

Insurance Requirements in Contracts

A Procedure Manual

2026.1 Version

This manual was originally developed and placed in public domain to benefit public agencies. Sections of this current edition have been updated by Alliant Insurance Services, Inc. The manual is intended to provide general guidelines. Alliant does not warrant or guarantee the legal effect or the appropriate use of the contents. Alliant recommends that users consult with their legal counsel when considering contractual language.

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IRIC VERSION 2026.1

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FOREWORD

The purpose of this manual is to serve as a guide in developing proper insurance requirements in contracts. This manual explains how to establish insurance requirements for most contracts, including those with contractors, professional service providers, tenants, vendors, and users of public property, and how to verify their compliance with those requirements during the term of the contract.

It should be noted, however, that risk management is more of an art than a science, and therefore, although this manual will provide guidance in 90% of the cases encountered by the user, there will also be exceptions to the rules contained herein. If the user encounters situations that fall outside of the manual's recommendations, the user should contact its insurance and legal advisors.

Recent editions have undergone extensive revisions to eliminate older insurance forms and to condense the material to make it easier for those without an insurance background to access and implement the recommendations. This includes a "basics" section that describes each element of the insurance requirements and provides a single set of specifications that can be used for most contracts. Instructions for the contractor and insurance agent or broker have also been included to make it easier for the contract administrator to request and receive the required coverage.

Another major change from years past is the elimination of most of the customized forms for public agencies. One of the proposed techniques of earlier editions was to request that insurers execute certificates and endorsement forms provided by the public entity. The obvious benefit of this approach is that the public entity knows that it is receiving the coverage it is looking for if the exact endorsement is provided. However, because many insurance forms require prior approval by state regulators, many insurers refused to use custom entity-designed endorsements, and it is no longer practical to obtain them. Also, most of the terms of the insurance requirements have been incorporated within standard insurance forms, lessening the need to spell out specific requirements. Finally, the reality of the emerging cyber and aviation risks has led the editors to create separate chapters on each.

The editors recommend that you use the specifications that spell out the form numbers and key terms described in this manual. Some insurers use custom policy documents, and we suggest that you compare the language in those documents to the specifications to verify that you are receiving the recommended coverage.

This manual contains sample standard Insurance Service Office (ISO) industry forms for reference. Occasionally, new editions of these forms are released. These new editions may broaden coverage, but they may also restrict coverage from the previous edition. An attempt is made in each successive version of this manual to include any updated forms, as well as comments on the changes made to old editions, and recommendations on which forms to use. Though a new edition is released, insurance companies may continue to use older editions of these forms. It is, therefore, important that the user check the edition date of the form supplied by contractors, tenants, vendors, and users of public property, and/or their agents and brokers. The edition date can usually be found in the lower left-hand corner of the form, following the form number.

While every attempt is made to present these changes in a concise manner, we strongly encourage you to review with your Legal and Risk Management staff the implications of these changes to your Agency and **update your Contracts to "trigger" coverage under these new forms. Otherwise, you may have reduced or even no coverage at claim time!**

As Alliant is not a law firm, we recommend that users of this manual consult with their own insurance professionals or legal counsel for specific language for this section's wording. Make sure your indemnity language is strong, and if the contractor does not carry sufficient or correct insurance to cover its obligations to your Entity, make certain it does have the assets to indemnify the Entity for those uninsured or underinsured areas of risk.

Finally, a section is included containing the most commonly asked questions from manual users over the years. We have included this section as a resource for the user, to illustrate that risk management is not always a simple process, and to encourage the user to contact their insurance advisor when encountering an "outside the box" situation.

Disclaimer: As of this current IRIC edition, Verisk has acquired ISO. The authors of the IRIC are maintaining ISO nomenclature in this guide at present.

Disclaimer: Wheresoever gendered pronouns appear in this document; it is intended that these terms will serve as placeholders for pronouns that accurately reflect the preferred gender identity of the individual to whom the pronouns refer. This is the intent for all such gender pronouns whether they be possessive (i.e. "his" or "her"), objective (i.e. "him" or "her"), or subjective (i.e. "he", "she", or "he or she").

ACKNOWLEDGEMENTS

This manual originates from work performed in the late 1970's by public entity risk managers and consultants, a time when the field of public entity risk management was beginning to come into its own. The editors acknowledge the work of Erin Oberly, a risk management consultant working with Frank James of the Redwood Empire Municipal Insurance Fund (REMIF), for the earliest versions of this manual. Many changes have occurred in the fields of risk management and insurance since its inception, and this manual has kept up with those changes due to the continued support and dedication of public entity risk managers and consultants, including David Born, David Clovis, Joe Risser, Marcus Beverly, and Marjorie Segale. Over the past several years, the updates have been prepared with the support of PRISM (Public Risk Innovation, Solutions, and Management) including the expertise of Robert Marshburn of CertifiedRiskManagers.com. Mr. Marshburn is a recognized leader in the field of risk management, insurance policy language and public agency contracting as well as the founder of AutomatedInsuranceVerification.com.

Most importantly, this manual reflects the issues encountered by its users, and their feedback continues to be vital in keeping the material up-to-date and useful. We encourage you to contact your insurance or risk management consultant for advice as needed and send questions and suggestions for future editions of this manual to Marcus Beverly at marcus.beverly@alliant.com, or to Daniel Howell at dhowell@alliant.com.

EMERGING TRENDS

The industry is rapidly changing, and the dynamic nature of these emerging risks has created an even greater need for creative risk management solutions. Here is some of what we are seeing:

- Nuclear Verdicts and Social Inflation
  - Settlement values and jury awards continue to escalate, driven in part by third-party litigation financing and evolving societal expectations regarding risk allocation and responsibility.
- Severe Weather and Catastrophic Loss Exposure
  - Increasing frequency and severity of weather-related events are placing sustained pressure on catastrophe exposed coverage lines.
- Cyber Risk Evolution and Emerging Digital Exposures
  - Evolving exposures related to Biometrics, Pixels, Artificial Intelligence, etc.
- Geopolitical Instability
  - Global events contributing to economic uncertainty, supply chain disruption, and increased risk volatility.
- Artificial Intelligence & Big Data Adoption
  - The rapid integration of AI and data driven technologies is introducing new risk considerations across all lines of coverage, particularly in contracts involving third-party vendors and service providers.
- Alternative Risk Transfer and Parametric Solutions
  - To manage volatility in catastrophe markets and improve access to timely liquidity following defined events.
- Security and School Safety Concerns
  - Heightened concerns around physical security and school safety continue to influence underwriting, risk management practices, and coverage availability.
- Third-Party Litigation Financing – see update in FAQ #11.

Pixel Tracking

Several media corporations offer tools for entities to track website user interactions. These trackers, known as "pixels", run a script when a user visits a website with the purpose of collecting information about that user. This information is then typically forwarded to the corporation providing the pixel for advertising purposes.

Pixel tracking has become a regulatory issue for entities with websites dealing in confidential information, such as health portals. The pixel can collect and forward that confidential information to these third-party corporations without consent to disclose this privileged information. This has now become the subject of numerous class action lawsuits and carriers are widely excluding this peril. In late 2022, the Office of Civil Rights issued a memo urging entities to cease this practice where privileged information was concerned.

As the world of risk continues to change at an accelerated rate, we can use what we've learned in the past to help us mitigate the risks of the future and present. Readers should consult with their risk advisors and legal counsel when contemplating how to manage these emerging risks

FREQUENTLY ASKED QUESTIONS

The following questions represent those most often asked by users of this manual. If you have questions that are not answered by this section, please do not hesitate to contact your Alliant Account Administrator. As you can see by reviewing the following section, we all learn through the process of thoughtfully examining the risk management process.

1. ***If a lessee or contractor is a large one, do I still need to insist on the insurance requirements?***

   Yes; you normally have no way of verifying that their assets are sufficient for losses that might occur, whereas you could be confident in an insurance carrier with a quality A.M. Best Rating.

2. ***Is it all right if the contractor alters the indemnification language?***

   This is not advised. Indemnification language is carefully worded to afford your Entity as much protection as legally possible, and usually the exact language has been tested in court. Altering the language could weaken your Entity's protection and should only be undertaken on advice of your legal counsel.

3. ***Can we require an A.M. Best rating for a company that is "admitted" in California, or is this against the law?***

   Yes; unless the company is providing a surety bond. State law requires owners to accept surety bonds from any surety company, in an effort to improve small firm contractors' chances in successfully bidding a job. If it is a federally approved surety company, you are obligated to accept the surety company. This can be reviewed on the web at:

   https://www.fiscal.treasury.gov/

   Remember, just because an insurance company is "admitted" does not ensure that they have the financial strength designation required by your contract. Also, we have removed the requirement for "admitted" insurers because so much insurance is now written by Surplus Lines insurers. We now suggest that insurers be "authorized" to write business in the state and rated by A. M. Best. These companies can offer advanced forms that can be tailored to specific needs. However, carefully verify that they do not take away needed standard coverages!

4. ***Why should we ask for property insurance on tenants' improvements and betterments, instead of just adding them to our property insurance policy?***

   Unless the lease specifically states that your Entity gains ownership of these improvements as soon as they are installed, your Entity has no insurable interest in them; and, therefore, you usually cannot insure them under your policy. We recommend that you require tenants to insure their TIB's and personal property. If your entity does have an insurable interest, you may want to add the TIB's to your entity's property insurance.

5. ***If the contractor's insurance does not meet the criteria in our insurance requirement specifications, should we alter the requirements to fit the contractor's insurance?***

   No; the insurance requirements language has been carefully worded to afford your Entity as much protection as possible, and it has been tested in court. Altering the language would usually weaken your Entity's protection. It is not the responsibility of your Entity to tailor your requirements to what the contractor has; rather, the contractor should procure insurance to meet

your specifications and truly, you are doing the contractor a favor in showing it the proper coverage needed in order to protect its business. We have worked very hard to recommend insurance requirement specifications that not only protect the Entity but are also realistic and available in the marketplace for the Contractor.

6. ***Does the "edition date" on the suggested ISO endorsements matter?***

   Yes; there have been significant reductions in the coverage afforded to additional insureds by "updated" versions of these endorsements. A further discussion regarding these changes is contained in the section of this manual describing these endorsements.

7. ***If the agent or broker changes the cancellation section of the certificate of insurance, or says we don't need an endorsement because of language on the certificate, are we okay?***

   No; Certificates of insurance DO NOT alter the insurance coverage: any changes need to be endorsed onto the policy with a copy of the endorsement provided to your Entity. Agents and brokers will sometimes try to convince you that endorsements are unnecessary when the certificate has its standard wording changed; if so, you need to point out the boxes across the top of the certificate, one which states that it confers no rights on the holder and DOES NOT amend or alter the insurance and the other that endorsements are needed for additional insured status and may be needed for waiver of subrogation.

   To ensure that the burden is on the insurance company to notify you of a change in status of coverage, you must receive an endorsement to this effect. Some carriers will provide such an endorsement, especially for larger projects, but most do not. Being named as an "additional insured" does NOT obligate the insurer to inform you of any status change in the policy since most policies require only the First Named Insured be notified.

   Prior editions of this manual have suggested requiring notice of cancellation or coverage changes with 30 days' notice by USPS registered mail with a return receipt. This approach does not seem feasible in the current environment of electronic communications and express mail services. Moreover, some insurers refuse to take on this obligation and, in some states, the cancellation requirements are stronger.

   Many risk managers are now requiring that the contractor take on this responsibility. While this may be allowing the "fox to guard the henhouse", mid-term cancellations and reductions of coverage are so rare as to make the value of this term less important. If a contract involves a risk so substantial that the risk of cancellation or coverage reduction is heightened, a project specific policy with the Entity as an Additional Insured may be warranted.

   NOTE: The latest edition of the standard certificate of insurance form now reads that "notice of cancellation will be provided in accordance with policy terms and conditions." This does not confer special rights on additional insureds, and you must ask for an endorsement to the policy if your entity truly desires advance notice of cancellation.

8. ***Can lower limits be permitted when we are dealing with small contractors or artisans, and we are only using them for small jobs?***

   Yes; there are some very small vendors or artisans that may provide a service to your Entity and the cost of obtaining standard limits may not be possible. You should always evaluate the potential of loss, potential benefit to the organization for the service provided and finally, the

vendor's financial capacity to purchase coverage at reasonable rates. The dollar amount of an agreement should never be the sole determining factor on the insurance, however. Even in a small-dollar contract, determine if it involves any exposures that could result in significant loss such as kids, large crowds, high voltage, water, heights, ladders, scaffolding, pyrotechnics, flammable products, alcohol, etc. Please see Appendix A "Risk Assessment" for criteria.

9. The contractor's agent says that we cannot get the endorsements as required by the Insurance Requirements in Contracts specifications; what can we do?

In many instances, the agent or broker has not approached the insurance company with your request – the agent or broker is merely trying to discourage you from asking. We recommend contacting the broker or agent directly to inform them of your insurance requirements, and typically they will provide you with the necessary endorsements you require. If this tactic does not work, please call an insurance advisor for confirmation of the unavailability of endorsements from the contractor's company.

Note that some states, California among them, now require prior approval of all insurance policy and endorsement forms by the Department of Insurance for "admitted" carriers. Therefore, use of custom endorsements may not be practical. However, many construction projects now use non-admitted carriers that are *A. M. Best* rated and on the LASLI surplus line list. In 2011, the List of Eligible Surplus Line Insurers, ("LESLI"), was replaced by the List of Approved Surplus Line Insurers, ("LASLI"). The LASLI is a voluntary list of non-admitted insurers that the California Department of Insurance ("CDI") has approved for use by surplus line brokers. Often these are part of large insurance groups with the group rating, backing, and resources of the larger, often admitted, insurance group and this allows for customized endorsements. In these situations, we recommend that the Entity work with its insurance advisor and the contractor to determine what forms are available to obtain the desired coverage.

10. Do we need an additional insured endorsement on an automobile liability policy?

An additional insured endorsement is usually not required on most business auto policies because the standard ISO forms include coverage for "Anyone liable for the conduct of an insured". Be careful with **non**-ISO policies since many, but not all, may contain this provision. It may be wise to require the additional insured coverage by using contract requirement language for the auto policy such as "the policy shall contain, or be endorsed to contain, Additional Insured coverage for the Entity." Also, there are times when general and auto liability coverage are issued on a package policy, and the additional insured endorsement can apply to all coverages.

11. How do we determine the proper limits of liability for any given job?

Ask yourself how much damage the contractor could cause if it completely mismanaged its work causing bodily injury and property damage to others. Include in your estimate, lost time, wages, extra expense incurred for repairing or replacing the work, and any future impacts. If this amount is more than the suggested amounts shown in the specifications in this manual, use the greater amount.

The authors of this manual have calculated how the $1 million/$2 million per occurrence/annual aggregate limit recommended since at least 1986 compares to today's environment. Using the Consumer Price Index (CPI), the value of $1 million in 1986 would

be over $5 million in today's dollars. But using an inflation factor impacted by tort litigation inflation, aka "social inflation", we estimate the value of $1 million in 1986 is over $10 million for tort liability claims in today's dollars (see the Insurance Information Institute at iii.org).

Beyond the direct impact of increased medical costs and higher attorney fees, a key change has been the introduction of third-party litigation funding for plaintiff litigation costs. Much information has been published on how third-party litigation funding has changed the duration and cost trajectory of claims. Plaintiffs now have the financial ability to resist pressures for early settlement at lower value. As a result, when the impacts of social inflation are combined with the availability of third-party litigation financing, the cost of liability claims has increased at a faster rate than the CPI.

Appropriate minimum limits will vary based on state jurisdiction and availability of governmental immunities and tort claims caps. Keep in mind that claims brought under federal causes of action or in other state jurisdictions may have very different potential cost.

The editors have increased the standard requested limits for general liability to $5 million for contracts with construction risks and to $2 million for other contracts. The Risk Manager will need to evaluate whether contracts require the suggested limits or a different amount. A major capital project may require even higher limits, and some smaller contracts such as facilities use agreements may not merit $2 million. We have not increased the amount of auto liability limits because the business auto policy does not have an annual aggregate, however, a catastrophic loss may prove $1 million of limits inadequate. A contract involving charter transportation could merit a $5 million limit or higher. See also the answer to question #8 above.

12. Can we accept an insurer with less than an A.M. Best Rating A: VII or Standard & Poor's BBB?

Yes; though the rating gives your Entity some confidence in an insurer's ability to cover all of its claim liabilities, including your potential claim. By accepting lower A.M. Best or Standard & Poor's ratings, you are exposing your Entity to the possibility that the insurer will be unable to pay any claim you or a third party may present. Major insurance brokers and agents also insist on placing clients in companies with high A.M. Best and Standard & Poor's ratings as a way of protecting themselves against potential E&O claims from their clients.

13. How do we discover what the rating of an insurer is?

A.M. Best ratings can be accessed over the internet for no cost at www.ambest.com. Go to the "Member Center" of the website to register for access to the ratings.

You also can go to the Standard & Poor's website to obtain the rating of a specific insurance company. You must register for access, although this is free of charge. Go to www.standardandpoors.com and look for a "Find a Rating" link in the margin or header.

14. What do the A.M. Best or Standard & Poor's Ratings mean?

See Chapter Two for a discussion of this question. Simply, the Standard & Poor's or A.M. Best ratings give your Entity a sense of the financial strength of the insurance company that is insuring the contractor.

15. Does a contractor need professional liability coverage?

A contractor needs professional liability coverage if expected under contract to provide "professional" services. The simplest way to decide is to determine whether the nature of the services provided entail "brain work" or "physical work". If it is only physical work, then a liability policy, general and/or automobile will most likely cover all your exposures to loss. However, if the work or a portion of the work is expected to involve the use of professional knowledge, professional liability insurance is required.

As an example, if a contractor is merely following blueprints in constructing a building, it would involve only physical work, and a general liability policy will suffice. However, if the contractor is a "design-build" firm, or decides that it knows of a better way to construct part of the building, and it alters the blueprints accordingly, then it has crossed the line over into providing "professional" service and would then need professional liability coverage to cover a subsequent loss.

16. How long of a period of time do we require the claims-made professional liability insurance to be carried after completion of the project?

A "claims-made" coverage will only respond to a claim that is presented while the policy is in force or during an extended reporting provision. Therefore, it is imperative that your Entity be protected as long as possible after the completion of the project, so that any claims caused by faulty design or other professional services (see Question 15) will be covered by the responsible party. A regular general liability policy will not cover professional liability losses, so your contractor may be bare in the event of a claim arising out of professional services rendered on the project. Normally, professional liability policies can be purchased with a three year "tail" (reporting period), which will allow claims to be presented up to three years after the professional liability policy expires. If you can get a longer tail in your contract, do so.

17. Does a contractor need proof of automobile liability when hired to work on the premises?

Yes; for the simple reason that the contractor has to use some means of transportation to reach your premises, and to transport tools, supplies, and materials. If the contractor is determined to be engaged in business on your Entity's behalf when it is involved in an automobile accident, then your Entity may be held liable. Further, since owners of vehicles are required to carry insurance anyway, this requirement carries little burden to the contractor.

18. Should we ask to be named as an additional insured on the contractor's professional liability policy?

No; the contractor's professional liability insurer will not comply with such a request. The reason is that the insurer does not want to pick up your Entity's professional liability hazards, which it would do if you were an additional insured. Professional liability policies are specifically underwritten based on the professional history of the contractor. A contractor's insurer is not interested in underwriting your Entity's professional risk and therefore will not add your Entity as an additional insured on the contractor's policy.

19. What can be done if we don't have the proof of insurance when it is time to start the work?

There is very little that can be done at this point in the process, which is why we **strongly** recommend that the indemnity and insurance specifications be sent out with the pre-bid

package. There are no good choices when this situation occurs; either you must delay the work while you wait for the proof, or you must take some risk until the proof is received, and hope that the contractor's insurance meets your specifications.

20. Why can't we accept a certificate of insurance as proof of the Entity being named as an additional insured?

Across the top of the current ACORD Certificate of Insurance are the following words:

> 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).

If any agent or broker tries to convince you that the certificate truly does confer rights or coverages, and that you therefore do not need the endorsements you are requesting (and some will) you can direct their attention to this statement.

21. Why do we need an indemnity clause in our contract when we are added as an additional insured on the liability policy?

Insurance is only one way that the contractor can financially guarantee its liabilities. If you have an indemnity provision in your contract with the contractor, that contractor is obligated to indemnify your Entity whether or not its insurance covers the loss. This puts the burden on the contractor rather than your Entity to make certain that its coverage is sufficient and current. Therefore, make sure your indemnity language is strong, and that if the contractor does not carry sufficient or correct insurance to cover their obligations to your Entity, it does have the assets to indemnify those uninsured or underinsured exposures.

In fact, the written indemnity clause in the contract is the real trigger for coverage as your contract, under normal circumstances, is an "Insured Contract" as defined under the Commercial General Liability policy (CGL). The CGL confers automatic coverage for "Insured Contracts," (unless endorsements provide otherwise) but the Entity must have a written contract containing indemnity language in your favor prior to the loss in order to trigger coverage. As a result, the indemnity clause is crucial to trigger coverage and may even cover items not covered by the Additional Insured Endorsement.

22. Should we ask for a waiver of subrogation from the contractor and/or insurer?

YES, always include in your contract terms; if your Entity does not do so, the contractor's insurance company can look for reimbursement of any claim payments they have made when they believe your Entity's negligence contributed to the loss. "Subrogation" is the transfer to the insurance company of the contractor's right to collect for damages from another party, in this case, your Entity. If the contractor waives rights of subrogation in the contract their insurers have no rights to pursue your Entity for reimbursement, *regardless of whether or not an endorsement is issued*, because the insurer's rights are no greater than their insured's.

