subject to all of the terms and conditions of the underlying or primary policy. In the event of a conflict between the primary and excess policies, it is the underlying policy provisions that should take precedence. Many excess liability policies state that they are follow form *except with respect to certain terms or conditions*, in which case, they are not true follow form policies.

Vicarious Liability: Liability arising out of responsibility for actions of another, such as the responsibility of an employer for acts of an employee within the scope of employment.

Waiver of Subrogation: An agreement between two parties to a contract whereby one or both agree not to pursue legal rights to recovery of a loss.

Workers' Compensation Insurance: Insurance coverage that provides the statutory benefits required for injured workers by the Labor Code. Includes employer's liability insurance, which is intended to cover potential liability of an employer for an employee injury that may be outside the applicability of workers' compensation.

Resource

[International Risk Management Institute \(IRMI\) online glossary.](#)



BIBLIOGRAPHY

Dixon, Sheila A.; and Crowell, Richard D. "The Contract Guide." Monterrey: DPIC Companies, Inc., 1993.

Farmer, Mark C.; McIntyre, William S.; Gibson, Jack P.; and Woodward, W. Jeffrey. "Construction Risk Management." Dallas: International Risk Management Institute, Inc., 1984.

Feldhaus, William R.; Cox, Vincent M.; and McDonald, W. Dan. "The Hold Harmless Agreement." Atlanta: The National Underwriter Company., 1987

Glossary of Insurance and Risk Management Terms, 6th Edition, Dallas: International Risk Management Institute, Inc., 1996

Malecki, Donald S.; Ligeros, Pete.; and Gibson, Jack P. "The Additional Insured Book." Dallas: International Risk Management Institute, Inc., 2000.

Postel, Joseph P. "Additional Insured Coverage Under Commercial General Liability Insurance Policies." Dallas: International Risk Management Institute, Inc., 2000.

Wielinski, Patrick J.; Woodward, W. Jeffrey; and Gibson, Jack P. "Contractual Risk Transfer." Dallas: International Risk Management Institute, Inc., 2010

"Six Myths Concerning Contractual Liability Insurance," CGL Reporter, Dallas, TX: International Risk Management Institute, Inc. 1995