Some insurers require their insureds to report and pay for waivers of subrogation, and all policies prohibit waivers of subrogation after a loss has occurred. However, any recourse the insurer may have is with their insured and will not create subrogation rights versus your Entity.

In addition, if your Entity is named as an "additional insured" on the contractor's liability policy, current case law holds that it is against public policy to allow an insurer to subrogate against its own insured, even an "additional insured."

Editor's note: the phrase "waiver of subrogation" is no longer used in the ISO Commercial General Liability form; rather the phrase "Transfer of Rights of Recovery against Others to Us" is now used. While the editors normally favor using the current industry language rather than historical legal terms, in this case we believe "waiver of subrogation" remains the best way to communicate to contractors and the legal community the intent of the agreement.

23. If a hold harmless agreement does not absolve us of liability, why do we need to include it?

While a hold harmless agreement does not relieve you of legal liability for your Entity's sole negligence, it should obligate the contractor and his insurer to pay for legal defense and damages due to your Entity's vicarious liability arising from the contractor's activities.

Each word in the phrase "hold harmless, defend and indemnify" conveys a different duty to be performed by the indemnitor. Even if the indemnity agreement is not fully enforced, or the indemnified party has separate negligence not included in the indemnity, the written agreement to indemnify is essential to triggering contractual liability coverage under the "insured contract" definition in the ISO CGL policy of your contractor.

24. Should we require bonds in contracts that are not construction related?

Yes; there are a number of situations when your Entity may want to require bonds. You may want to consider bonds when dealing with certain types of vendors, including those providing personalized products such as customized information systems, equipment, or other specific services for your Entity. Although bonds may not be required on all vendor agreements, it is important to understand how they may save your Entity in the event that the vendor fails to deliver or lacks the funding to finish its project.

25. Should we require that contractors provide proof of terrorism coverage in their insurance programs?

Maybe; the Federal Government has mandated that all insurers offer coverage for "terrorist acts" for an additional premium. Though this coverage is currently available, many insureds are declining it due to the additional cost. It is unclear to what extent a contractor could be responsible for any act of terrorism that occurs while performing tasks for your Entity. You may consider the coverage on construction projects which may be impacted as a result of a terrorist attack. As with any exposure, you must identify the potential for risk. If the project is politically sensitive or highly visible, the inclusion of terrorism coverage may be necessary.

26. What do I do if my contractor states that they are self-insured for liability, auto, and workers' compensation, and they cannot provide a certificate of insurance?

In the State of California, organizations that are self-insured for Workers' Compensation must have a Certificate of Consent to Self-Insure issued by the State of California Department of Industrial Relations. They must also have authorization from the State to self-insure their auto exposure, but this is not the case for general liability. First, obtain copies of their documents granting them the authority to self-insure for Worker's Compensation and automobile liability. Second, obtain a letter from the contractor that clearly states all of the requirements in your

agreement apply to their self-insurance. Next, you will need to confirm that the contractor has assets available to cover any losses in the event they occur. This would normally include the review of their independently audited financial statements. Finally, you may require the contractor to issue a bond or a letter of credit to your Entity in an amount necessary to cover any losses. Note that the manual references special treatment of self-insured retentions to protect the entity.

27. The contractor states that they are a sole proprietor and does not carry Workers' Compensation insurance as they have no employees, is this acceptable?

Yes; many contractors are either sole proprietors or partnerships. You should receive a letter from the contractor stating they are either the owner of the organization or a partner and are exempt from the State's workers' compensation requirements because they have no employees and agree to hold the Entity harmless from loss or liability for such.

28. Should I require wet signatures on endorsements to policies?

It depends. If an endorsement is issued and delivered as a part of the policy, it does not need a signature as the complete policy was signed off by an authorized representative when it was issued. Usually there is a schedule of endorsements attached to the signed Declarations page and if your endorsement is listed on that schedule then it was a part of the policy at issuance and does not need a signature. Mid-term endorsements should be signed to confirm that an authorized representative has agreed to the policy change. A copy of the updated Policy Declarations and Endorsements page can be your best tool to verify the added endorsement. Keep in mind that all of this effort is intended to raise your confidence that the insurer has agreed to provide the required coverage, rather than an unauthorized intermediary. Indeed, you could next require that the signatory prove that he or she is authorized – which you might do if the signatory is a retail broker or agent, rather than a company underwriter or delegated managing general underwriter. At some point, it is reasonable to assume that the people who are issuing documents to you have the authority to do so.

29. The ISO released an update to the CGL form in April of 2013, CG 00 01 04 13, and a number of Additional Insured endorsements. What are the important changes and what impact do they have?

There are <u>significant</u> changes in all of the 2013 Additional Insured endorsements section, the most relevant of which for the purpose of this manual are forms CG 20 10, CG 20 37, CG 20 33, and CG 20 38. Included is language that states:

- The coverage available **shall not be broader than** coverage that is **required** by the written contract or **agreement**
- The **limits** available to the Additional Insured **shall not exceed** what is **required** by the **written** contract or **agreement**
- The insurance afforded to the Additional Insured only applies to the extent permitted by law

Also noteworthy is the 2013 CG 20 01 endorsement that provides primary and non-contributory coverage. A more thorough discussion of the new CGL Additional Insured

Endorsements is found in a separate section. Copies of the new forms are in the Exhibit section of this manual.

30. What is the purpose of the 2013 Additional Insured endorsement, CG 20 38?

CG 20 38 is an Additional Insured endorsement that provides coverage for "upstream" parties such as property owners who may not have a direct contractual relationship (privity) with the insured. For example, if a Subcontractor is required by a General Contractor to add the Owner **(**Entity**)** as AI, then coverage is available to the Owner **(**Entity**)** even though no contract exists between the Owner and the Sub.

The key element here is to make sure your contracts require that anyone performing work for your Entity must add upstream parties as additional insureds using CG 20 38, or broader coverage.

31. I'm confused by the all the different versions of the additional insured endorsements. Is there a short answer?

Yes, at the risk of oversimplification. Since it is rare to be able to get the ISO 20 10 11 85 version, the common standard today is the more recent 20 10 "ongoing operations" form combined with 20 37 "completed operations" form.

The table below provides a summary of the AI endorsements to be used for the situations as described above. Note there is no AI endorsement currently providing Completed Operations coverage to a party with no privity and no work being performed for them.

Insured Relationship to AI for Coverage	**Doing Work *For* AI with a Contract requirement regardless of Privity**		**Doing Work *For* AI, with Privity, but no Subs**	**No Contract "With You" (No Privity) & No Work *For* Additional Insured**	
Type of Endorsement	**Scheduled**	**Automatic [1]**	**Automatic [2,3]**	**Automatic [1]**	**Designated**
Ongoing Ops Form #	20 10	20 38	20 33	20 43	20 42 & 20 26
Completed Ops Form #	20 37	20 40	20 39	NONE from ISO	NONE from ISO

[1] Only if required in a written contract or agreement

[2] Only if required in a written contract "with You" (Privity)

[3] Use form 20 33 and 20 39 ONLY when you are SURE there are NO Subs being used that have NO Contract "with You"

For Automatic Status, Form Numbers 20 38 and 20 40 should be required rather than the 20 33 and 20 39

More details on this complex area may be found in Chapter 9 of the manual.

32. How can my entity make sure that we have access to (1) the full coverage and (2) the full limits of insurance carried by our contractors?

The insurance requirements in this manual have long recommended language that states that the required limits are a minimum. We are reinforcing this language throughout the manual with the addition of the following shown in italics here:

"The Insurance obligations under this agreement shall be: 1—all the Insurance coverage and/or limits carried by or available to the Contractor; or 2—the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the Entity. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement."

33. With the passage of California Civil Code §2782.9 effective January 1, 2018, do I have to adjust my current indemnification language as it relates to design professionals?

Yes. The new language states that design professionals shall be indemnified and held harmless from all liabilities and claims that arise out of negligence, recklessness or other misconduct on behalf of the principal. For a more complete analysis, please refer to Appendix C.

Non-California users should consult their general counsel for state-specific language and analysis of any "anti-indemnity" statutes or case law applicable to their contracts.

34. How can we ensure Additional Insured coverage for completed operations?

ISO has three AI endorsements providing completed operations coverage: the CG 20 37 for Scheduled Persons and Operations, and the new CG 20 40 and CG 20 39 endorsements for Automatic Status when required in contract.

More details on this complex area may be found in Chapter 8 of the manual.

35. Is my independent contractor really an independent contractor?

Some states are tightening the rules via legislation or judicial decisions defining when a contractor is truly and independent contractor. California has enacted AB 5 effective January 1, 2020. The evaluation of whether a contractor is truly an independent contractor is beyond the scope of this manual and should be reviewed by the user with your counsel. Suffice it to say that agreements should be reviewed with counsel to ensure the agreements have appropriate and strong independent contractor language. The independent contractor's agreement to indemnify, defend and hold harmless the entity will then be supported by the insurance requirements described in this manual.

36. How to dispel the myth of "following form" excess insurance coverage?

Most following form excess policies do not truly follow form. Many of these excess policies do provide higher limits, but they often have contradictory differences in terms of how and why the excess policy is triggered. There are often conflicts with the primary policies, and the excess policy may have additional provisions not included or even referenced in the

underlying. A quick check for whether the excess policy is truly following form is the length of the excess policy – this should be no more than two to four pages. Our discussion in Chapter 2 includes a checklist for potential conflicts between the primary and excess policy, as well as sample endorsement language and examples of following form policy language.

37. How does my agency transfer risks related to housing the homeless, including grant programs to purchase properties to convert to housing?

Most social service grant programs are administered by and through state or county agencies, though in the case of housing the homeless local agencies may be given the task of purchasing and managing the properties. Ideally, the agency is able to contract with a responsible nonprofit to take on the management responsibilities, though some agencies choose to manage themselves and *ultimately liability will rest with the agency as the property owner*. If contracting with a nonprofit we recommend thorough vetting, a minimum $3 million general liability limit, and regular management oversight.

38. Are there potential gaps in coverage due to use of generative artificial intelligence?

Yes. This is covered more extensively in Chapter 4 but at present ISO endorsements are being introduced that exclude coverage for generative AI. ISO forms CG 40 47, CG 40 48, and CG 35 08 fit this description and have been added to our form library. At present, cyber and technology errors & omissions insurance would not pick up these gaps. Real life examples of issues include: (1) AI being used to screen job applicants and using criteria that could qualify as discriminatory, (2) AI being used to write legal briefs and citing case law that does not exist, (3) customer-facing AI chatbots promising discounts that do not really exist. These are just a few examples in an emerging area of risk.

39. Are non-ISO blanket additional insured endorsements legitimate?

You should be wary if you encounter a non-ISO or “fake” blanket insured endorsement. Examples of these are not included in the IRIC for copyright purposes but these are designed to look and read like an ISO form but they are far more limiting in terms of coverage afforded. You should be suspicious of such custom AI endorsements, especially for construction projects. The introductory paragraph Makes it sound like the old preferred 11.85 "your work" endorsement that included both ongoing and completed operations liability, but what follows takes the coverage for the AI away!

Such endorsements may limits coverage for the AI "only to the extent" of the Named Insured Contractor, and "No coverage is provided" for the AI "arising out of the acts, errors, or omissions of the AI". This very coverage is needed for the AI for their vicarious and passive liability for their "errors or omissions" of failure to supervise, do due diligence, provide a safe workplace, etc in their supervision of the work of the Contractor! This alone means there will not be any coverage for the AI under such endorsement.

There may also be no duty to defend. If there is a Contract requirement to do so, then the defense costs are "deemed to be damages". This removes the unlimited defense coverage costs of standard AI endorsements, and reduces the liability limits of the policy.

If you used the standard requirement language we recommend in the IRIC manual, “coverage at least as broad” as the standard ISO Additional Insured Endorsements for ongoing (CG 20

10, 20 26, or 20 38) and completed operations (CG 20 37 or 20 40), then such custom endorsements certainly do not qualify as such.

If you used the standard "failure to comply with these Insurance requirements shall be considered a material breach of Contract" language, then you can require that this endorsement be deleted and the standard ISO endorsements (or coverage at least as broad") be put on the policy – with no cost or penalty to the Agency for requiring it, or, if need be, cancelling the Contract and using another Contractor who will comply with the requirements.

INTRODUCTION - WHY BOTHER?

Let's face it, dealing with indemnity and insurance requirements can be tedious. No one likes to haggle about the terms of a contract or worry about whether a contractor has provided the correct insurance. Requesting, obtaining, and verifying insurance for contracted goods and services takes time, can be aggravating, and most often doesn't seem to make any difference, since most contracts are completed without incident. However, when an incident occurs, all of those efforts become worth it. Public entities and businesses have saved millions of dollars by successfully tendering claims or suits arising from contracted goods or services, from the largest public works projects to the smallest service contracts.

The reasons for including a strong indemnification clause in your contracts and requiring insurance coverage include:

- Your entity can be held liable for damages caused by your contractors
- You should be able to rely on the contractor's expertise to do the job safely, and if it doesn't, it should pay for the consequences
- Responsibility encourages safety on the part of the contractor
- Risk is placed upon those best able to control the work
- You have a source for payment of claims against your entity
- Maintaining your own project or entity budget
- Maintaining your own good loss history and lower insurance costs

And remember, it is never a good thing to be the one responsible for costing your agency the significant expense of a large claim that could have been tendered to your contractor and paid by its insurance company. So, while it may be tempting to ignore the indemnity and insurance requirements in your contracts and accept whatever the contractor sends you as proof of insurance, consider it a required measure of due diligence that could result in significant savings for your entity.

CHAPTER ONE:
CONTRACTUAL RISK TRANSFER – THE BASICS

SUMMARY

This chapter describes the basic steps in administering insurance clauses in contracts where the other party is required to provide insurance to protect your Entity, its officials, employees and volunteers. The five basic steps are:

1. *Analyze the Risks and Relationships*
2. *Use a Hold Harmless (Indemnity) Agreement*
3. *Select the Appropriate Insurance Specifications*
4. *Verify Insurance Coverage*
5. *Report Claims Promptly*

In the practice of good risk management, your Entity should attempt to transfer the risk of accidental loss accruing through its contractual relationships. Usually, your Entity will require the other party to a contract to assume your Entity's liability arising out of their negligent delivery of products, services, or activities. This transfer generally is appropriate, as the contracting party is most often the one in the best position to control loss.

This intended transfer of risk is achieved by requiring suppliers, contractors, tenants, and users of public facilities to hold your entity harmless from loss arising from their products, services, or use of your facilities. The best way to assure that the transfer actually takes place and the responsible party pays for the loss, rather than your Entity, is to require a strong indemnity agreement and insurance requirements appropriate for the type of contract. In addition to protecting the contracting party, the insurance should also protect the Entity, its officers, officials, employees, and volunteers.

This section is intended to give users a brief overview of the contractual risk transfer process and a set of insurance requirements that will apply to most situations. Many users will find that this section provides all the tools they need. Each step of the process is discussed in more detail in the following sections, including additional specifications for certain types of contracts, sample insurance forms, checklists, and references for additional resources.

Contractual Risk Transfer - The Steps

1. Analyze the Risks & Relationships
2. Use a Hold Harmless (Indemnity) Agreement
3. Select the Proper Insurance Requirements
4. Verify Coverage
5. Report Claims Promptly

Step 1: Analyze the Risks and Relationships

Review the contract's scope of work, persons capable of completing it successfully, and the relationship that person will have with your entity. Pay special attention to the scope of work. Is it sufficient to describe the work to be performed, especially in case of a dispute as to who was responsible for certain duties, such as maintenance? Make sure you understand what is to be accomplished based on what is written in the scope.

Step back and think about the objectives to be accomplished and ask, "What could go wrong?" What are the critical steps in completing your objectives? Is the contractor qualified? Focus on the risks and remember each situation is unique. The risks and your options for managing them will vary. It's worth the time to learn as much as you can about the work, the contractor, and the risks involved to develop the best ways to protect your entity and avoid wasting your efforts on requirements that aren't needed or won't be effective.

It's a mistake to think that a contract for a small job or service carries with it a small risk of loss, but contract managers often don't pay as much attention to the risks inherent in smaller contracts. Some contracted services do carry more risks; even the smallest job has the potential for catastrophe. For this section, we are assuming the typical kinds of risks for most contracted services, such as professional services, maintenance agreements, and other contracted work performed for your entity, with the exception of construction contracts. Please see Chapter 3 for more details regarding construction projects and Chapter 4 for a discussion of other special types of situations.

Appendix A, "Risk Assessment", has more information about identifying and prioritizing risks, including common questions to ask and references for conducting risk assessments, the first step in the risk management process.

Step 2: Use a Hold Harmless

Your contracts should contain a Hold Harmless (Indemnity) agreement that includes an obligation to defend your entity (including employees, officials, agents, and volunteers) and is meant to be interpreted as broadly as possible in your favor. Hold Harmless agreements are language that shifts responsibility for loss or damage arising from the activities of a contract from one party (your entity) to the other (the contractor). Your contractor acts as your representative while performing services for you, provided they are within the scope of your agreement. Any damages caused in such performance on your behalf can be collected against you. "Hold Harmless" language allows you to tender the claim of the damaged third party to the contractor for defense and indemnity by the contractor or their insurer.

Good Hold Harmless language for most contracts (with the key terms in bold) reads as follows:

> **Hold harmless:** to the fullest extent permitted by law, Contractor shall **hold harmless**, **defend** at its own expense, **and indemnify Entity** its officers, employees, agents, and volunteers, **against any and all** liability, **claims**, losses, damages, or expenses, including reasonable attorney's fees, **arising from all acts or omissions of contractor or its** officers, **agents,** or employees in rendering services under this contract; **excluding**, however, such liability, **claims**, losses, damages, or expenses **arising from Entity's sole negligence or willful acts.**

It is preferable to use your own contract form with language that has been drafted by your attorney, but at times you may have to accept someone else's form or negotiate the terms of your Hold

Harmless with the prospective contractor. If you do have to make changes or accept another form, always have your attorney review and approve any language before you sign.

Sometimes your options are limited, and some service providers work very hard to limit their obligations. There are limits to the extent to which you may be held harmless, and there are two special restrictions for public entities, for construction and design professional contracts, that are discussed in more detail in Appendix C. That section also contains a good waiver and release for participants in sporting or volunteer activities.

Step 3: Select the Appropriate Insurance Specifications

A Hold Harmless is the Contractor's promise to pay for claims caused, in whole or in part, from its activities. Requiring insurance helps to ensure the contractor will have the money to deliver on that promise. Therefore, it's important to require insurance of the proper type and in sufficient amounts to protect your entity.

It's also important to inform contractors of the insurance requirements early in the contract or bid process. This accomplishes two goals. First, it eliminates any questions that the bidder may have about the nature of the required insurance. Second, the bidder has the opportunity to forward the forms to its insurer or agent for approval before the bid is submitted, thus eliminating delay or the submission of unacceptable insurance documents after the contract or bid is awarded.

To make this process easier, we suggest including the insurance specifications as an appendix or attachment to the contract, with a reference to them in contract itself. In Chapter Two we have also provided a sample set of instructions for the contractor and agent, including a description of the contracted work or service, the applicable dates coverage is required, and space for any special instructions.

Sample Contract Language for Insurance Requirements:

> INSURANCE REQUIREMENTS. Contractor agrees to have and maintain the policies set forth in Exhibit A entitled "INSURANCE REQUIREMENTS," which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Entity as to form and content. These requirements are subject to amendment or waiver only if approved in writing by the Entity. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

Basic Insurance Specifications: Chapter 2 contains Exhibit 1: Insurance Requirements for Most Contracts. The professional liability (E&O) insurance can be waived or deleted if the contract does not involve professional services. The specifications (specs) contain a note for the contract administrator's reference to help decide if professional liability insurance is needed.

For construction and environmental services contracts, please see Chapter Three for a complete set of specs and explanation. Chapter Four contains specifications for other types of special situations, including contracts with private individuals, cyber risks, instructors and special events. The rest of this section provides an explanation of the requirements for most contracts. Links are provided to the language in the requirements for key terms so you can review them along with the explanation.

For commercial contracts, the types of insurance regularly required are:

- **Commercial General Liability (**ISO CGL CG 00 01) – fundamental coverage for bodily injury, property damage, products & completed operations, and personal injury arising from the contractor's activities.
- **Business Auto Coverage Form (CA 00 01)** – important for any work or service involving the use of motor vehicles, and a legal requirement for all vehicle owners.
- **Workers' Compensation (WC) & Employers Liability (EL)** – all employers must provide this insurance or be registered as a Self-Insured entity with the State. This is not required for sole proprietors or companies that have no employees, typically professional partnerships that use contracted administrative support.

For technology and professional services contracts, particularly with licensed professionals such as architects, engineers, attorneys, accountants, claims administrators and insurance brokers, you should also require:

- **Professional Liability (or E&O - Errors and Omissions)** – this provides coverage for errors in professional judgment that lead to damages to your entity or others.

Limit of Insurance: the minimum limit recommended is $2,000,000 per occurrence, accident, or claim, for CGL, CAL, and E&O, respectively. If an aggregate limit applies (a limit on the amount the insurer will pay for all claims in one policy period, typically one year) it should be no less than twice the required per occurrence limit.

For Workers' Compensation Insurance, you should require "Statutory Limits", what the statute provides in benefits (essentially unlimited), with Employers Liability limits of $1,000,000 per accident or disease.

Keep in mind, these are recommended minimum limits that should be increased for a number of activities that are considered higher risk, including construction contracts. Many service providers still carry $1,000,000 limits you may choose to accept depending on the nature of the risk and your options. Please refer to subsequent chapters and Appendix D for more information and a reference table for situations in which higher limits are recommended.

Other Recommended Insurance Requirements

In addition to the basic coverage outlined above, your entity should also request the following:

Additional Insured: an endorsement to the Commercial General Liability (CGL) policy will name your entity as an additional insured under the contractor's policy for covered claims arising from their work or activities on your behalf. This status gives you direct rights under the Contractor's insurance and greatly increases your chances of recovery, especially for your legal defense. This is not required under the Workers' Compensation or standard Business Auto policies and is generally not available under Errors & Omission policies.

Primary Coverage: for all the insurance policies, you want to require the Contractor's insurance to be the first to cover any claim, with your coverage applicable only if the Contractor's is exhausted. An endorsement is not required for the standard Business Auto policy as primary insurance language is written into the policy but is recommended for the CGL policy (ISO form CG 20 01 04 13 or equivalent), especially for high- risk activities.

Waiver of Subrogation: if an insurer pays a claim, any rights their insured may have to recover all or part of the payment from someone else are transferred to the insurer. That process and the insurer's attempts at reimbursement are called subrogation. Your insurance requirements should contain a waiver of any rights to subrogation of any of the Contractor's insurers. An endorsement is not needed for this to be effective though for large construction projects we recommend an endorsement to the Workers' Compensation policy.

Notice of Cancellation: you want to be notified immediately if the policy is cancelled. You should be notified of cancellation by the Contractor's agent or broker if he or she sent you a Certificate of Insurance verifying coverage, but unless you request an endorsement to the policies, failure to notify on the agent or broker's part does not prevent cancellation without proper notice.

General Insurance Recommendations

Deductibles and Self-Insured Retentions: you want to make sure any amounts a Contractor must pay before its insurance applies are known and the contractor is capable of paying those amounts if needed. An insurer has the same obligation to defend and pay for damages under a liability policy whether the deductible is paid or not. However, if a Self-Insured Retention (SIR) is not paid, in most cases the carrier has no obligation to defend or pay damages unless and until the SIR is paid. For this reason, be especially careful in evaluating a contractor's ability to pay claims up to their SIR before acceptance.

Verification of Coverage: proof of the Contractor's insurance coverage is usually provided by its agent or broker with a Certificate of Insurance listing the types of coverage, insurers providing the coverage, policy period, and limits. Your entity will be listed as the Certificate Holder. For ongoing contracts, you should receive a new Certificate when the policies expire, but if not, you will need to follow up for proof of ongoing coverage. Make sure the agent is aware of the length of the contract when requesting the initial certificate and your entity should be notified automatically when their coverage renews.

A Certificate of Insurance is NOT enough proof of coverage when your entity wants to be named as an additional insured on the contractor's CGL policy; you MUST also have an endorsement in order to be covered. The standard CGL contains "contractual liability" coverage which affords the insured coverage for liability they assume in most contracts. Some policies may automatically name your entity as an additional insured if required in a written contract, or they may issue an automatic or "blanket" endorsement to that effect. You will want to obtain proof of your status, either through the endorsement or a copy of the applicable policy language.

We strongly recommend including the ability to obtain a copy of the policy declarations and endorsement page to facilitate verification of coverages as needed and spot any undesirable policy limitations or exclusions. This is most important for larger construction projects as the endorsements page could show a prior work exclusion or other limitations of coverage that will not be listed on the Certificates of Insurance.

Acceptability of Insurers: the specifications list a minimum A.M. Best rating of A:VII. You can look up an insurer's rating by going to www.ambest.com. At times you may run into an insurer that does not have the minimum rating or that is not rated by A.M. Best, particularly if your contractor is covered by a captive, Self-Insured Group (SIG), risk pool, or other "alternative" risk transfer mechanism. In such cases, research the company by referring to the Internet, requesting documentation from the agent, and enlisting the advice of your insurance broker or consultant.

We are no longer suggesting that coverage must be written with "admitted" markets. In recent years an increasing percentage of coverage has moved to surplus lines markets that are "licensed" to conduct business, but not "admitted." In the manual we now use the term "authorized" insurers to include both admitted and non-admitted surplus lines insurers. Non-admitted markets may offer customized forms and better terms than admitted markets but may not be supported by a state's insolvency fund. As a result, consider asking for a higher rating as an indication of a non-admitted insurer's financial capacity. Also note that non-admitted insurers may use custom policy forms, so review them carefully to verify these forms do not take away needed standard coverages.

Claims-Made Policies: most Professional Liability insurance policies, and other specialized policies such as Environmental Impairment (Pollution), Cyber Coverage, or Educators Legal Liability, are written on what is known as a "claims-made" basis. This means the policy in force on the date a claim is made against the Contractor is the one that covers the loss, not necessarily the one that happens to be in force on the date the work begins or, as with an "occurrence" policy, the date when an accident that causes damage occurs.

For the work of Architects and Engineers, it may be many years after the design work is completed and the structure put to use before errors or defects in the design become apparent and a claim is filed. For this reason, it is recommended that you require proof of ongoing coverage for design work, at least three years, and often up to as long as ten years after a job is complete.

This section of the requirements can often be deleted if the contract does not involve professional or environmental services.

Special Risks or Circumstances: each situation is unique, and you may encounter a type of risk or coverage that requires more limits, acceptance of a lower A.M. Best rating, or a waiver of one of the recommended requirements. You should always reserve the right to modify your requirements to meet such demands, especially when conducting a bid process that could lock you in to rejecting an otherwise acceptable proposal.

Step 4: Verify Coverage

Review the Completed forms promptly.

You should receive at least two documents verifying coverage, a Certificate of Insurance and an Additional Insured (AI) Endorsement (or a copy of the applicable policy language confirming your AI status by written contract). Review the forms to be sure they are completed fully, that they have been signed by an appropriate party, and that no items have been crossed out or altered. Note the expiration date of the policies. If any policies expire during the term of the contract or project, set up a suspense file for forty-five (45) days before the expiration of the insurance. If you have not received proof of renewal or replacement of coverage by that time notify the other party that your Entity requires receipt of a new set of forms before expiration of the existing coverage.

This manual provides a one-page checklist that can be completed for each contract (see Appendix D for examples). This checklist is used to compare the Entity's specific requirements to the certificate(s) and endorsements provided. If something is missing, contact the contractor's broker or agent to obtain the necessary certificates and endorsements. You can also enlist the assistance of your Risk Manager to contact insurance brokers/carriers to obtain all documents required to comply with your contract provisions. Please refer to Chapter Five for more guidance and details on verifying compliance.

Save the signed forms.

Save the forms with the rest of your contract documents. Contracts and insurance documentation for construction projects should be saved **indefinitely**, as claims may be presented many years after work is completed. The forms may be your Entity's only proof of coverage. For other types of contracted work, follow your own record retention policies, but be aware that certain types of contracts, particularly for environmental services or other work that has the potential to generate claims far into the future should also be kept indefinitely.

Step 5: Report Claims Promptly

Inform the other party's insurer immediately, in writing, of any incidents or claims arising out of the work. Send a copy to the Contractor and its agent as well.

Some liability insurance policies require reporting of accidents or other covered losses as soon as it is practical to do so and do not impose any specific deadline. Others require reporting of accidents immediately but again leave that term undefined. Some policies written on "claims-made" forms impose strict deadlines on claim reporting. As you may not have immediate access to the policy's notice-of-claim requirement clause, you should assume the worst-case version and report incidents or claims to the other party's insurer immediately. If you have a copy of the policy, follow the reporting procedures explicitly.

Most insurance policies require reporting of incidents or claims to the insurer. However, it is customary with most insurance buyers to report such events to the insurance agent, and to allow the agent to pass the information along to the insurer. While convenient, this practice does not fulfill the insured's contractual responsibility to report events to the insurer. Therefore, the safest practice is to report the event to the insurer, with secondary notification to the agent. If you report by telephone, make a note of it, including the date and person spoken to. Follow up in writing as soon as possible.

You should also notify your own insurance company, claims administrator (TPA), agent or broker of the claim in order to protect your rights under your policy. If the Contractor's insurer delays or disputes acceptance of the claim, you may need to rely on your own resources to protect your interests while the issue is resolved. Your insurer or TPA should continue the negotiations with the Contractor's insurer on your behalf to successfully tender the claim to them, but at times these issues are not resolved until the claim is ready to settle. It may even be necessary to file a suit against the Contractor and/or insurer to enforce your rights, something that your insurer should do on your behalf.

Use Exhibit 1: Insurance Requirements for Most Contracts

Past editions of this manual have included an "Exhibit A" that is the same as **Exhibit 1: Insurance Requirements for Most Contracts.** Instead of repeating here, we have provided a link to that section of Chapter 2, including additional notes to the Exhibit for the user. Other Chapters provide the Exhibits for more specialized risks as noted above.

CHAPTER TWO:
INSURANCE SPECIFICATIONS FOR MOST CONTRACTS

SUMMARY

This chapter describes considerations for drafting insurance specifications for most contracts. Sample specifications are included as exhibits in this chapter and for more complex or specialized contracts in the next six chapters.

The following provides more detail on a number of issues to consider in drafting insurance requirements, including specifications for the most common types of public entity contracts.

Evaluate the Risk
Before determining the types of insurance to be required, you must have some idea of the types of harm that could arise from the contracted activities. Review the scope of work and talk to the contract manager and/or contractor to be sure you understand the work or service to be performed and that it is adequately described in the Scope. Refer to Appendix A for more information on Risk Assessment.

Use the Appropriate Contract Template
Every organization should establish procedures for developing and approving contracts. We recommend your Entity create templates reviewed and approved by your attorney for the types of contracts typically used by your departments. This makes the process of selecting and reviewing the contract terms much easier by simply adding the Scope of Services, with any changes to the template itself approved by legal counsel prior to signing.

Common contract templates should include:

- **General Services:** for most contracts, including routine maintenance of facilities.
- **Construction:** for public works projects or major remodeling of facilities.
- **Design Professional Services:** for the services of architects, engineers, and surveyors.
- **Professional Services:** for all other professional service providers, such as attorneys, accountants, technology services, medical professionals, and insurance brokers.
- **Leases and Rentals:** for long and short-term use of your real property and/or personal property/equipment.

One important reason for having a separate template for design professionals is a limitation on the type of Hold Harmless agreement you may require for their services. There is also a limitation on the Hold Harmless you can use for construction contracts. Refer to California Civil Code §2782 and see Appendix C for a full discussion of these limitations and recommended language.

Insurance Requirements
Insurance requirements in a contract ensure that the organization you are contracting with will have adequate assets available in the event of a loss arising out of the work performed for your Entity. The use of insurance is not the only means of guaranteeing that an organization will have adequate resources. Some very large organizations may choose to self-insure their liabilities. In

that event, you may need to examine the organization's financial statements or receive a letter of credit from a banking institution to guarantee the adequacy of assets. For the rest of this chapter, we will focus on insurance as the means for effective risk transfer.

Be as Specific as Possible in Describing Types of Insurance Required

Avoid using phrases which do not have a specific meaning. For example, the term "public liability" does not have a definite meaning in common usage or in the insurance industry. If you use an ambiguous term, your Entity may intend that a relatively broad coverage be purchased, yet a limited coverage form would still comply with the written requirement. This ambiguity is reduced by stating the titles or exact types of coverage forms to be maintained. The insurance specifications provided in this manual refer to specific Insurance Services Office (ISO) coverage forms wherever possible. While overwhelmingly industry standard, not all insurers use ISO forms, but they should have similar forms or policy language they can provide. Avoid the use of language such as "or its equivalent" since this is ambiguous and use the phrase "with coverage at least as broad as" the ISO forms. However, use of non-standard ISO language is a reason to review the forms and endorsements carefully, including a review of the policy language if in doubt.

In particular, your Entity should require that liability insurance be written on an "occurrence basis". "Claims-made" coverage should be accepted only as an exception after verifying that occurrence-based coverage is not available. Professional liability insurance is usually available only on a claims-made basis and will be discussed later in this chapter.

Describe Maximum Deductibles or Self-Insured Retentions that the Other Party may Maintain

As described in Chapter 1, a Self-Insured Retention (SIR) is different than a deductible. Under a policy with a deductible, the insurer adjusts (and controls) the claim and is reimbursed by the insured for the amount of the deductible. Under a policy with an SIR, the insured controls the claim, such as selection of counsel and right to settle, and the insurer has no duty to defend or pay damages until the SIR has been paid. Until then you must seek reimbursement directly from the other party per the terms or your contract's indemnity or hold-harmless clause. If the other party is financially unable to reimburse your Entity and/or pay the SIR, you would bear the amount of the SIR or perhaps be left with no coverage from the contractor's policy if the SIR was not paid.

At least one court has held that an additional insured has no right to satisfy the policy's SIR if the first named insured is unable to do so, based on language that unambiguously allowed only the named insured to satisfy the SIR. There has also been litigation involving a bankrupt insured where the court found that the additional insured had no right to pay the deductible and trigger the coverage above the SIR. This situation can also occur when a subcontractor is not named in a suit and therefore is not required to respond and spend money that would count toward the SIR. In such cases, your entity may have to file a cross-complaint to force the subcontractor to respond and satisfy the SIR.

If SIRs are substantial, you can request the other party post a bond guaranteeing payment of losses and defense costs within the retained layer. As an alternative, the other party's insurer may be willing to reduce or eliminate the retention as respects your Entity's interests, most likely for an additional premium. You can include language that allows your Entity to withhold payment up to the amount of the SIR and act as the contractor's agent in satisfying the policy SIR.

Also, some policies with SIRs do not require the insurer to provide legal defense. In such cases, your Entity might have to pay its own defense or seek reimbursement from the contractor. Therefore, you should require disclosure and approval of SIRs and discuss them with your risk management advisor as necessary. Include language in your contract requiring that the policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or your Entity.

How to Evaluate an SIR

Since a liability insurer has no duty to defend or pay damages until the SIR has been paid, it is necessary to pay special attention when an SIR policy is providing required liability coverage.

It is not practical to simply disallow a contractor to utilize an SIR Policy, and nearly all large public entities and pooling organizations utilize SIRs for the same reason your contractors may use them – they want to control their claims and avoid the frictional costs of trading dollars with their insurers. There are numerous organizations with well-funded and well-managed self-insurance programs. But how do you determine if a bidder or existing contractor has a well-funded and well-managed self-insurance program? Here are some factors we recommend be considered in evaluating an SIR:

- Financial Size of Organization – Larger organizations tend to have the financial wherewithal and desire to have an SIR policy. If you see a smaller organization with an SIR, you should wonder why they have gone to an SIR policy. Does this organization have a high frequency of losses?
- Amount of SIR – An SIR Policy may include a retention into the millions of dollars for very large organizations. How can you tell if the organization can fund their SIR? We recommend reviewing the financial statement to see whether it appears the organization has the revenues and assets to pay for its SIR. If the organization is private, we recommend asking for the most recent audited financial statement (noting that you may be required to sign a non-disclosure agreement). For construction contracts, we recommend very careful examination of an SIR larger than $250,000, and that large an SIR should only be proposed on a very large capital project. Other vendors such as major utilities or Fortune 500 companies may have an appropriate SIR running in the millions of dollars.
- Funding of SIR – A well-funded self-insurance program should be able to demonstrate funding of the SIR at a reasonable level. For a smaller SIR, it may not be necessary to ask for a copy of a recent actuarial study (and they may not have one, say for a $100,000 SIR). For a larger SIR, you should obtain more information, and at least a certification by a risk professional (such as the organization's Risk Manager) that the program has been funded at a 70% confidence level or more as calculated by an independent actuary. You may find information on funding in an audited financial statement.
- Program Management – A self-insurance program requires that the insured is responsible for administration of the claims within the SIR. This may be performed in-house or by a third-party-administrator (TPA). You should evaluate whether the contractor has the resources and personnel to administer claims, or whether their TPA is reputable.
- Excess/Reinsurer Review – The number of insurers offering SIR Policies is relatively small. They are considered "specialty" contracts and are carefully underwritten by

underwriters. As a result, you would normally expect to see an SIR policy issued by a larger "A" rated carrier, a minimum of size X, the lead (first excess layer) underwriter.

With all these variables, evaluating an SIR is not an exact science. We recommend engaging your insurance broker or other risk management advisor to assist in your evaluation the first few times you encounter an SIR. And, if you encounter an SIR that doesn't seem to make sense, we recommend engaging your insurance broker or other risk management advisor to assist.

Finally, as described above, if an insured cannot pay their SIR, the excess insurance may not be available to your entity as an additional insured, but there are workarounds to make it acceptable.

Require the Addition of Your Entity, its Officials, Employees and Volunteers as Additional Insureds to all Required Liability Coverage

Standard contract conditions should specify that your Entity, its officials, employees, and volunteers be added by endorsement as additional insureds to all liability policies, except Workers' Compensation or Professional Liability (Errors & Omissions) policies.

When the contractor will be employing subcontractors, request that they be required to maintain at least the same types of insurance as required of the general contractor. A lesser amount of general liability limits may be acceptable for a subcontractor performing a part of the project. You may require the contractor to provide your Entity with the required endorsements or insurance policies from each subcontractor which names the Entity, its officials, employees, and volunteers as additional insureds. It is common practice for an owner to require a contractor to furnish these endorsements, particularly for construction projects. For large construction projects with consolidated insurance programs ("wrap-ups" aka OCIP's), all subcontractors are additional insureds under the insured's (contractor's) policies.

Require that the Other Party's Insurance be Primary

To simplify loss adjustment and eliminate the possibility that the other party's insurer will seek contribution from your Entity, your standard requirements should state the other party's insurance is to provide primary coverage, and your Entity's insurance or self-insurance program will not be called upon to contribute to a loss that should be paid by the other party's insurer. You should require coverage at least as broad as ISO CG 20 01 12 19. Some policies will provide primary coverage as long as it is required in the contract, without the need for an endorsement, so you may need a copy of the policy language to verify.

Require that Your Entity be Given at least Thirty (30) Days' Notice of Cancellation with Ten Days' Notice for Non-Payment

Your Entity's standard insurance requirements should state that the insurer will provide at least thirty (30) days written notice of cancellation. Sixty (60) days' notice is better and is required by law in many states. However, in CA the requirement is only ten (10) days for notice of cancellation due to non-payment. The standard certificate of insurance language has recently changed noting that notice of cancellation will only be given "in accordance with policy provisions", which now clarifies what was always the intent. For this reason, if notice is required it needs to be endorsed on to the policy like the additional insured status.

Prior editions of this manual have recommended requiring an endorsement necessitating notice of cancellation or coverage changes with 30 days' notice by USPS registered mail with a return

receipt. This approach does not seem feasible in the current environment of electronic communications and express mail services. Moreover, some insurers refuse to take on this obligation and, in some states, the cancellation requirements are stronger.

Most often you will not receive an endorsement regarding notice of cancellation even when your specifications require it. This is an area to use your judgment regarding what is reasonable and obtainable in light of the risks involved.

If a contract involves a risk so substantial that the risk of cancellation or coverage reduction is heightened, you should require an endorsement or consider a project specific policy with the Entity as an Additional Insured. For example, the insurance requirements for construction and environmental risks (Exhibits 5 & 6) require a notice cancellation endorsement to the policies.

Statements made on a certificate regarding cancellation notice do not have the same effect as the same statement made in an insurance policy or endorsement but could lead to an E&O on the part of the agent, since generally. You should presume that the certificate does not grant any conditions not contained in the policy.

Specify that the Insurance is to be Placed with Insurers that Meet a Certain Minimum Rating, Unless Otherwise Acceptable to Your Entity

The ratings given by A.M. Best and Standard & Poor's are widely used as standards for measurement of insurer acceptability. Insurer ratings are available on-line from each company at http://www.ambest.com and www.standardandpoors.com/ratings/insurance.

The A.M. Best rating is a two-part rating, separated by a colon. The first portion is the assessment of the quality of assets held. The second, given as a Roman numeral ranging up to XV, indicates financial size by policyholders' surplus. Standard & Poor's uses a single rating scheme measuring the company's overall financial strength.

The management ratings currently used by A.M. Best and the overall ratings used by Standard & Poor's are:

A.M. Best Ratings		Standard & Poor's Ratings	
A++, A+	Superior	AAA	Superior
A, A–	Excellent	AA +/–	Excellent
B++, B+	Good	A +/–	Good
B, B–	Fair	BBB +/–	Fair
C++, C+	Marginal	BB +/–	Needs Improvement
C, C–	Weak	B +/–	Barely Acceptable
D	Poor	CCC +/–	Poor
		CC +/–	Exceptionally Poor
		C	Failing

+,– These signs following the letter rating indicate the relative position within the class

The above analogy between A.M. Best and Standard & Poor's ratings is not exact. Each rating system has its differences, and the ratings are based on slightly different criteria and/or weighting. The use of both systems provides a better picture of the strength or weakness of the company.

A.M. Best also rates insurance companies by their policyholders' surplus. Class I is the lowest Financial Size category, indicating a policyholders' surplus of under $1,000,000. Class XV indicates policyholders' surplus of over $2,000,000,000. In the middle, Class VII surplus ranges from $50,000,000 to $100,000,000.

Your Entity should require that insurance be placed with companies that have a minimum A.M. Best rating of A:VII or a Standard & Poor's Rating (if rated) of at least BBB unless specific approval for a lower rating has been granted by your Entity. This requirement does not guarantee that the insurer will be solvent when called upon to pay a loss, but it does reduce the possibility of coverage being placed with a clearly unqualified insurer.

Your Entity should only accept a lower-rated insurer if no other insurer will provide the coverage. Be aware, however, that there may be a significant risk that the insurer will not be able to pay a claim for which your Entity may then become responsible. Special consideration and evaluation should be undertaken when coverage is provided by Self-Insured Groups (SIGs), captives and risk pools. Many governmental agencies purchase coverage through pooling arrangements, so don't be surprised when contracting with another governmental agency if their coverage is provided by a pool. Pool financials are public information, and it is easy to discover their strength. SIG financial information may or may not be accessible but should be requested if there is a concern. Contract documents should specifically address alternative risk transfer programs where possible. If in doubt, contact your insurance advisor prior to approving a particular coverage provider.

Fit the Insurance Limits to the Situation

Judgment and experience are required to set required insurance limits. Precedent also plays a significant role. It's hard to require $5,000,000 limits from one contractor if the Entity has previously required only $1,000,000 for similar projects. Nevertheless, if a contractor carries limits less than you think are appropriate you should not hesitate to ask for more.

In our view, the $2,000,000 limit stipulated in the sample insurance requirements is the minimum limit to require. Higher limits should be required for any hazardous activity, such as blasting, or where the activity has a severe loss potential, such as construction close to highways, utility lines, or high-valued property. You should consider the loss exposure, not the value of the contract, in determining appropriate limits. Some jobs, such as spraying of pesticides or backhoe operation near utilities, involve substantial potential liabilities even though the contract may involve only a small expense. Checklists at the end of this manual will help identify hazardous exposures, including a chart in Appendix D that lists recommended limits for different types of activities.

Amendments to additional insured endorsements in 2013 limit coverage to the amount required in the agreement. As a result, the Entity will be covered only to the amount requested so minimum limits should be carefully considered.

How Much is Enough?

The saying, "A million dollars just ain't what it used to be," rings truer with the years. This manual required a $1 million general liability limit as the basic limit since the early 1980's. The editors are now recommending limits of $2 million for basic commercial contracts (without construction) and $5 million for contracts with construction risks. Please keep in mind that because of annual limitations on policy payments ("aggregates", see below) in standard policies unless a contract specific policy is written, your entity is sharing the contractor's policy limits with all of the contractor's other customers.

Note that increasing jury verdicts and recent changes to coverage forms make higher limits advisable. Jury verdicts against public entities have increased substantially over the last several years, driven by social inflation and reviver statutes for sexual abuse claims. Also, changes to the CGL insured contract definition may bring defense costs within the limit of insurance, eroding the coverage available if there is a conflict, or your Entity selects separate defense counsel.

The editors understand that smaller vendors, sole proprietors, and individuals may not have $2 million of limits. This is where the art of risk management plays a role. Your entity must determine when to allow lesser limits. We suggest that standard tests be applied. For example, you might decide that any contract that does not includes a products or completed operations exposure is a low enough risk to accept a $1 million limit. Note that these other agreements may not always be low risk, so the risk manager's best weapon – common sense – must carry the day.

Professional Liability

Professional Liability coverage presents a difficult question as to how much limits should be required. An error by a professional can result in a significant loss to your entity even where the professional service fees are not significant. The authors believe that it is time for most entities to consider increasing the amount professional liability limit required. It would not be out of line to require a limit of $2 million of professional liability in most professional service agreements, with the amount adjusted up or down as exposure merits. Also, keep in mind that professional liability limits usually apply per claim and with an annual aggregate of the same amount.

Aggregate Limits

Many liability insurance forms used today impose aggregate limits for all losses paid by during the policy period (usually one year). There are usually three types of aggregates: a products and completed operations aggregate; a personal injury and advertising injury liability aggregate; and a general aggregate for all other types of losses. If the contractor purchases a Commercial General

Liability policy, any losses arising out of projects for that contractor's other clients would also reduce the aggregate limit available for losses arising out of its work for your Entity. Therefore, you may wish to require:

- A higher aggregate limit which is a multiple of the occurrence limit; for example, a $2,000,000 per occurrence limit with a $4,000,000 aggregate, or
- A separate aggregate limit for your project or lease, or
- A policy dedicated to your project.

None of these solutions is a perfect answer. Even a higher aggregate limit may be insufficient if the contractor experiences a large number of substantial claims during the coverage period. A possible solution is to require that the contractor provide higher limits through a combination of excess and primary policies. In this case, evidence of excess coverage should be provided on the same certificate form. On large projects, this approach may be the most feasible.

The insurer may decline to provide a separate or higher limit for your Entity's project. If the insurer is willing to provide a higher limit, the contractor will be asked to pay additional premium. The cost of this premium may be passed along to your Entity if the contractor must obtain this coverage in order to receive the contract award.

The discussion above applies to coverage under the current ISO Commercial General Liability policy form. Other variations of endorsements adding aggregate limits exist. You should review these forms carefully when evaluating aggregate limits on your contractor's liability policies and seek assistance from your insurance advisor as needed.

The Myth of "Following Form" Excess Insurance Policies for Higher Limits

Most so-called "Following Form" Excess Insurance policies that provide additional higher limits after exhaustion of the underlying policies are not true following form. It is not true that "covered on the underlying means covered on the excess"!

Since there is no "standard" Excess or Umbrella policy recognized in the industry, even those that claim to be a "Following Form" policy, the entire policy must be reviewed to determine the extent to which it follows the underlying policy, any differences, and how those differences affect the desired coverages in your contract requirements.

- Most Excess policies have additional provisions that apply instead of the underlying policy in case of a conflict! Carefully check if the following are the same as the Underlying Policy:
    - General Provisions – the correct underlying policy, limits, and effective dates are the same as listed in the Excess Policy
    - Defense provisions – inside or outside limits
    - Is defense an obligation; or the "right, but not the duty" to defend
    - Are Additional Insureds on the primary covered on the Excess
    - Must Additional Insureds be advised or endorsed on to the Excess
    - What about Automatic Additional Insureds when required by Contract
    - Is the Excess Policy Primary & Non-Contributory for an Additional Insured
    - Is there the same coverage for Indemnity

- Are the Contractual liability provisions that cover Indemnity the same
- Is the "Insured Contract" Definition the same or is it modified
- Has the definition of "Occurrence" been modified
- Is there a "Prior Work" limitation or exclusion
- Are there any other exclusions or limitations that are part of, or have been added to, the Excess Policy
- Does the primary/underlying policy have a Self-Insured Retention (SIR) that can only be satisfied by the named insured and that, if not paid, would prevent triggering the Excess Policy and Defense obligations?

- It is much easier to spot these changes on the ISO CGL policy since the policy is standardized and any changes from the unmodified policy must be made by endorsement. Although ISO has an Excess & Umbrella liability policy, there is no generally recognized Excess **"standard"** policy in the industry. As such, limitations or exclusions can be in the text of the policy itself as well as because of endorsements!

- *True* "following form" Excess policies will generally be only 2 or 3 pages! If more, you must carefully wade through all of the pages to analyze and understand the differences! Some are twice as many pages as the entire standard ISO CGL.

If a "Following Form" Excess Policy is not a true "Following Form", it can sometimes be endorsed back to be such with language similar to the following from an actual excess policy:

> **FOLLOW FORM ENDORSEMENT**
> It is agreed that this **policy** will follow the exact warranties, terms, conditions, exclusions and limitations contained in the Followed Policy listed in the Declarations

Some following form endorsements will say something similar to the above and then add "...except for any other endorsement added to this policy" or other similar policy language.

If the Excess Policy is not 4 pages or less, or does not have a "clean" following form endorsement, it will no doubt read similar to the following actual examples:

EXAMPLE of not being true following form, and other exclusions or limitations that are part of or have been added to the Excess Policy**:**

The following was on an Excess Policy with an additional Exclusion for PD liability.
The Excess Policy is NOT a TRUE Following Form:

On Page 5 of the excess policy it states:

"If an inconsistency or contradiction exists between an Exclusion of this policy and an Exclusion of the "controlling underlying insurance" the Exclusion of this policy will apply."

Exclusions

The EXCLUSIONS sections of the "controlling underlying insurance" are made part of this policy. **If an inconsistency or contradiction exists** between an Exclusion of this policy and an Exclusion of the "controlling underlying insurance" **the Exclusion of this policy will apply**. However, in no case will coverage be excluded by the "controlling underlying insurance" and not excluded by this policy.

Translation: The broader exclusion of either policy is what will apply!

EXAMPLE:

Except to the extent any terms, definitions, limits of insurance, conditions or exclusions of the "controlling underlying insurance" are different from any terms, definitions, limits of insurance, conditions or exclusions of this policy, this policy will provide the same coverage for "ultimate net loss" as provided by the "controlling underlying insurance". **If** any terms, definitions, limits of insurance, conditions or exclusions of **this policy** are **more restrictive** than those of the "controlling underlying insurance", **then this policy's** terms, definitions, limits of insurance, conditions or **exclusions** will **apply**. However, under no circumstance will this policy provide broader coverage than that provided by the "underlying insurance".

The red in the middle sounds pretty good, and the "Except..." at the beginning of this statement is almost incomprehensible, but what it really says is 'if there are not any differences between the underlying policy and this excess policy, this policy will provide the same coverage for "ultimate net loss" as provided by the "controlling underlying insurance". But after that, it explains that ". **If this policy is more restrictive, then this policy's** terms, definitions, limits of insurance, conditions, or **exclusions will apply**.

Translation, once again: The broader exclusion of either policy is what will apply!

EXAMPLE:

This **policy** will follow the warranties, terms, conditions, exclusions and limitations that are contained in the Followed Policy listed in Item 6. of the Declarations unless a warranty, term, condition, exclusion or limitation contained in this **policy:**
1. Differs from a warranty, term, condition, exclusion or limitation of the Followed Policy; or
2. Is not contained in the Followed Policy;
In which case, such warranty, term, condition, exclusion or limitation of this **policy** will apply, to the extent that it provides less coverage than the Followed Policy.

The above statement was contained in a "Following Form" Excess Policy that said at the top of the policy "FOLLOWING FORM EXCESS LIABILITY INSURANCE POLICY"

Many other examples could be given, but you get the idea – You must verify **all** of the coverage provisions of any so-called "Following Form" Excess Policy!

A WORD OF CAUTION: MULTIPLE COVERAGE SINGLE ENDORSEMENTS

We are noticing a number of insurance companies that have created various types of "Multiple Coverage Endorsements" that activate coverages previously provided by individual endorsements into a single omnibus endorsement, rather than an individual endorsement for each coverage issue.

These Multiple Coverage Single Endorsement Coverages are effective ONLY IF they are specifically REQUIRED in a Written Contract or Agreement between the parties!

These can include coverages for such things as Automatic Additional Insured for Ongoing and / or Completed Operations, Primary and Non-Contributory, Waiver of Subrogation, and so on for these various Types of Coverage Endorsements that are considered elsewhere in this manual.

As with any Endorsement on any policy, these can be to the good or harm of the Entity Risk Transfer interests. Each one of these Multiple Coverage Endorsements must be considered carefully compared to see if they are "at least as broad as" the corresponding coverage provided by the standard individual ISO endorsements since they are all customized by each company and are non-standard endorsements!

A WORD OF CAUTION: VENDOR SUPPLIED TERMS AND AGREEMENTS

For procurement procedures, do NOT allow vendors to incorporate their provisions or conditions such as from Sales terms to be to be incorporated into service agreements or purchase orders from them with limitations or exclusions for their liability, indemnifications, and additional insured endorsements (as well as other non-insurance provisions such as credit terms, late fees, etc.).

You want to control all of these Provisions that should be supplied whenever possible by the Agreements or Purchase Orders from the Entity that transfers the risk back to the Vendor/Contractor and protects the entity, and wherever possible NOT use the vendor supplied sales terms, purchase orders, or amendments.

Sample Contract language:

EXCESS/UMBRELLA LIABILITY INSURANCE – If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this agreement, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including, but not limited to, the additional insured, contractual liability & "insured contract" definition for indemnity, occurrence, no limitation of prior work coverage, and primary & non-contributory insurance requirements stated therein. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Specify how Long the Insurance Must Remain in Effect for the Project or Lease

You should state in the contract that the required insurance must be in effect prior to awarding the contract and that it or a successor policy must be in effect for the duration of the project or lease. A clause in the contract should state that maintenance of proper insurance coverage is a material element of the contract and that failure to maintain or renew coverage or to provide evidence of renewal may be treated by your Entity as a material breach of contract. For large, ongoing projects you may want to include a provision allowing your Entity to withhold payment to purchase insurance to replace any expired coverage.

For Construction Projects or Claims-Made Policies

You will want coverage to *extend a number of years past the end of the project* to cover completed operations liability claims, often in the form of construction defect liability. See the discussion in Chapter Three on Construction and Professional Services contracts for more detail.

Professional Services Contracts

Professional service providers (consultants) include those who are licensed by the state, including architects, engineers, attorneys, medical service providers, accountants, and insurance agents, brokers, and claims administrators. However, there are a wide variety of professional services that fall outside state licensing, including computer system designers and programmers, technology consultants, safety professionals, and risk management consultants. They key is whether you are relying on a consultant's professional judgment and if an error in judgment could lead to damages to your Entity or a third party.

A consultant is guilty of professional negligence when damages result from a failure to exercise the same standard of care that another consultant in the same practice and geographic area would use. Examples of claims include design errors of architects or engineers and malpractice of doctors or lawyers. An expert in the subject field is almost always necessary to establish the duty of care and render an opinion on whether or not it was met when attempting to prove a claim for damages.

Claims arising from professional services performed for your Entity will name the consultant, your Entity and any other connected party as defendants. Even though the consultant may be the party liable under the law, your Entity, in the event of even the slightest joint liability, could still be required to pay for all or part of a loss caused by the consultant. In addition, your Entity may have its own claims against the consultant for improper design or other professional negligence that results in damage to your property.

When contracting for professional services, your Entity should ensure that the other party to the contract (consultant) carries sufficient professional and general liability insurance to protect against losses that may result from its negligent acts or omissions. The following discussion addresses a number of issues when dealing with professional services contracts, including:

- Professional Liability (E&O) Insurance
- Additional Insured Status
- Claims-Made Coverage
- Auto Insurance
- Workers' Compensation
- Independent Consultant Status
- Indemnity Limitations

Professional Liability Insurance

Professional liability insurance provides protection against covered claims for damages by reason of any act, error or omission committed or alleged to have been committed by the insured. It is also referred to as "Errors and Omissions" or "E&O" insurance. Coverage provided by professional liability insurance policies differs from coverage provided by general liability insurance. General liability policies exclude professional liability exposures such as design errors. General liability policies are also limited to claims for bodily injury, property damage, advertising injury, and personal injury. Professional liability policies cover a broader range of financial and economic loss from an error or omission even if no bodily injury or property damage happened. This type of coverage is for consultants, attorneys, architects, engineers, and others who give advice, specifications, plans, or other professional services.

Exhibit 2 (at the end of this chapter) provides a sample set of specifications for consultant insurance requirements. Limits required by these sample specifications are $2,000,000. On large projects, or those with significant potential for loss such as bridges or dams, higher limits are appropriate.

You must also exercise judgment on the subject of minimum acceptable insurer requirements. For some professions, limited insurance markets exist for professional liability coverage. There may be no insurers meeting your Entity's standard insurer requirements that are willing to write the particular kind of coverage required. In such cases, you must be willing to relax standard insurer rating requirements. When doing so, you should attempt to evaluate the financial condition of the consultant and its insurer, determine how long the consultant has been in business, how long it has maintained insurance coverage, and how long its insurer has been writing the kind of professional liability in question.

Additional Insured Status

Because of the highly personal nature of professional liability insurance (the insurer covers the professional's competence), insurers generally will not add additional insureds to the policy unless they are employees or subsidiaries of the insured. The specifications in this manual do not request additional insured status for professional liability.

Claims-Made Coverage

Most professional liability coverage is written on a "claims-made" basis, rather than the "occurrence" or "accident" coverage for general and auto liability. This means the policy in force on the date a claim is made against the consultant is the policy that responds to the loss, not the policy in force on the date damages occur. For architects and engineers especially, the date of a claim may be many years after the design and construction of a structure and months after any defects caused damage. For this reason, this manual recommends requesting continuation of professional liability coverage for at least three to five years after completion of the subject of the design work. For large projects you may want to require an even longer time period and/or require a policy with a built in "tail" for reporting claims in the future.

Because professional liability insurance is almost always written on a claims-made basis, Entities that hire architects or engineers should have concern about coverage for latent defects or design errors that may result in claims well after the current coverage has expired. One solution to this problem is to require the design professional to agree to maintain coverage for a specified period after the project has been completed. However, this requirement may be difficult to enforce. If the project is large enough, the architect's or engineer's insurer may provide a policy specific to the project or "project policy" in the name of the Entity, with a built-in tail. The policy may cover all design professionals on a project. This arrangement affords greater protection for the Entity's interests but will require an additional premium for the separate policy. Therefore, this is only cost effective on large projects (generally when architects and engineering fees exceed $1 million).

The "trigger" of coverage differs for Claims-Made policies rather than the more typical Occurrence policy. The trigger of coverage for an occurrence policy is the date of the loss, regardless of when the claim is made. And as many public entities have seen, claims for certain long-tail exposures can be reported many years after the initial incident that caused the loss.

For Claims-Made policies the trigger of coverage is the date the claim is made against the insured. The loss also must have occurred after any applicable Retroactive Date and reported to the insurer

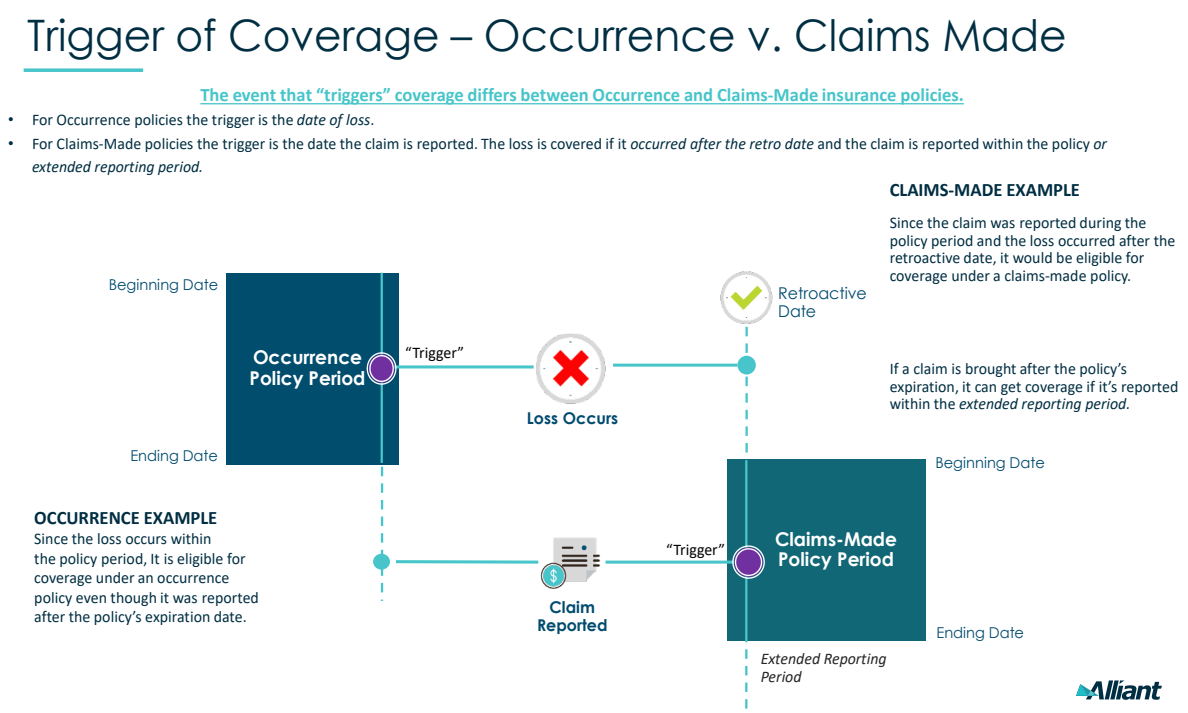
within the policy period or any applicable extended reporting period. Typically, the insured has 30-60 days after policy expiration to report the claim, and extended reporting periods of a year or more are generally offered for an additional premium.

The illustration below provides an overview of how Occurrence and Claims-Made policies may be triggered by the same loss that occurs in one policy period but is reported in another.

Other types of professionals may also have claims that are not reported until many months or even years after the incident that caused the loss, including attorneys, medical practitioners, and risk management professionals. Consider the exposure, including the consultant's history of maintaining coverage and ability to continue, and how best to enforce any continued coverage requirements you may have.

ISO Professional Liability Policy

Professional Liability policies have not been standardized since ISO never published one that became the standard for the industry such as the ISO Commercial General Liability (CGL) and Business Auto (BAP) forms. ISO published a Professional Liability policy in 2017, but since the carriers writing this type of insurance already developed and used their own proprietary manuscript forms for years, we have not noticed any rush to adopt the ISO form. If it begins to come into common use we will do an analysis of the ISO form.



Auto Insurance

If the consultant will use an automobile in any phase of the work performed for your Entity you should also require evidence of automobile liability insurance. In some cases, the consulting firm will not own automobiles and therefore may not purchase full automobile liability coverage. Regardless of whether or not a firm owns any autos of their own, they should carry coverage for their non-owned and hired automobile exposure. Non-owned and hired automobile liability insurance covers vehicles owned by consultants and their employees and protects your entity from

claims arising out of the use of personal or rented vehicles used in the course of business. To verify coverage, request a certificate of insurance listing the carrier, coverage terms and covered auto symbols – hired is symbol 8 and non-owned is symbol 9. If you are dealing with a sole proprietor, proof of personal auto coverage should be required, though you may have to accept less than a $1 million limit.

Additional Insured Status

The omnibus clause afforded in automobile liability policies grants coverage to any person or organization held responsible for operation of the vehicle and for the covered autos of a contractor's policy. This means that there is no need to request and review additional insured status and endorsements.

Workers' Compensation

Your Entity should require evidence of Workers' Compensation insurance. However, if the other party has no employees, for example a sole practitioner or a partner in a consulting firm with only contracted support staff, then Workers' Compensation is not required. Many persons in that position will purchase Short and/or Long-Term Disability to cover their own exposure. If a contractor advises that it does not have any employees subject to Workers' Compensation, we recommend requiring a declaration of this status in lieu of providing a certificate of WC coverage.

States may have requirements to provide Workers' Compensation for certain types of activities or occupations that otherwise would be exempt and may require filing a declaration that the person qualifies for the exemption that can be requested to satisfy your insurance requirements. Regardless, you should request written confirmation from the other party before agreeing to waive this important coverage. The confirmation should include an agreement to obtain Workers' Compensation and notify you if any employee is hired, to verify proof of coverage for any subcontractors, and to hold harmless and defend you in case of claims arising from failure to provide benefits.

Independent Consultant Status

Even though the contract with the consultant may make clear that the consultant is hired as a contractor and not as an employee, the courts may find a way to provide Workers' Compensation coverage or other benefits through Entity resources in the event that a consultant or employee is injured or claims that he or she should be entitled to health, pension, or overtime benefits due to the nature of the contractual relationship.

This is an area to involve legal counsel specializing in employment issues to review the work assignments and performance standards and draft appropriate protections in the contract. The Internal Revenue Service may ultimately decide whether or not a consultant should be considered an employee. You can review its criteria on its website at http://www.irs.gov. The key factor is the amount of control you exercise over the work, especially whether you have the right to control only the result of the work, not the means and methods. However, there are other factors and other types of benefits to be considered. Your agency should carefully review all consultant agreements to avoid a ruling that you are responsible for benefits, payroll taxes, social security, pension, and Medicare payments as a result of the consultant's function.

Indemnity Limitations

Special care is needed in drafting indemnification requirements for contracts with consultants. Appendix C explains special restrictions on indemnity agreements with design professionals. In addition, most professional liability insurers exclude liability assumed under contract by their insureds. However, most general liability policies in use today provide an exception to the contract exclusion to provide coverage for bodily injury and property damage liability assumed under an "insured contract". Therefore, the indemnity agreement should be carefully worded so that the consultant agrees to defend and indemnify your Entity for bodily injury or property damage arising out of the consultant's negligent acts or omissions in performance of the work. This assumption of liability is insurable under general liability policies.

Professional liability policies generally do not contain an "insured contract" exception in their contract exclusions. The exclusion applies unless the liability arises from an error, omission, or negligent act of the insured and would have attached in the absence of such agreement. While the insurer will protect the consultant, it may not honor certain provisions of the hold harmless, such as a duty to defend or pay costs as incurred. For this reason, many consultants attempt to negotiate away such provisions.

In such cases, you may have to rely on the consultant's or another contractor's general liability coverage for defense and ongoing reimbursement of costs, and you may have to file a cross-complaint to assure that the consultant and insurer pay for their share of any loss.

Note, however, that your Entity would seldom be liable for any share of a true E&O loss, as the concept of professional liability applies to a practitioner of that profession. The most common ways your Entity could be directly liable for a professional error include negligently choosing the consultant or negligently approving a design or work product. On any large construction loss there will be allegations of professional negligence as well as construction defects attributed to the contractor or various subcontractors, so the goal is to make sure the consultant or insurer pays for its share of the damage.

Another tactic often tried with professional services agreements is to limit the indemnity to the amount of the contract or some other relatively low dollar amount. This should be avoided but if not possible, as noted above, separate out the obligations for damages covered by general liability or other insurance and, if necessary, limit only certain obligations related to delays or other hard to prove damages, typically in a liquidated damages provision.

The area of professional liability insurance does not lend itself to the application of hard-and-fast rules. Flexibility and discretion are needed to protect your Entity. Although there are no absolute guarantees to assure that your Entity will not be forced to pay a loss due to errors or omissions of its consultants, the practices described above can help provide a reasonable measure of protection.

Property Insurance

Responsibility for damage to property owned by one of the parties to a contract, irrespective of cause, is normally not addressed in the insurance requirements. But there are two situations where responsibility for property loss should be clearly spelled out - buildings in the course of construction and leases involving tenant improvements and betterments. Course of construction risks are addressed in the next chapter, while leases are addressed below and in Exhibit 3 at the end of this chapter.

Tenant's Improvements and Betterments

Property insurance should be required where your Entity has a continuing interest in improvements or betterments installed by a tenant in one of your properties. Many leases require that such improvements revert to the property owner at the completion of the lease. In such cases, you should require the tenant to provide sufficient insurance to cover the full replacement value of the improvements and to name your Entity as loss payee on the policy. In addition, you should require a copy of the policy for your review.

Fire Legal Liability

Another insurance requirement for property leases is "Fire Legal Liability" for damage the tenant causes to the property. While that term is often used, it's in quotes because technically it doesn't exist anymore – it's now called Damage to Premises Rented to You. And the coverage has the same limitation in that it only applies to the tenant's liability for fire damage and the limit shown in the *liability* declarations is usually $100,000. You can ask for more but better to ask for coverage under the tenant's *property* insurance with Legal Liability Coverage (ISO Form CP 00 40). This will provide coverage for the tenant's legal liability for *any cause* that is covered by their property policy and with a limit to cover the replacement cost value of the rented space.

Typically, the Landlord will also require a Waiver of Subrogation for any claims paid by the tenant's insurance. While it is not recommended, at times it may make sense to forego the insurance and agree to a mutual Waiver of Subrogation. The major benefits of a Mutual Waiver of Subrogation clause are:

- No need to purchase separate fire legal liability
- No dispute over cause of loss between tenant and landlord
- Existing property policy has built-in language that allows you to waive subrogation in writing as either a tenant or landlord before a loss occurs
- You are not relying on another entity's policy, nor do you have to verify the adequacy of its coverage as respects to your property

An example of language for a waiver is as follows:

Tenant and Landlord agree to a waiver of any right to subrogation which any insurer of either party may acquire against the other by virtue of the payment of any loss under such insurance. Tenant and Landlord agree to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not a waiver of subrogation endorsement has been issued by the insurer, and each party shall indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

Insurance Requirements for Lessees Exceptions for the Civic Center Act

In California, **"The Civic Center Act,"** CA Education Code Section §38130, specifies which groups are entitled to the use of school district facilities free of charge, and those groups which the district can elect to charge a fee for use of a school facility.

With respect to the insurance requirements and indemnification language, there are differences in what the district can require depending upon whether the user is a free of charge user or a paying user.

Free of Charge Users – Groups entitled to use school facilities free of charge under Education Code Section §38130 must be able to demonstrate the following:

1. There is no other suitable meeting place available;
2. The group is a nonprofit organization;
3. The group is organized to promote youth and/or school activities.

For Free of Charge Users, the school district is liable for any injuries resulting from the negligence of the district and the maintenance of those facilities and grounds. This cannot be transferred. The user shall be liable for any injuries resulting from the negligence of that group during the use of those facilities or grounds.

The Other Insurance Provisions – Clause 1 in Exhibit 3 needs to be amended to state that:

> "1. The District, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of negligence of the user during the use of the facilities or grounds."

Clauses 2 and 3 should remain unchanged.

This exception applies only to Free of Charge Users.

Insurance Specifications for Common Situations

The sets of insurance specifications at the end of this chapter have been developed for the most common situations your Entity staff will encounter. If you want to rely on just one set of specifications in this manual, use Exhibit 2. If the contract does not involve professional services, you can delete the required insurance and the section on claims-made coverages.

Exhibits 5 and 6 are found at the end of Chapter Three: Construction & Environmental Services. Exhibit 7 is at the end of Chapter Four: Agreements including Cyber Risks. Other exhibits are:

- Exhibit 1 — Insurance Requirements for Most Contracts (not for professional services or construction risks)
- Exhibit 2 — Insurance Requirements for Professional Services
- Exhibit 3 — Insurance Requirements for Lessees (Not for Daily or Short-Term Rentals)
- Exhibit 4 — Insurance Requirements for Vendors
- Exhibit 5 — Insurance Requirements for Construction Contracts
- Exhibit 6 — Insurance Requirements for Environmental Contractors and/or Consultants
- Exhibit 7 — Insurance Requirements for Agreements Involving Information Technology
- Exhibit 8 — Insurance Requirements for Airport, Airport Operations and FBOs
- Exhibit 9 — Insurance Requirements for the Use of UASs
- Exhibit 10 — Insurance Requirements for Chartering of Aircraft
- Exhibit 11 — Insurance Requirements for Marine Risks
- Exhibit 12 — Insurance Requirements for Rental of Facilities
- Exhibit 13 — Insurance Requirements for Instructors
- Exhibit 14 — Insurance Requirements for Bus and Transporation Contracts

Exhibits 1 and 2 are the broadest requirements. While Exhibit 1 can be used for tenant or supplier contracts, its requirements are broader than needed for such agreements. For example, the exhibit requires automobile insurance. Automobile insurance is not required in most tenant situations.

Exhibit 3 is identical to Exhibit 1 but deletes the automobile insurance requirement. It should be used for most tenant situations, provided the tenant does not use or commercially park vehicles on the leased premises.

Exhibit 4 is intended for contracts that involve only the purchase of equipment or supplies which do not require installation or maintenance by the vendor. It is identical to the first exhibit, except that both the auto insurance requirement and the workers' compensation insurance requirement are deleted.

If the activity or subject of the contract fits into more than one category, use the broadest applicable language. For example, if a vendor will also install or maintain the product or perform other services for your Entity, the vendor should be considered a contractor for the purpose of insurance requirements. Instead of using Exhibit 4, use the broader language of Exhibit 1 or 2.

Following are some guidelines for determining which set of specifications to use or if special language is needed.

TYPE OF ACTIVITY	*SPECIFICATIONS AND LIMITS*
Maintenance and services contracts, including most routine maintenance, janitorial service, movers, on-site equipment maintenance agreements, tow service, tree maintenance, firework exhibits, and other general services.	**Use Exhibit 1,** with a minimum limit of $2 million. If $1 million is used, request at least a $2 million aggregate limit. Remember to base the required limits on the amount of damage that may occur, not on the contract price.
Construction projects	**Use Exhibit 5.** Construction projects will usually require course of construction (builder's risk) property insurance. Major construction projects, especially those which involve many subcontractors, may call for special insurance requirements. See Chapter Three for a more complete discussion.
Professional services, including architects, engineers, consultants, counselors, medical professionals, hospitals, clinics, attorneys, and accountants.	**Use Exhibit 2**. Your Entity should require proof of professional liability insurance.
Environmental risks, including asbestos, hazardous chemicals or waste, and nuclear risks. *[**Reminder:** Your Entity is unlikely to have pollution coverage through its primary liability insurance or risk pool. If you don't transfer the risk, your Entity could be totally responsible for a loss.]*	**Use Exhibit 6. However, coverage specifications and limits should be developed to fit the circumstances of the situation.** Generally, limits should be no less than $2 million. Special insurance is available for hazardous activities, including nuclear risks, asbestos removal/containment or waste handling.
Aircraft, watercraft and airports operated under contract, including charter of aircraft or watercraft by your Entity or by another party in performance of work for your Entity. *[**Reminder**: Your entity's primary liability insurance or risk pool program probably does not cover aircraft or airports. If you don't transfer the risk, your Entity could be totally responsible for a loss.]*	See Exhibit 9 for Aviation exposures and Exhibit 11 for Marine exposures.
Leases for tenants and concessionaires including food and beverage concessions, gift shops, office space tenants, childcare centers, senior centers, and other space rental to lessees who have full-time or part-time employees.	Exhibit 3 can be used if no autos are used or commercially parked on the premises. If autos are used or parked, Exhibit 1 should be used. If the tenant's activities include valet parking, with or without a fee, or servicing of automobiles, Exhibit 1 may need to be supplemented by additional coverage called Garagekeeper's legal liability. The required limit for this coverage should be equal to the value of the maximum number of automobiles that may be in the tenant's custody.
Vendors, including vendors who supply equipment or other products to your Entity and who do not perform other functions, such as installation or maintenance.	Exhibit 4 may be used.
Space rental, including short-term space rental for special occasions to groups who have no employees, such as club functions, weddings, dances, picnics or social dinners, crafts exhibitions or classes, animal shows and recreational activities, including baseball and football.	Exhibit 12 may be used. *[**Reminder**: A special events policy is available to public entities. Contact your risk management department for details.]*
Transportation of Hazardous Materials	Exhibit 6 may be used.

PLEASE NOTE:

Non-insurance sections of the contract are also very important to the risk management process. At a minimum, always review the "scope of work" and "indemnification" sections of a contract. If the contractor's insurance does not cover all of their indemnity exposures under the contract, it is its responsibility to obtain the necessary coverages to satisfy its agreement with your Entity.

Always remember that insurance is only one way that the contractor can indemnify your Entity. There should always be a section in the contract that states that the lack of insurance does not negate the contractor's obligations under the contract. We recommend that the manual user consult with their Entity's attorney for specific language for this section's wording. Make sure your indemnity language is strong, and if the contractor does not carry sufficient or correct insurance to cover its obligations to your Entity, make certain it has assets to indemnify those uninsured or underinsured areas.

CASE STUDY
Texas Exxon Case

EXXONMOBIL CORPORATION, Petitioner, v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, and Starr Indemnity & Liability Insurance Company, Respondents No. 21-0936

ISSUE: Exxon hired a subcontractor that had employees severely burned. Exxon was sued seeking compensation for the injuries. Exxon required Additional Insured coverage from the subcontractor.

FINDINGS: The primary policies immediately paid in full but the excess policies totaling $25M in limit did not. The service agreement between the parties was ambiguous and did not clearly provide umbrella or excess coverage requirements.

DISCUSSION: Had the service agreement language clearly specified required limits being minimum and that the additional insured will have access to all available excess and umbrella limits as recommended in the IRIC manual, there would be no ambiguity and Exxon would have saved a 9-year legal battle as well as the millions of dollars spent pursuing the excess carriers for payment.

Sample Instructions for the Contractor, to be included as an attachment with the applicable Insurance Requirements

INSURANCE REQUIREMENTS INSTRUCTION FORM

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

Entity 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 Notice to Bidders regarding Indemnity and Insurance Requirements (may also be used with Purchase Orders)

SUMMARY OF INDEMNITY AND INSURANCE REQUIREMENTS

1. These are the Indemnity and Insurance Requirements for Contractors providing services or supplies to Name of Entity (Entity). By agreeing to perform the work or submitting a proposal, you verify that you comply with and agree to be bound by these requirements. If any additional Contract documents are executed, the actual Indemnity language and Insurance Requirements may include additional provisions as deemed appropriate by Entity, and if a conflict occurs, the broader requirements shall prevail.

2. You should check with your Insurance advisors to verify compliance and determine if additional coverage or limits may be needed to adequately insure your obligations under this agreement. These are the minimum required and do not in any way represent or imply that such coverage is sufficient to adequately cover the Contractor's liability under this agreement. The full coverage and limits of Insurance carried by or available to the Contractor shall be available to Entity and these Insurance Requirements shall not in any way act to reduce coverage that is broader or includes higher limits than those required. The Insurance obligations under this agreement shall be either: 1—all the Insurance coverage and limits carried by or available to the Contractor; or 2—the minimum Insurance requirements shown in this agreement; whichever is greater. Any Insurance proceeds in excess of the specified minimum limits and coverage required, which are applicable to a given loss, shall be available to Entity.

3. Self-insured retentions (SIRs) of the CGL and any policy, including Excess liability policies, must be disclosed to and approved in writing by the Entity and shall not reduce the limits of liability. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured and shall provide, or be endorsed to provide, that the SIR may be satisfied by either the Named Insured or the Entity. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or Subcontractor(s) who procured such Insurance and shall not apply to the Indemnified or Additional Insured Parties. Entity may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. All policies, including Excess policies, must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible.

4. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this agreement, then said policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the Insurance requirements stated in this document, including but not limited to the additional insured, SIR, and primary Insurance requirements stated therein. No Insurance policies maintained by the Indemnified parties or Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until all the Primary and Excess liability policies carried by or available to the Contractor are exhausted.

5. Contractor shall furnish the Entity with original Certificates of Insurance including all required amendatory and Additional Insured endorsements (or copies of the applicable policy language affecting coverage required by this clause) **and** a copy of the Declarations and Endorsements Pages of the policies listing all policy endorsements shown below under "ADDITIONAL ENDORSEMENTS REQUIRED" to Entity before work begins. Entity reserves the right to require full-certified copies of all Insurance policy coverage and endorsements.

6. The Contactor shall contractually require and verify that all Subcontractors maintain the same types and limits of insurance required of Contractor under this contract and meeting all the Indemnity and Insurance requirements applicable to their scope of work stated herein and provide proof of such upon request to the Entity. In connection with the subcontractors' commercial general liability insurance policies, Contractor shall also require its subcontractors provide endorsements (i) Naming Project owner as an additional insured (ii) Agreeing that the subcontractor's coverage shall be primary and shall not require contribution from Project owner's insurance or self-insurance program (iii) Waiver of subrogation rights in favor of Project owner.

I. INDEMNIFICATION:

COPY YOUR INDEMNITY REQUIREMENTS HERE – California Type 1, 2, 3, or Design Professional

II. INSURANCE COVERAGE AND LIMITS:

Liability coverage shall be at least as broad as Insurance Services Office (ISO) CGL Policy CG 00 01. No modifications or endorsements are allowed that would reduce, limit, restrict, or exclude coverage under the standard unmodified ISO CGL policy coverages. Minimum Coverage Requirements are:

COPY YOUR INSURANCE REQUIREMENTS HERE, including all Coverages and Limits required for your specific Contract as required based on the scope of work i.e., CGL, Professional Liability, perhaps Environmental Pollution Liability, as well as the usual Auto & Workers' Compensation coverage and liability and any Specialty Coverages necessary to cover the risks involved for the scope of work.

ADDITIONAL ENDORSEMENTS REQUIRED:

1. Waiver of Subrogation (Rights of Recovery) endorsement for Workers' Compensation.

2. Additional Insured Endorsement for "ongoing operations" at least as broad as ISO CG 2010 or 2016 Scheduled form, or Automatic form CG 2038.

3. Additional Insured Endorsement for "completed operations" at least as broad as ISO CG 2037 Scheduled form, or Automatic form CG 2040.

4. Primary & non-contributory coverage (at least as broad as ISO CG 20 01)

5. ALSO: A copy of the Declarations & Policy Endorsements pages for the CGL policy.

6. ALSO: A complete copy of all Excess or other Liability policies with all endorsements.

Failure to comply with these requirements shall be considered a material breach of contract.

I have read and understand the above requirements and agree to be bound by them for any work performed for the Entity.

Authorized Signature: _____ Date: _____

Printed Name: _____

Exhibit 1:
Insurance Requirements for Most Contracts
(Not for Construction Contracts)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL)**: Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation**: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)**: Insurance appropriates to the Contractor's profession, with limit no less than **$2,000,000** per occurrence or claim, **$2,000,000** aggregate. *(If applicable – see footnote next page)*

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or 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 Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 12 19 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance

and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained, and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause All documents are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Note to User: *Professional liability insurance coverage is normally required if the Contractor is providing a professional service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc.). However, other professional Contractors, such as computer or software designers, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk management or insurance advisors.*

Exhibit 2:
Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.

   (Not required if Consultant has no employees)
4. **Professional Liability** (Errors and Omissions) Insurance appropriates to the Consultant's profession, with limit no less than **$2,000,000** per occurrence or claim, **$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or 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 Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 12 19 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the

Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

The Consultant may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. The policies shall be provided on a true "following form" coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Consultant shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause All required documents are to be received and approved by the Entity before work commences. However, failure to obtain the documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that Entity is an additional insured on insurance required from subcontractors.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Exhibit 3:
Insurance Requirements for Lessees

(Not For Daily or Short-Term Rentals)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **$1,000,000** per accident for bodily injury or disease. (This applies to lessees with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out the lease of the subject property including damage caused in whole or in part by Lessee or by those working on your behalf. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance, at least as broad as ISO Form CG 20 11 12 19 or if not available, CG 20 43 12 19.

Primary Coverage

For any claims related to this contract, the **Lessee's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 12 19 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Legal Liability Coverage

The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property on all real

property being leased, including improvements and betterments owned by the Entity, and shall name the Entity as a Loss Payee.

Loss Payee Endorsement
Lessee's property and legal liability coverages required herein shall be endorsed to name Entity as a Loss Payee as to its interests in any covered property.

Interruption of Business Insurance
Lessee shall, at its sole cost and expense, maintain business interruption insurance by which the minimum monthly rent will be paid to Lessor for a period of up to one (1) year if the premises are destroyed or rendered inaccessible by a risk insured against by a policy of standard commercial special form or "all risk" property insurance.

Notice of Cancellation
Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation
Lessee hereby grants to Entity a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Entity by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers
Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Verification of Coverage

Lessee shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All required documents are to be received and approved by the Entity before lease commences. However, failure to obtain the documents prior to the lease beginning shall not waive the Lessee's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances
Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Exhibit 4:
Insurance Requirements for Vendors

Vendor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Entity. The cost of such insurance shall be borne by the Vendor.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) and include products coverage.

Minimum Limits of Insurance

Coverage shall be at least as broad as Insurance Services Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.

If the Vendor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or 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 Entity.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Vendor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Vendor including products sold and materials, parts, or equipment furnished in connection with such products, work, or operations. General liability coverage can be provided in the form of an endorsement to the Vendor's insurance at least as broad as ISO Form CG 20 15 12 19, or if not available, through the addition of **both** CG 20 10 or CG 20 26, **and** CG 20 37.

Primary Coverage

For any claims related to this contract, the **Vendor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 12 19 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Vendor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy
The Vendor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance.

Notice of Cancellation
Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Acceptability of Insurers
Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Verification of Coverage

Vendor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before contract inception. However, failure to obtain the required documents prior to inception shall not waive the Vendor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Waiver of Subrogation
Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

Special Risks or Circumstances
Entity reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Note to User: Vendor Exceptions

There are a number of organizations/companies that provide services to your agencies that will not have formal contracts in place. These include but are not limited to, United Parcel Service, Federal Express, United States Postal Service, and for hire interstate truck lines as examples. Although each of these companies may provide vendor services to you, you typically will not require formal contracts and will not require evidence of insurance. All of the companies listed above are required to be licensed under the Department of Transportation rules and regulations which also require specific limits of insurance.

CHAPTER THREE:
CONSTRUCTION & ENVIRONMENTAL SERVICES

SUMMARY

This chapter provides guidance for drafting insurance requirements for construction projects and environmental services.

Construction Contracts

Construction contracts are often the largest and most complex agreements that your organization will create, usually involving a formal and complex bidding process preceding the agreement. The potential for loss in construction related events can be devastating. The size and nature of most construction agreements give you a significant advantage in the negotiation process for requiring insurance. You need to carefully examine all of the exposures to risk in the construction agreement and then must require specific insurance for each exposure.

The discussion on construction agreements provides a baseline for the majority of agreements that will be created for your organization. Discussion on the specifics of the project should occur early on in the design process. This will better position your Entity to develop your insurance requirements and provide the bidding contractors with all of the requirements before the bids are submitted. It should be made clear during the pre-bid meetings that your Entity has exact insurance requirements and contractors should be encouraged to contact their brokers/carriers as they are developing their bids. Your Entity should precisely advise bidding contractors that you will not accept change orders that are based on insurance costs that were not appropriately considered.

Indemnification provisions within construction contracts are unique and should be reviewed carefully. Please see Appendix C for a more robust discussion on the scope of indemnity clauses within construction contracts.

What is a "Construction Contract"?

The reader needs to be aware that the term "construction contract" has specific meaning as it relates to public entities, and there are a number of requirements and restrictions that relate to risk transfer and management of such contracts. One significant restriction is the extent to which a public entity may be held harmless for damages arising from construction contracts, as more fully explained in Appendix C. For purposes of this section, we refer you to the following California Civil Code section defining these contracts as they relate to the indemnity restrictions:

> Civil Code §2783: As used in Sections **2782** and **2782.5**, "construction contract" is defined as any agreement or understanding, written or oral, respecting the construction, surveying, design, specifications, alteration, repair, improvement, maintenance, removal of or demolition of any building, highway, road, parking facility, bridge, railroad, airport, pier or dock, excavation or other structure, development or other improvement to real or personal property, or an agreement to perform any portion thereof or any act collateral thereto, or to perform any service reasonably related thereto, including, but not limited to, the erection of all structures or

performance of work in connection therewith, the rental of all equipment, all incidental transportation, crane and rigging service and other goods and services furnished in connection therewith.

Public Contract Codes

A discussion of various State Public Contract Codes is beyond the scope of this manual. However, the editors want to make the reader aware of certain common provisions, such as bonding requirements and written acknowledgement by the contractor of the requirement to provide workers' compensation or approved self-insurance, that impact the insurance requirements for construction projects. The reader who is regularly involved in managing the risks and/or insurance requirements for construction contracts should be familiar with their Code's terms and conditions related to their type of entity and their typical public contracts. The IRIC manual editors recommend that capital project agreements include specific language direction that any claims or change orders under the agreement shall be presented in writing, subject to a mediation process that includes requirements to "meet and confer" as well as mediation.

Unique Construction Contract Provisions

For purposes of this manual, we will provide an overview of insurance requirements that are generally unique to construction contracts, including issues you are likely to encounter in providing risk management oversight for them. These include:

- Surety Bonds;
- Builder's Risk or course of construction insurance;
- Consolidated insurance programs or wrap-ups;
- Higher Limits; and
- Extended Coverage/AI Status.

We conclude this section with a discussion of environmental services contracts and hazards, including remediation and waste hauling, with sample insurance specifications and forms for reference.

Surety Bonds

"Surety" is a three-party contract wherein a person or entity agrees to be responsible for the contractual obligations of another should those obligations not be met.

A surety bond is a contractual agreement under which the surety company guarantees the performance of certain obligations of the principal (contractor) for the benefit of another (entity). In public works contracts, for example, the surety company guarantees the completion of the construction project by the contractor for the benefit of the public entity.

The surety company stands behind the bonded contractor and guarantees the completion of the bonded work. In this way, the surety bond is a risk transfer technique similar to but different than insurance. A bond differs from insurance in two fundamental ways: (1) the number of parties to the contract, and (2) the surety's right of indemnity from the contractor, if they fail.

Insurance has two parties to the insuring contract: the insurer and the insured (policyholder). A bond, however, has three parties to the surety contract: the bonding company (surety aka

obligor), the entity being bonded (principal), and the entity who benefits in the event of a bonded default (obligee).

A surety company also has the right of indemnity from the principal. If a surety is called upon to make a payment on a bond because the principal failed to meet a bonded obligation to the obligee, the surety may recover the amount of loss from the principal (also referred to as the obligor).

Surety bonds are designed to help the obligee ensure that the contractor will complete the job in accordance with the contract. If a bonded contractor defaulted on any obligation of a bonded job, the surety may seek to recover any amounts it paid to the obligee (the Entity) from the principal (the bonded contractor). Thus, the bonded contractor has a punitive incentive through the legal constraints of the bond to complete the work expected by the obligee.

Further, surety companies carefully underwrite applicants for bonds by examining the contractor's managerial and financial ability to undertake and complete a job. Thus, the requirement for surety bonds also serves to eliminate truly unqualified contractors from the bid process.

All public works contracts should include a requirement that the contractor furnish contract bonds, but you may choose to exercise discretion for certain types of jobs that have inconsequential cost or risk of other harm should a contractor fail to complete the work.

The surety bonds related to public work contracts include Bid Bonds, Performance Bonds, Payment Bonds, and Completion Bonds. Collectively, they are referred to as Contract Bonds.

Bid Bond
A Bid Bond is a guarantee by the surety that the bidder for a public works contract will undertake the job at the quoted price and replace the bid bond with a performance bond.

Performance Bond
A Performance Bond is a guarantee that if the bonded contractor fails to complete the bonded job as quoted, the surety will assume the contractor's financial responsibility to have the work completed.

Payment Bond
A Payment Bond, or Labor and Material Bond, is a guarantee that the contractor will pay all the bills incurred on the work, as provided in the lien laws (subcontractors, suppliers, laborers).

Subdivision or Completion Bond
A Subdivision or Completion Bond is a type of performance bond that includes all the improvements to be made in a subdivision. The key difference is that the developer must pay the cost of building the improvements if the contractor fails to complete them, not the public agency. The owner/developer purchases the bond and serves as the principal, rather than the contractor, and is ultimately responsible if the contractor fails to complete the work.

The contractor should obtain Performance and Payment Bonds with penalties equal to one hundred percent (100%) of the contract price as determined from the prices in the bid form. The bond amount may be periodically adjusted as necessary to cover and satisfy all payment obligations arising from the contract.

The contractor should file the required bond with the public entity prior to or simultaneous with the execution of the contract.

Although bonds are most commonly used in construction agreements, there are other specific agreements where performance bonds may be used by your Entity. Purchase agreements for specific items such as software development or other products specifically engineered by the vendor may incorporate language requiring a performance/material bond.

Performance and Payments Bonds should be submitted on forms provided by the public entity. The surety should possess a minimum rating from A. M. Best Company of A:VII. Also, the surety or co-sureties should be listed as an acceptable surety on federal bonds by the United States Department of the Treasury, https://www.fiscal.treasury.gov/, subject to the maximum amount shown in the listing. If co-sureties are used, their bonds should be on a joint and several basis. In California, the only requirement by law is that the surety needs to be an admitted carrier with a valid surety license.

Builder's Risk Insurance (Course of Construction)

Insurance for property under construction is called "Builder's Risk" or "Course of Construction" insurance. This protects the interests of both the owner and contractor by covering property under construction as well as equipment and materials to be installed. Pricing takes into account changing values as construction nears completion.

Often, the contractor provides builder's risk insurance on construction projects as a part of their construction services. The recommended default position in the insurance specifications require the contractor to provide it to protect both their and your interest in property while in the course of construction. However, many public entities have Builder's Risk coverage as part of their own property policy, and many larger agencies, or those in large programs, may be able to obtain broader or less expensive coverage from their own insurer. For large projects it's worth having a conversation with your broker about this and perhaps having the contractor provide a bid with and without the Builder's Risk cover in order to compare terms and pricing.

Items to consider include:

- **Perils**
  Coverage should be written on an "all risk" (aka "Special" policy form) basis, and the perils of earthquake and flood should be **considered** for inclusion, but it can be problematic due to pricing considerations. In an "all risk" form, earthquake and flood are the major exclusions. Earthquake and flood coverage are normally optional based on the needs and location of the project. For example, earthquake and/or flood coverage must be included if a grant funding the project or financing arrangements (i.e., bonds) require it. In California, Public Contract Code §7105 limits the amount of coverage that can be required for an "Act of God" defined as earthquake or tsunami, so this code may need to be considered if earthquake or tsunami coverage is to be required.

- **Deductibles**
  Deductibles should be reasonable in relation to the financial ability of the parties and the size of the project. If your entity purchases the Builder's Risk Coverage, then you need to make clear who will be paying the deductible. Note that contractors typically purchase Builder's Risk coverage with relatively low deductibles, $5,000 to $25,000. If your entity decides to purchase the Builder's Risk coverage, then you need to clearly

state who is responsible for all or part of the deductible. The editors recommend that the contractor remain responsible for primary losses up to a specified amount so that contractor has an incentive to control and protect the job site.

- **Property Covered**
  At a minimum, the insurance should cover the full insurable value of the improvements. It may, at your Entity's option, also include consequential loss insurance, if your Entity could be harmed financially because of delay due to an insured loss. Coverage is available for both loss of revenue (rents or earnings) and for additional interest costs or expenses.

- **Loss Payee Status**
  Your Entity should be named in the policy as a Loss Payee, to protect your interests with respect to the repair or replacement of any damaged property or other amounts payable under the policy. Any payment will have to include your Entity as a payee or otherwise have your written authority to make payment to someone else. Since both your entity and the contractor have an interest in the property while it's being constructed, payment might also include the contractor and/or other party making repairs.

- **Valuation Basis**
  Coverage can be written based on the completed value of the project or by reporting changes in value on a monthly basis. Usually, the former method is preferred as it is less complex, and there is less of a chance of error resulting in inadequate insurance.

The editors recommend that the Entity request and retain a complete copy of the Builder's Risk policy. It is not necessary to provide sample endorsement or certificate forms in your specifications, but requirements for the coverage should be clearly stated in the bid documents.

Installation Floater
Insurance coverage for property (usually equipment) being installed by a contractor is called an "Installation Floater". Essentially, it is a specialized type of builder's risk coverage that is often written on the same form used to provide builders risk coverage, but for projects where no real property construction is taking place.

Consolidated Insurance Programs (Wrap-Ups)
Construction contracts may vary widely in scope and in degree of risk involved. Simple remodeling projects or building repairs can be addressed through the appropriate specifications as presented in **Exhibits 1 or 5.** Larger projects may require more sophisticated insurance techniques.

Large-scale construction projects involve numerous contractors, subcontractors, consultants, and other parties, all subject to a variety of risks arising out of the work. Because of the numerous parties involved, assuring adequate insurance protection for all concerned poses certain technical and logistical problems. An approach often advocated to deal with these complexities is called the Consolidated Insurance Program (CIP).

A CIP (often referred to as a "wrap up") usually involves procurement by the project owner (OCIP) or general contractor (CCIP) of certain insurance policies which protect both the project owner and various contractors and subcontractors involved in the construction. These

coverages may include general liability, professional liability, workers' compensation, umbrella liability, and builder's risk. The owner or general contractor arranges for safety and loss control services, if any, beyond those provided by the insurer. A CIP works best on large projects where there are a number of contractors, where the project is labor intensive, where construction takes place in a limited geographical area, and where the owner or general contractor is committed to safety and loss control, including top quality claims management.

While entire books can be written on the advantages and disadvantages of CIP's, theoretically, the CIP concept should provide for cost savings to the owner due to purchasing economies of scale, cash flow advantages from controlling premium payments, potential for dividend returns and potential for savings due to coordinated loss control. In practice however, a number of factors can reduce or eliminate these potential savings. Some of these factors may include:

- Insufficient contractor motivation to control losses.

  Many contractors do not realize that workers' compensation losses on a CIP project will affect the contractor's experience modifier. The contractor may therefore be more highly motivated to complete the project ahead of schedule or under budget than to pay attention to safety.

- Inclusion of contractor insurance charges.

  Depending on the competitive environment, contractors may include the cost of insurance in its bid pricing. Additionally, the contractor may feel compelled to charge for difference in conditions coverage to fill any gaps in the owner's insurance program as it applies to the contractor.

- Inclusion of non-project-related claims.

  If a contractor has employees assigned to the project who also work on other projects for the contractor, it is possible that workers' compensation claims not related to the project may show up on the owner's loss runs.

- Increased administrative costs.

  In order to obtain the cost-saving benefits, the owner of a CIP project must provide superior loss control services either through staff or contractors. Keeping track of various workers' compensation insurance policies and other paperwork adds administrative expense to the project.

To a certain extent, all of the above factors can be controlled. If properly administered, the CIP concept should generate cost savings, some of which may be realized by the project owner. Because of the variables cited above and other factors, precision in estimating savings usually is not possible.

Other than possible savings, a major incentive for using a CIP is to avoid the reduction in coverage for the Entity as an additional insured under the recent editions of the CG 20 10 and CG 20 37 endorsements. Additional reasons for using a CIP include better control of claims involving potential multiple defendants, and the comfort of knowing that adequate insurance is in place. Because there is a single policy for liability insurance, limits and breadth of coverage under a CIP are known and uniform, rather than a patchwork quilt of different insurance that might be purchased by the various contractors. A CIP eliminates much of the

need for establishing insurance specifications in each contract with each contractor, as the owner provides the insurance. Also, the paperwork burden of keeping up with certificates is greatly reduced.

Discussion of the New Updated ISO Wrap Up Exclusion:

ISO issued a new more limited Wrap Exclusion, CG 21 31 12 19, that provides a narrower exclusion, and therefore broader coverage, than the 25-year-old CG 21 54 1 96 for the ISO CGL policy.

The older version that has been used for years had ambiguous language that has been interpreted by some as very broad in excluding any coverage under the Contractor's ISO CGL policy for any Wrap program "in which you are involved", which could be mean you are involved in that Wrap program even if you are not enrolled in it, as is sometimes the case.

The newer exclusion applies "only if you are enrolled in a "controlled (wrap-up) insurance program"...

Furthermore, the Wrap exclusion does not apply if the wrap-up program "in which you are enrolled... has been cancelled, nonrenewed or otherwise no longer applies for reasons other than the exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable."

This more limited Wrap up exclusion would therefore seem to allow the CGL coverage from the Contractor's own insurance to apply in all Wrap projects except when the issues providing the need for coverage was other than the exhaustion of limits under the Wrap up policy – and even then the exclusion will apply only if the Contractor was actually enrolled in the Wrap up Insurance program.

It would therefore be prudent, and we are recommending that all Entities that provide a Wrap up policy for a particular project require that any participating contractors have a CGL policy that contains the following requirement:

"If any Wrap up exclusion is contained in the Contractor's CGL policy, such exclusion shall be no broader than ISO form CG 21 31 12 19."

Of course, it would be preferred to not have any Wrap up exclusion on their CGL policy as a requirement, or a custom negotiated Wrap up exclusion that is Excess of any liabilities not covered by the Wrap up project policy, but this has become very difficult to negotiate due to the nearly universal application of Wrap up exclusions.

Future revisions and case law litigation will clarify if this revised wording of the Exclusion for the Contractor's Wrap Up provides coverage for some of the gap coverage issues involved with Wrap Ups (other than the exhaustion of limits; or when not actually enrolled), such as...

1. Property Damage liability coverage for the Sub to the work of other Contractors?
2. Completed Operations coverage after the Wrap is cancelled, expired, or non-renewed?

3. Coverage for Construction Defects as well as Warranty, Maintenance, or Repair work done on a Wrap project in the future after the time period covered by the Wrap?
4. The Contractor's CGL coverage for Contractual liability for indemnification of the Owner/GC, including "Action over" litigation from a Contractor's employee when the Owner/GC is not considered to be the Employer who has protection from the "sole remedy" doctrine of Workers' Compensation and Employer's Liability?
5. "Off-site" Coverage, including Additional Insured Endorsements for the Project Owner?

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 21 31 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description And Location(s) Of Operation(s):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability:**

1. This insurance does not apply to "bodily injury" or "property damage":

a. Arising out of your ongoing operations; or

b. Included in the "products-completed operations hazard";

at the location(s) described in the Schedule of this endorsement, but only if you are enrolled in a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraphs **1.a.** and **1.b.** above at such location(s).

2. This exclusion applies whether or not the "controlled (wrap-up) insurance program":

a. Provides coverage identical to that provided by this Coverage Part; or

b. Has limits adequate to cover all claims.

3. However, this exclusion does not apply if the "controlled (wrap-up) insurance program" in which you are enrolled with respect to the "bodily injury" or "property damage" described in Paragraph **A.1.** above at the location(s) described in the Schedule of this endorsement has been cancelled, nonrenewed or otherwise no longer applies for reasons other than the exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

- **Other Provisions of the Construction Contract Insurance Requirements.**

  Limits: the recommended minimum limit for general liability is $5 million per occurrence. The higher limit is appropriate for general contractors on any new construction or major remodel projects. Subcontractors in areas of higher risk, such as electric, roofing, or plumbing work, should have limits above the standard minimum of $1 million (or $2 million as recommended in this IRIC). Please refer to the chart in

Appendix D, for a reference to suggested minimum limits for a variety of construction and other risks.

- **Extended Coverage and Additional Insured Status**
  For many types of construction projects, the reader is advised to consider requiring that the contractor maintain general liability coverage **and** maintain your entity's status as an additional insured for a period of time after completion. This is due to the fact that defects in construction may not become evident or cause damage for many years after completion, and you want to be certain the contractor has coverage naming you as an additional insured when that damage first occurs.

  For example, your entity hires a contractor to replace a sewer line. Four years later, neighboring homeowners file a claim alleging negligent construction of the line has caused their patios to shift and crack. The contractor's policy at the time the damages first began, say three years after construction and a heavy rain, is the first policy to respond to the loss. While your entity may be able to rely on the hold harmless agreement, and the contractor may have insurance at that time, you will not have the added protection of additional insured status.

  Note: For new and larger construction projects, requesting coverage for up to 5 to 7 years, or even longer, is recommended. The Instruction Form to be used for the insurance specifications has space for requesting coverage beyond the construction completion. As a minimum, and for smaller projects, your entity should request additional insured status until the expiration of the policy in force when the project is completed.

- **Design/Build Contracts**

➢ For contracts with construction risk, we have added coverage requirements for professional liability. The professional liability coverage is necessary for "design/build" contracts where the contractor is expected to provide engineering and architectural services. Effective January 1, 2018, California Civil Code §2782.9 was amended to protect design professionals from defense and indemnity obligations, except for claims caused by negligence, recklessness or willful misconduct by the design professional. For a more in-depth analysis, please refer to Appendix C.

Environmental Contractors and Consultants

Environmental issues are a concern and responsibility for municipal risk managers both as the owner of potentially contaminated property and as the jurisdiction responsible for the permit process. Entities are progressively recognizing their exposure as generators and transporters of hazardous materials and pollutants. Entities are involved in issuing easement permits for access to their property involving both groundwater and soil contamination testing and potential cleanup of pollution generators within their communities.

Exhibit 6 (at the end of the chapter) addresses the availability of coverage for the unique risks associated with environmental issues in today's insurance market. When testing and cleanup are either mandated or desired, a common public goal must be met. There are very few insurance companies underwriting these unusual risks, and they are reluctant to amend the

policy conditions. Careful research and compromise on the part of the risk manager is recommended.

Many times the standard insurance requirements as set forth in other sections of this manual may not be achievable for environmental contractors and/or consultants. An example is the issuance of encroachment permits relating to environmental work. Frequently contractors and consultants are not made aware of the Entity's requirements when responding to the private sector, and many times the contractor's insurance companies will not comply with standard requirements. Therefore, these standards must be flexible to allow for compliance by the few professional firms experienced in environmental testing and cleanup, since they will not typically be aware of your Entity's specific requirements until they have been hired by the private sector firm to conduct testing. Without preventing the needed testing or cleanup, the Entity must recognize how to transfer risk with the best protection for the Entity while still reaching the common goal.

Exhibit 6 contains insurance requirements appropriate for environmental contractors and/or consultants. If you cannot verify the A.M. Best rating of the insurance company, or if the coverage is written by a Risk Retention Group or captive insurance company, you may want to check with your insurance advisor for further information about the market.

It is fairly obvious that environmental remediation, asbestos abatement, and other hazardous material operations involve exposures that require pollution legal liability coverage, but some contracts have pollution exposures that are not in the primary scope of work. For example, materials recovery/recycling facilities are rife with hazardous materials exposures, as are landfill operations. Road construction can also include risks of contamination to waterways from runoff or accidents involving hazardous substances.

Note that pollution policies now come in many formats such as:

- First party clean-up of the insured's property
- Third party clean up and bodily injury if the insured's pollutants impact other properties
- Cost Cap coverage to protect the insured from cost overruns or surprises for cleanup of properties with known pollutants
- Landfill closure coverage – to comply with Federal financial responsibility requirements

The areas of coverage are as varied as the exposures and the pollution liability and clean up insurance market is now well developed to respond to the insured's needs – but for a price!

Note: Automobile, Contractors Pollution Liability, Asbestos Pollution, and/or Errors & Omissions insurance carriers may not name the Entity as additional insured. If the Entity cannot be named as additional insured, you should request a letter from the insurance company confirming their position.

Transporters of Hazardous Materials and Wastes

Entities are increasingly recognizing their exposure as generator and transporter of hazardous materials and pollutants. It is important to know that all motor carriers and drivers involved in transportation of hazardous materials must comply with requirements contained in federal and

state regulations and must apply for and obtain a hazardous materials transportation license. Additionally, transporters of hazardous wastes are required to carry the MCS-90.

The MCS-90 is a required endorsement to a business automobile policy for hazardous material/waste transporters. It originated in response to the Motor Carrier Act of 1980. Its purpose is to ensure that funds are available for damages arising from a trucking accident that involves hazardous materials. However, it only applies to vehicles subject to financial assurance requirements of the Act; that is, which are subject to Federal jurisdiction. It may not provide coverage in situations where substances are transported that do not specifically fall within the definitions contained in the Act.

The MCS-90 endorsement is limited coverage for transport and hauling and doesn't cover true pollution risks from operations involving the handling and disposal of hazardous materials. The editors of this manual recommend analysis of whether broader coverage is needed based on the contracted exposure.

What is a Hazardous Material?

The Clean Water Act (Federal) defines hazardous material as "any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant presence or potential hazard to human health and safety, or to the environment." Hazardous materials include, but are not limited to, hazardous substances and hazardous wastes. The Porter-Cologne Water Quality Control Act is the California version of the Clean Water Act and predates it.

A hazardous waste is a waste or combination of wastes that because of its quantity, concentration, or physical, chemical, or infectious characteristics may do either of the following:

- Cause or significantly contribute to an increase in serious irreversible illness or death; or
- Pose a substantial hazard to human health or the environment when improperly treated, stored, transported or disposed of.

A hazardous substance is any substance or chemical product for which any of the following applies:

- The substance is listed as hazardous by the US Department of Transportation;
- The substance is listed on the "Director's List of Hazardous Substances," which is maintained by Cal/OSHA;
- The substance is listed as radioactive by the Nuclear Regulatory Commission; or
- The manufacturer or producer is required to prepare a Safety Data Sheet (SDS) for the substance.

Even if a contract does not involve hauling waste which is statutorily defined as hazardous, the Entity may consider the waste a hazard and should be requiring ISO Form CA 99 48 03 06 – Pollution Liability – Broadened Coverage for Covered Autos. This form should be required of municipal solid waste haulers, construction debris roll off services and haulers of other items which may be caustic but not defined as falling within the statute.

Exhibit 6 contains insurance requirements appropriate for environmental contractors and/or consultants. These same insurance requirements are appropriate for transporters of hazardous wastes.

Owners and Contractors Protective (OCP) Coverage

An Owners and Contractors Protective (OCP) policy covers the vicarious liability of the named insured (the Owner or Contractor) for the designated contractor's operations and the named insured's general supervision of those operations.

Although Project Owners and Contractors have some liability coverage for these acts within their CGL policies, the goal of this policy is to transfer the risk to the Contractor performing the operations. This is usually done by means of the indemnity agreement in the contract, as well as an Additional Insured Endorsement with the downstream Contractor. These are discussed in detail elsewhere in this manual.

The OCP policy is purchased by the contractor as an alternate method to the Additional Insured Endorsement by providing direct coverage for the benefit of the upstream party that requires it.

There are two significant exclusions in the OCP policy—the completed operations exclusion and the "acts or omissions of the insured" exclusion for anything other than the "general supervision" of the designated contractor's work. "General supervision" examples are negligent failure to provide the independent contractor's employee with a safe workplace; to make "reasonable inspection" of the work site; to take "reasonable precautions" and safeguards to protect contractors' employees; and requiring work to be done on equipment so situated that a great risk of injury existed. "General supervision" is usually understood to include coverage for an "action over" lawsuit alleging an unsafe workplace from the Contractor's employee.

The primary advantages of OCP coverage over additional insured status are a separate set of limits; guaranteed notice of cancellation; and the avoidance of conflicting "other insurance" provisions due to its specific application as a primary policy.

The primary disadvantages of OCP coverage are the exclusions stated above, especially in construction where there is a significant Completed Operations exposure.

With the common usage of Additional Insured Endorsements, the use of OCP policies has become relatively rare.

Railroad Protective Liability

Railroad protective liability (RPL) is coverage protecting a railroad company from liability it may incur because of work done on or near the railroad's right-of-way by hired contractors and/or third parties. Commonly, the proximity of the RPL applies to premises and operations coverage within 50 feet of the railroad's owned property and otherwise on railroad worksites. Coverage for work within 50 feet of the railroad's property is excluded in a normal general liability policy and therefore requires Railroad Protective Liability coverage be purchased. Importantly, contractors should note that this coverage does not protect their work or

employees, but rather only shield the railroad from liability and thus, often includes various hold-harmless and indemnity language. Because RPL policies are premises-operations based, they are often required by owners of projects associated with railroads. RPL policies are project specific and apply to bodily injury and property damage.

- **Coverages**
  RPL's are similar to previously discussed OCP policies but are broadened to cover the railroad's acts or omissions resulting in damages, as opposed to the OCP which limits coverage to vicarious liability of those as named insureds. Another key difference is the RPL policy covers bodily injury or property damage caused by or due to the railroad. However, the policy only covers those damages that resulted from work related to or in connection with the work performed by contractors or subcontractors within the scope of the policy. It is important that your Entity makes certain the job location and description of work or services tendered is specifically documented – brevity is strongly discouraged. *See CG 34 17*.

  In addition to railyards and tracks, which are obvious, railroad property coverage commonly includes buildings and signs, equipment breakdowns, loss of income, and post-accident cleanup.

- **Physical Damage**
  The RPL applies to physical damage to property owned, leased or otherwise in possession of the insured per a contractual agreement. This language is broader than standard ISO forms. The most important difference pertaining to railway operations is the clearly-applied legal difference between buildings and structures. Case law holds that structures are defined broader than buildings. Simply put, all buildings are structures, but not all structures are buildings. Thus, any physical damage to a structure that is not defined as a building would not be covered until standard RPL policies. For more complete reference, see *Katsoff v. Lucertini, 103 A.2d 812 (CT 1954)*.

  Other risks include physical damage to tools, property, equipment, and items lost in transit.

- **Limits**
  The Railroad will determine the limit required; however, low risk jobs' RPL policies commonly require coverage limits of $2 million per occurrence and $2 million aggregate. Low risk jobs do not pose inherent risks nor the potential for interference to railway operations or tracks. High hazard jobs are typically excluded in CGL policies – so your RPL is designed to fill this void. Despite the fear or apprehension contained within the name, high risk jobs are those pertaining to work along rail corridors or otherwise within 50 feet of railroad property. These jobs typically require limits of $10 million per occurrence and $10 million aggregate.

- **Who Should Buy RPL**
  RPL coverage should be required for those contracted to perform any work for or around railroad owned property. Additionally, those engaged as lessors and lessees of railcars, as well as suppliers, short-line and/or regional railway operators, rail service companies, tourist and excursion railway operations, manufacturers, track owners, light-rail and urban transit services, and those engaged in rail freight.

Contractors looking for a Railroad Protective Liability market can quickly and easily access one at www.railroadprotectivesolutions.com by clicking on "click here" if you are a contractor.

Agents or Brokers looking for a Railroad Protective Liability market quickly and easily access one at the link above and clicking on "click here" if you are an agent or broker.

Limits up to $25,000,000 can be purchased through this program.

- **ISO Forms**
  There are four primary ISO forms that apply to railroad liability: CG 00 35, CG 22 27 CG 24 17, and CG 24 27.
  - CG 00 35 – Railroad Protective Liability Coverage Form

    Much of this form has been discussed above, but it is certainly worth referencing, along with your insurance broker, prior to signing off on any railroad related projects.
  - CG 22 27 – Exclusion – Bodily Injury to Railroad Passengers

    Depending on the scope of services sought and/or offered, this form can have significant impacts on liability coverage should any passenger-related accident occur.
  - CG 24 17 – Contractual Liability – Railroads

    This GL endorsement was referenced above. Your Entity will want to be as thorough as possible when describing the scheduled railroad project and designated job site, because default interpretation will rely solely on your policy's declarations page.
  - CG 24 27 – Limited Contractual Liability - Railroads

    This covers not only the railroad's own negligent acts or omissions, but the updated version limits injury or damages caused by the contractor or its agents.

Exhibit 5:
Insurance Requirements for Construction Contracts

Contractor shall procure and maintain for the duration of the contract, *and for x years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **$1,000,000** per accident for bodily injury or disease.
4. **Builder's Risk** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Professional Liability** (if Design/Build), with limits no less than **$2,000,000** per occurrence or claim, and **$2,000,000** policy aggregate.
7. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **$1,000,000** per occurrence or claim, and **$2,000,000** policy aggregate.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or 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 Entity.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity. The CGL and any policies,

including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds $25,000 [fill in the amount for your comfort level for the specific Contractor and job – it could be much higher, or in the case of a very small Contractor, you might want it lower] unless approved in writing by Entity. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. Entity may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. Entity reserves the right to obtain a copy of any policies and endorsements for verification.

NOTE to Agencies: If the SIR is not paid, there is NO COVERAGE for the Insured or you as the Additional Insured or Indemnified Party. Since there is usually a requirement in the SIR provisions on the Contractor's policy that the Named Insured Contractor (not the Agency as an Additional Insured) is the only party allowed to make the payment of the SIR

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the Entity as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the Entity, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building,

structure, machinery, or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the Entity's site.

Claims Made Policies – (If at all possible avoid and require occurrence type CGL policies)
If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Entity for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Umbrella or Excess Policies
The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

> *NOTE to Agencies: Please see the section on The Myth of "Following Form" Excess Limits Insurance Policies in chapter 2 for additional explanatory information on this very common Excess policy problem that needs to be verified and corrected.*

Acceptability of Insurers
Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the Entity.

Waiver of Subrogation
Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the Entity for all work performed by the

Contractor, its employees, agents and subcontractors. This provision applies regardless of whether or not an endorsement has been issued.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond
4. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Exhibit 6:
Insurance Requirements for Environmental Contractors and/or Consultants

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees, or subcontractors. With respect to General Liability, Errors & Omissions, Contractors Pollution Liability, and/or Asbestos Pollution Liability, coverage should be maintained for a minimum of five (5) years after contract completion.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.
4. **Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions** applicable to the work being performed, with a limit no less than **$2,000,000** per claim or occurrence and **$2,000,000** aggregate per policy period of one year.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or 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 Entity.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds $25,000 [fill in the amount for your comfort level for the specific Contractor and job – it could be much higher, or in the case of a very small Contractor, you might want it lower] unless approved in writing by Entity. Any and all deductibles and SIRs

shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. Entity may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. Entity reserves the right to obtain a copy of any policies and endorsements for verification.

NOTE to Agencies: If the SIR is not paid, there is NO COVERAGE for the Insured or you as the Additional Insured or Indemnified Party. Since there is usually a requirement in the SIR provisions on the Contractor's policy that the Named Insured Contractor (not the Agency as an Additional Insured) is the only party allowed to make the payment of the SIR

Other Insurance Provisions

A. The General Liability, Automobile Liability, Contractors Pollution Liability, and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:

   1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

   2. For any claims related to this project, **the Contractor's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

   3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

B. The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Contractor pursuant to the contract. This coverage may also be provided on the Contractors Pollution Liability policy.

C. If General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:

   1. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.

   2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Entity for review.
5. If the services involve lead-based paint or asbestos identification / remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification / remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

> *NOTE to Agencies: Please see the section on The Myth of "Following Form" Excess Limits Insurance Policies in chapter 2 for additional explanatory information on this very common Excess policy problem that needs to be verified and corrected.*

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII if admitted in the State of California.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this

waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Contractor, its employees, agents, and subcontractors.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Sample Forms: Surety Bonds

Performance Bond

BOND NO. _____
PREMIUM: _____

WHEREAS, The _____, (hereinafter designated as "Obligee") and _____ (hereinafter designated as "Principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____ , and identified as project _____ is hereby referred to and made a part hereof; and

WHEREAS, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement;

NOW, THEREFORE, We, the principal and _____ as surety, are held and firmly bound unto the hereinafter called "The Obligee," in the penal sum of _____ dollars ($ _____) lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally firmly by these presents.

The condition of this obligation is such that if the above bound principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and perform and at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Obligee, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specification accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named, on

By _____
PRINCIPAL
By:_____
PRINCIPAL
By: _____
ATTORNEY-IN-FACT

Payment (Labor & Materials) Bond

BOND NO._____

KNOW ALL MEN/WOMEN BY THESE PRESENT that we,_____ as Principal (also referred to herein as "CONTRACTOR"), and _____ as Surety, are held and firmly bound unto _____, hereinafter called "OWNER," in the sum of _____Dollars ($_____), for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

The condition of the above obligation is such that, whereas said Principal has been awarded and is about to enter into the annexed Contract for the _____ [NAME OF PROJECT], in accordance with OWNER's Call for Bids documents and Principal's Bid Dated _____, and to which reference is hereby made for all particulars, and is required by said "OWNER" to give this bond in connection with the execution of said Contract;

NOW, THEREFORE, if said CONTRACTOR, its Subcontractors, its heirs, executors, administrators, successors, or assigns, shall fail to pay (a) for any materials, provisions, equipment, or other supplies used in, upon, for or about the performance of the WORK contracted to be done under the Contract, or (b) for any work or labor thereon of any kind contracted to be done under the Contract, or (c) for amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the Contract, or (d) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the CONTRACTOR and its Subcontractors under Section 13020 of the Unemployment Insurance Code with respect to such work and labor, in each case, as required by the provisions of Sections 9550-9566 inclusive, of the Civil Code of the State of California and acts amendatory thereof, and sections of other codes of the State of California referred to therein and acts amendatory thereof, and provided that the persons, companies, corporations or other entities so furnishing said materials, provisions, provender, equipment, or other supplies, appliances, or power used in, upon, for, or about performance of the Work contracted to be executed or performed, or any person, company, corporation or entity renting or hiring implements or machinery or power for or contributing to said Work to be done, or any person who performs work or labor upon the same, or any person, company, corporation or entity who supplies both work and materials therefor, shall have complied with the provisions of said laws, then said Surety will pay in full the same in an amount not exceeding the sum hereinabove set forth and also will pay, in case suit is brought upon this bond, a reasonable attorney's fee, as shall be fixed by the Court. This bond shall inure to the benefit of any and all persons named in Section 9100 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

PROVIDED, that any alterations in the WORK to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of said Contract Documents, shall not in any way release said CONTRACTOR or said Surety thereunder, nor

shall any extensions of time granted under the provisions of said Contract Documents release either said CONTRACTOR or said Surety, and notice of such alterations or extensions of the Agreement is hereby waived by said Surety.

IN WITNESS WHEREOF, the Principal and the Surety have executed this instrument in duplicate this _____ day of _____, 20_____.

_____	_____
Surety	Principal
By: _____	By: _____
_____	_____
Print Name/Title	Print Name/Title
_____	_____
Address	Address
(_____)_____	(_____)_____
Telephone Number	Telephone Number
_____	_____
Email Address	Email Address

NOTARIAL CERTIFICATE OF ATTORNEY IN FACT AND SEAL OF SURETY MUST BE ATTACHED.

CHAPTER FOUR:
AGREEMENTS INCLUDING CYBER RISKS

SUMMARY

Collectively called "Cyber Risk" these exposures are rapidly expanding and changing as we become more reliant upon technology and insurers respond to emerging statutes, regulations, and case law. In an era of accelerated mass digitization there is no longer a question of "will" my Entity be breached, rather, "when" and what can we do now to prepare? In the following section, we will address some of the implications of privacy laws and what your Entity can do to mitigate risk from both a contract and internal policy & procedure perspective.

New Information:

The landscape of coverage questions related to cyber liability and intellectual property liability are becoming further complicated by developments in artificial intelligence (AI) and especially Generative AI. First some definitions will be useful:

- Artificial Intelligence (AI) serves as a general reference for software that analyzes data and organizes data for decision-making by humans.
- Generative AI (gen AI) creates new content such as documents, music or images

Insurers have defined in the CGL form "Who is an insured" and the persons described do not include the ghost in the machine. Insurers are becoming increasingly concerned about liability arising from Generative AI and Verisk has responded by publishing a new ISO Exclusion CG 40 47 – Generative Artificial Intelligence. There are also the new CG 40 48 and CG 35 08 exclusions. These exclusions are intended to eliminate coverage for claims arising from gen AI which is defined:

"Generative artificial intelligence" means a machine-based learning system or model that is trained on data with the ability to create content or responses, including but not limited to text, images, audio, video or code.

So what does all this mean to the covered Entity or its contractors?

For the covered Entity, the IRIC authors believe that coverage analysis will need to be performed on the Entity's utilization of gen AI software and the Entity's insurance coverage programs. The authors suspect that the providers of gen AI software products will exclude all liability arising from how the products are deployed. Entities will need to have policies, procedures and audit processes to reduce the opportunity for generative AI utilization to result in claims. A significant set of exposures to be addressed such as infringement of intellectual property rights utilizing results of gen AI. As to the Entity's traditional insurance coverage, we expect that most policies will add the gen AI exclusions in the near future, just as cyber

exclusions became common over the past decade. For entities covered under pooling organizations, the authors expect pools to address the exposure directly. It's likely that the available coverage for gen AI will be a lower limit, similar to the Cyber coverage or perhaps as a part of the Cyber coverage.

For the Entity's contractors, the IRIC authors believe that it will become necessary for the Entity to perform an analysis of the services and products to be provided by the contractor to determine the exposure to gen AI. For a straight construction contract, it would appear no gen AI exposure would exist at this time. For a customer service or media contractor, likely a policy including intellectual property coverages and related professional liability coverage will be necessary. It appears this will be a case-by-case basis until a settled pattern emerges. Perhaps your Entity's AI assistant can lessen the burden!

Real life examples of potential coverage issues through the use of generative AI:

- A lawyer uses ChatGPT to write legal briefs. They reference cases that do not exist.
- An airline's chatbot tells a customer that they qualify for a discount when they in fact do not.
- AI used to screen job applicants uses age as a selection criteria.

Cyber Risks & Electronic Data Processing (EDP)

The risks associated with IT products and services is ever-evolving and increasing which means serious attention needs to be paid to the contract wording along with the insurance requirements. The ability to transfer these risks to traditional insurance or look to typical contractual indemnity **is severely limited due to the complexity of these risks.**

Cyber risks and the related management techniques can be broken down into first party risks, related to damages directly to an entity's own systems or data, and third-party risks related to liability to others for breaches of security that may lead to loss of privacy or potential for identity theft for which the Entity may be responsible. There is no approved standard for cyber liability policies and the coverage and terms **vary significantly between policies**. It's important to review the coverage you have in place closely with your broker and legal counsel to ensure the coverage will respond the way you expect it to.

Many vendor's services require access your data, and contracts oftentimes do not clearly define the responsibilities and obligations of the vendor when doing so. With clearly defined privacy and data security provisions in vendor contracts, your organization can ensure that vendors have a responsibility to protect your data and there is an adequate remedy if they fail to honor that duty. Also, **discussing these provisions during contract negotiations may provide valuable insight** on the maturity of a vendor's information security posture.

To include or not to include Technology Professional Liability (Tech E&O)? Third party vendors, services, consultants, and advisors may perform a wide variety of services for the entity. Organizations that provide technology services or technology products for compensation may have professional liability known as "Technology (or IT) Professional Liability". The agency may have vicarious liability for the work performed by the vendor/consultant. In other words, when any technology services or technology products for compensation is provided as a service for the entity by a vendor, the exposure is referred to as

"Technology Professional Liability." See following **Exhibit 7** for sample contract language relating to Tech E&O.

It can be a bit confusing to determine whether Tech E&O coverage is necessary for agreements in addition to standard Cyber Liability. A good rule of thumb is that Cyber Liability is meant to protect systems and data. It's third-party liability coverages tend to deal with mishandling data. On the other hand, tech E&O deals specifically with technology services and products. For example, when contracting with a law firm, it is likely appropriate to request evidence of cyber liability coverage. When contracting with a cyber security firm, it would be more appropriate to request evidence of cyber liability as well as Tech E&O.

When evaluating your own cyber liability coverage, a good barometer would be "Do I have first party coverages?" These are the ones that would come into play during a ransomware event, such as Cyber Extortion, Data Recovery Costs, and Business Interruption Loss. If you are unable to acquire these coverages on your cyber liability policy, it is likely that underwriters have issues with your entity's cyber security posture. Dependent Business Interruption has also come into focus recently due to the widespread effects of the July 2024 CrowdStrike event. It is important to note when negotiating contracts that a contractor's cyber insurance policy will not indemnify your entity for these first party liability coverages. Underwriters will only afford these coverages to the specific entities that they are underwriting.

Unfortunately, it is difficult, if not impossible, to apply the same privacy and data security provisions to every contract. It is important for your organization to determine the **types of data to be accessed by the vendor, and what they will be doing with it**. The answers to those questions will determine what provisions are necessary and how far you can "bend" before looking elsewhere. This guide will discuss certain privacy and data security provisions for your organization to consider when negotiating contracts with vendors that access or process your data.

For purposes of drafting hold harmless language and insurance requirements for contracts with third parties who may provide cyber and tech services, including data processing services to your entity, the reader is advised to work closely with his or her legal, technical, and insurance advisors to ensure the broadest possible indemnity, not limited to bodily injury or property damage but should specifically include wording that encompasses cyber-related risks that include theft, loss or misuse of data, release of private information and responsibility for costs, fines and penalties that the entity might incur. Beyond that, questions should be asked about the contractor's data security procedures, including whether or not they have been audited to industry standards regarding their controls over information technology and related processes. In drafting the agreement the following points should be taken into consideration:

1. Essential Privacy and Security Terms

Every contract with privacy and data security implications should contain certain defined terms. Organizations should push for definitions that align with the business objectives of the contract and encompass all data accessed or processed by the vendor.

a. **Personal Information** – Properly defining this term will ensure the vendor's duties align with the organization's obligation to protect personal information under state, federal and international law.

i. If a vendor accesses, stores, or processes any personal information, such as personally identifiable information ("PII"), protected health information ("PHI"), or payment card information ("PCI"), include these items in the definition to ensure it is specifically protected.

2. Confidentiality

Standard contract language is often too narrow or omits provisions of confidentiality for information that is protected under state and federal law, which can result in disputes if it is unclear whether information that has been breached falls under the contract. Specifically, we recommend that you think through the following:

a) Make sure that the definition of Confidential Information is broad and applies to the relevant data or intellectual property the vendor collects, stores, or processes on your behalf. If the vendor collects any personal information, protected health information ("PHI"), or payment card information (PCI), include these items in the definition of confidential information to ensure confidential treatment of the same.
   i. Suggested: Vendor shall encrypt Highly-Sensitive Personal Information at rest and in transit
   ii. Suggested: If Vendor handles payment-card data, Vendor shall maintain compliance with PCI DSS and assume all associated costs.

b) If your organization is providing credentials to the vendor to access your network or systems, make sure that such credentials are deemed confidential information.

c) Require access to confidential information only on a "need to know" basis.

d) Require vendor to enter into similar confidentiality agreements with staff, third parties, and subcontractors who may have access to confidential information.

3. Data Protection Provisions

Clear and specific data protection provisions will allow your organization to limit its exposure due to a vendor's failure to employ standard security practices. The data protection provisions should apply to all vendor personnel, including contractors and subcontractors with access to data. Depending on the relationship, you may want to require that all vendor personnel agree to the data protection provisions in writing.

a. **Standard of Care** – It is important to establish a baseline standard of care for vendors to employ when accessing or processing your organization's information. Minimally, vendors should be expected to use the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of your information as it uses to protects its own, including standard anti-virus/malware deployment.

b. **Information Security Program –** Consider requiring your vendor to have a written information security program in place.
   i. Entities that store or maintain PII, PCI, or PHI are required to implement reasonable security to safeguard information in their care. Vendors that do not

have a written information security program or resist a contractual agreement requiring one, should be viewed sceptically.

ii. Consider requiring vendors of all sizes to conduct periodic penetration testing and/or risk assessments. Although not a requirement, periodic testing and risk assessment is a sign of information security maturity.

i. Suggested: Vendor shall fully cooperate with the Entity's investigation, providing access to personnel, systems, logs, and reports, and preserving evidence.

ii. Suggested: The Entity retains the right to determine the content, timing, and recipients of any external notifications except where disclosure is legally required.

c. **Notification of an Information Security Incident** – It is important that the contract require prompt notification in the event of an information security incident involving your data. However, consider the timing and how quickly you will want to be notified.

i. Faster is not always better. Forensic investigations take time to understand the full scope of the incident and identify potentially affected individuals. Most legal notification deadlines start from when you are notified by the vendor. If the vendor notifies you immediately, the clock will start running before the vendor has completed their investigation, further reducing the amount of time you have to notify affected individuals. Consider discussing these timing considerations with your legal counsel to find what works best for your organization.

ii. Consider requiring the vendor to notify your organization of actual or suspected use, disclosure, or acquisition of your data by an unauthorized actor.

1. The vendor may attempt to limit notice obligation only to "actual" incidents instead of encompassing "alleged" incidents – make sure you include language requiring notification for alleged as well.

d. **Incident-Related Costs** – In the event that an incident occurred due to a failure of the vendor to secure your organization's data, consider shifting your costs associated with investigating, addressing, and responding to an incident to the vendor. The threat of exposure to these costs may provide the vendor additional incentive to keep your data secure.

i. Suggested: Where the incident results from Vendor's acts or omissions, Vendor shall reimburse the Entity's reasonable costs of response and remediation, including notifications, call center, credit monitoring, and regulator communications.

4. Compliance with Privacy Laws

It may be helpful to set out the privacy laws that your organization expects its vendors to comply with. Here are some laws to consider depending on your industry and states where your data subjects reside:

i. GLBA (financial), FCRA (consumer reports / HR data), CAN-SPAM (marketing)
ii. PCI DSS – if handling payment card data
iii. GDPR
iv. HIPAA – if handling medical records or health information
v. FERPA – if handling student data
vi. CCPA/CCPR or its equivalent
vii. DSL (Data Security Law) and PIPL (Personal Information Protection Law) for entities whose operations touch China
viii. Certain states impose minimum security requirements (e.g. California, Illinois, Massachusetts, and New York)

5. Access to Systems

The principle of least privilege – only permitting a user to access data or systems that is necessary to perform their duties – is an important data risk management tool for organizations of all sizes. This principle can also be applied to vendors to help limit your exposure in the event of a data security incident. Your organization should consider defining **where your data can be stored and what happens after the vendor no longer needs access**.

a. **Restrictions** – Depending on the scope of engagement, you may consider the following restrictions for vendors who access or process your data:
   i. Domestic Operations: No access or transfer of data to/from outside of the United States (domestic operations); international operations should be subject to the appropriate legal instrument(s) governing access or transfer.
   ii. No modifications to company data.
   iii. No unauthorized access.
   iv. Restrict access to those who "need to know" in order to perform services under the agreement.
   v. Require vendors to **terminate credentials** of an employee who no longer needs access to your systems to perform their duties. Credential management is a best practice to help limit activity by disgruntled individuals or malicious actors.
b. **Data Storage** – Limiting the data that can be stored outside on your enterprise is an important data loss prevention tool. Consider the following:
   i. Limit the data that can be stored outside of your environment to that necessary for a vendor to perform services and authorized by your organization.
   ii. Do not permit the storage of company data on vendor mobile/removable devices (e.g. laptops, USB drives, or removable) except for **limited purpose and duration**.
c. **Data Destruction** – Consider requiring that vendors to destroy or securely return your data upon termination or expiration of the engagement.
   i. Suggested: Upon termination or upon request, Vendor shall promptly return all Entity data or securely destroy it and shall certify destruction in writing.

Any legally retained backups remain subject to this Agreement and may not be used for any other purpose.

6. Audit Rights

Trust, but verify. Depending on the size and nature of your contract, consider requiring vendors to submit to information security audits or questionnaires to ensure compliance with the requirements of the agreement. Below are a few audit considerations for your organization when negotiating vendor contracts.

a. Determine who will conduct the audit – vendor, third-party, or resources at your organization.
b. Decide on the scope and frequency of the audit as determined by the size and information accessed by the vendor.
    i. The less onerous the audit measure, the more frequently it can be requested.
        1. Penetration testing – monthly
        2. Risk Assessments – quarterly
        3. Full SOC 2, Type II, or ISO 27001 certification – yearly

7. Indemnification and Limitation of Liability

Standard limitations on liability are too low to cover the costs related to a breach as breaches often expose companies to significantly high costs for remediation and legal fees. If the vendor had more control over the factors giving rise to a particular risk, the vendor should bear more responsibility if such risk materializes and results in damages to your company.

a. **Security breaches** – Where the vendor is responsible, include indemnity language for liability for security breaches and failure to timely notify thereof to vendor; indemnity should cover any breach of confidentiality and security obligations. Depending on who the laws see as the original data owner, you may still have liability and may need to file suit against the vendor to draw upon their insurance policy, should the contractual language not fully indemnify you. You should not only require that the vendor indemnify you, but also that the vendor cooperate with any pending litigation or investigation in connection with security incident.
    i. Suggested: Because a Security Breach may cause irreparable harm, the Entity is entitled to equitable relief (injunction or specific performance) in addition to other remedies.

b. **Carve-outs:**
    i. Insist on exceptions to a limitation of liability cap in instances of gross negligence, wilful misconduct, or fraud and in cases of third-party claims.
    ii. Limitation of liability provisions should not disclaim the costs of termination and any additional costs you may incur to obtain alternative functionality as promised in the original contract that vendor failed to deliver.
    iii. Exclude breach of confidentiality, data security, notification, and data privacy obligations from the limitation of liability provision to the greatest extent

possible. If vendor will not exclude such claims, attempt to negotiate a separate liability cap.

c. **Remedies** – Limitation of liability provisions should address specific remedies in the event of a breach, including liquidated damages, the right to seek injunctive relief, the right to terminate, credit for not meeting service levels, the release of materials from escrow, breach notification reimbursement, special damages for epidemic failure, etc.

d. **Impact on Insurance** – If you agree to indemnify vendor against third-party claims, consult with your insurance broker to make sure your policy covers the claims and to understand the potential impact of such indemnification language on coverage in general.

8. Warranties

Vendors tend to disclaim all warranties unless specifically stated otherwise. It is therefore crucial to include affirmative, express warranties regarding security. Warranties should be tailored to match the specific services rendered.

a. Require vendor to provide warranties of adequate internal security standards and any such standard that specifically relate to the product acquired or services rendered.

b. Require vendor to give ample prior notice of any material changes to the deliverables that could adversely affect security and/or data integrity.

c. Vendor should represent that any work product should be free and clear of viruses.

d. Vendor should provide proper documentation and/or user manuals describing the deliverable and technical specifications. Work product and all related equipment, software and systems should conform with such documentation.

9. Termination

The ability to terminate an agreement with a vendor who did not adhere to certain security standards or suffered a breach is essential to the protection of your data. Even if a breach was not involved, the termination of a contract may present additional risk to your company because the vendor **may no longer be under any duty to protect your confidential information.** Consider the following to award your data maximum protection and to transition the engagement to another provider swiftly and effectively:

a. **Termination due to a security failure** – If termination for convenience cannot be agreed upon, reserve the right to terminate if vendor fails to comply with its security representations and obligations under the agreement (those do not have to amount to a full-blown breach).
b. **Return of materials upon termination** – Vendor should return or destroy all data and materials provided to vendor or created by vendor during the engagement. Server access to any systems post-termination should be provided for.
c. **Transition Assistance** – Require assistance if data or materials need to be transferred to a subsequent service provider.
d. **No data "Lockout"** – Vendor should return data and materials regardless of any other open items and payment obligations; data should not be held "hostage."
e. Suggested: The Entity may terminate immediately for any Security Breach or non-compliance with the security obligations in this Chapter or the Agreement. Vendor shall cooperate with secure transition of data to replacement providers at no cost.

10. Subcontractors and liability for third parties

When engaging a vendor who may use subcontractors to provide the contracted services, your main objective is to hold the vendor to the same performance standards and liabilities regardless of who performs the work. Therefore, the vendor should require any subcontractors to meet the same security standards as vendor is required to meet. Key considerations include the following:

a. Vendor should be accountable and liable for any acts or omissions by third parties (such as failure to employ adequate security measures) in accordance with any limitation of liabilities/indemnification provisions in the contract.
b. **Permission to Subcontract** – Vendor should seek prior authorization to subcontract in writing. If vendor will not agree to prior written consent, vendor should at a minimum promptly notify you of any subcontracting. Vendor should not be permitted to subcontract services that access or process sensitive company information.
c. **Access** - Make sure that third-party access rights are spelled out conspicuously to help control who has access to the data and how it can be used when multiple participants are involved.

11. Preservation Notices and E-Discovery

Records, documents, and communications with the vendor may become relevant if litigation is brought against your company due to a security incident. Consider adding language like the following to ensure in advance that the vendor complies with discovery requests to help avoid friction over this issue in the future.

a. It is beneficial to add language ensuring vendor's compliance with a third-party legal hold notice in the event of litigation, any preservation notices and document requests.
b. In instances where the vendor provides software/platform, vendor should allow you to retain an archival copy of the most recently used version of the software and all documentation if discovery requests call for electronically stored information in native format.
c. Suggested: Vendor shall implement processes to preserve, export, and produce electronically stored information in native format upon the Entity's request and comply promptly with legal-hold notices.

12. Insurance

Review section above for sample language and common exposures to address in contract. See following **Exhibit 7** for sample Cyber and Tech E&O limits. Make sure that your company is an additional insured and request a certificate of insurance annually from all vendors.

Please note, if there is an insured vs. insured exclusion on the vendor's policy, carefully review with the vendor and their insurance carrier on whether being added as an additional insured onto the vendor's policy removes your organization's ability to file suit against the vendor and draw upon the policy should final adjudication in a lawsuit state that the vendor shall pay damages to your organization.

Please also note, while you can and should request Additional Insured Status from any Vendors/Consultants who have access to your Entity's sensitive data, in the event of a breach you should consult with your insurance advisor on whether to trigger the vendor's policy or your own. Your data is ultimately your responsibility and even if you can tap into a Vendor's policy through Additional Insured status, that may not be the best way to respond to a breach. Your entity's own cyber liability policy could have broader terms and higher limits for certain coverages, like dependent business interruption coverage.

If a Vendor/Consultant is requesting Additional Insured Status on YOUR entity's Cyber policy, be wary! If you can't push back on the requirement there are alternative solutions in place. In some cases, it may make more sense to place a separate standalone cyber policy which carves out the specific service and or contract that is requiring AI status.

Requesting a waiver of subrogation on a Consultant's cyber liability policy is not typical, but it can be done in certain situations. An Entity can request a waiver if the Consultant's actions or negligence could impact your Entity's ability to operate, however, most cyber policies simply won't grant this coverage extension so expectations should be managed. If it is granted, we would recommend the following:

13. Pixel Tracking

Several media corporations offer tools to entities to track website user interactions. These trackers, known as "pixels", run a script when a user visits a website with the purpose of collecting information about that user. This information is then typically forwarded to the corporation providing the pixel for advertising purposes.

Pixel tracking has become a regulatory issue for entities with websites dealing in confidential information, such as health portals. The pixel can collect and forward that confidential information to these third-party corporations without consent to disclose this privileged information. This has now become the subject of numerous class action lawsuits and carriers are widely excluding this peril. In late 2022, the Office of Civil Rights issued a memo urging entities to cease this practice where privileged information was concerned.

When using a vendor for web hosting or other such services, it would be good to make sure that they are in compliance with website tracking guidelines.

Cyber Liability vs. Tech E&O Coverage:

Cyber Liability	**Technology Errors & Omissions (Tech E&O)**
Designed to **protect users** of data and technological products &/or services. Coverage mainly relates to **Information; privacy, security, governance liability, and related risks.**	Intended to **protect the merchant who sells** technological products &/or services.
Offers a **blend of 3rd party liability and 1st party costs and expenses**. Designed to help entities deal with financial impact of **network related issues from network outages** (business interruption) to the potential costs involved with **liability, data breaches, and expenses.**	Covers **negligence, errors, and omissions in delivering technology-related products and/or services** that result in failing to meet contractual obligations. Protects against **losses related to the provision of technological products or services** that are **caused by digitally corrupted media content and network security breaches.**
Some examples of entities who need Cyber: * entities with **high revenue and significant assets** * entities with a **large citizen or consumer base** * entities who **access &/or keep critical data online or on computers**	Some examples of companies who need Tech E&O: * **data storage companies** * **web developers** * **computer & computer peripheral equipment manufacturers**
Some similarities	
Cyber Liability may provide coverage for:	**Tech E&O may provide coverage for:**
Regulatory fines and penalties resulting from non-compliance with data protection laws or regulations.	Costs related to regulatory fines or penalties resulting from technology-related errors or omissions.
Legal expenses associated with defending against lawsuits alleging negligence or failure to protect sensitive data.	Legal expenses associated with defending against claims of professional negligence or errors in technology services or products.
Business interruption losses resulting from cyber attacks or system disruptions.	Costs of business interruption due to technology failures or errors.
Data restoration and recovery costs to restore lost or corrupted data.	Loss of client data or failure to protect sensitive information. There could be overlap here with traditional cyber liability.
Data breaches resulting in the unauthorized access. theft, or disclosure of sensitive	Cyber attacks resulting in data breaches or system disruptions for clients.

information such as personally identifiable information (PII), financial data, or intellectual property.	
Some differences	
Cyber Liability may provide coverage for:	**Tech E&O may provide coverage for:**
Cyber liability coverage may also include coverage for third party claims arising from cyber incidents, such as lawsuits from clients or business partners affected by a data breach.	Software or system failures leading to financial losses for clients.
Crisis management and public relations expenses to manage the fallout from a data breach and maintain the organization's reputation.	Intellectual property infringement claims arising from technology services or products.
Extortion and ransomware payments in the event of a cyber extortion incident.	Breach of contract related to technology services or products.
Notification costs, including expenses related to notifying affected individuals, regulatory authorities, and providing credit monitoring services.	Errors or omissions in software code or development that cause client dissatisfaction or financial harm.
Cyber fraud losses, including funds transfer fraud and social engineering scams.	Failure to deliver promised services or products on time or as specified.

Note - This is a general guide. Please refer to actual policies for full coverage details.

Exhibit 7:
Insurance Requirements for Agreements Involving Information Technology

Consultant or Vendor shall procure and maintain for the duration of the contract insurance against claims for security breaches, system failures, injuries to persons, damages to software, or damages to property (including computer equipment) which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Consultant shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

Please consult the full text ahead of this exhibit in Chapter 4 for a more thorough analysis of the special terms and conditions related to cyber contacts.

MINIMUM SCOPE AND LIMIT OF INSURANCE
Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **$1,000,000** per accident for bodily injury and property damage.

3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease. *(Not required if consultant provides written verification it has no employees)*

4. **Cyber Insurance**, with limits not less than **$2,000,000** per occurrence or claim, **$2,000,000** aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

- **Technology Professional Liability Errors & Omissions**

  (Include this section only if Consultant/Vendor is providing a technology service (data storage, website designers, etc.,) or product (software providers)

- To the extent that Supplier provides software, hardware, software or system development, consulting services, or Internet/Application Service Provider services (e.g., outsourced functions such as web-hosting), **Technology Professional Liability Errors and Omissions Insurance** coverage in an amount not less than $2,000,000 per claim and cover all sums the Consultant shall be legally obligated to pay because of claims for loss or disclosure of electronic data, media and content rights infringement and liability, network security failure and software copyright infringement liability due to the failure of Consultant's products or services. If the policy is written on a claims-made basis, the retroactive date must be on or before the commencement of the Services and the coverage must remain in force for a period of at least three (3) years following the termination of the Services.

    a. The Policy shall include, or be endorsed to include, ***property damage liability coverage*** for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the care, custody, or control of the Consultant.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or 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 Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status
The Entity, its officers, officials, employees, and volunteers are to be covered as insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Consultant's insurance, at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10 **and** CG 20 37 forms if later revisions used. For Vendors ISO Form CG 20 15 12 19 is acceptable.

Primary Coverage
For any claims related to this contract, the **Consultant's insurance coverage shall be primary and non-contributory**, with coverage at least as broad as ISO CG 20 01 12 19 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance, including any excess policies, and shall not contribute with it.

Umbrella or Excess Policy

The Consultant may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. The policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying CGL insurance.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the Entity**.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the Entity.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Dat***e prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of contract work.

Verification of Coverage

Consultant shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All documents are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that Entity is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

CHAPTER FIVE:
AVIATION RELATED RISKS

SUMMARY

This chapter covers considerations related to Aviation Risks including risks involving operation of airports, aircraft, unmanned aerial systems and charter aircraft

Aviation Risks

Whether a commercial, municipal, or general aviation airport, the operation of airports inherently includes risks of loss that are identified in almost every section of this manual.

- Injury or damage to the general public on the airport premises or operations.
- Environmental damage, including third party injury or damage arising out of the various fuels, lubricants, metals, and other pollutants that are found at airports.
- Construction operations that can involve repair, renovation or maintenance of the grounds, the facility, or ancillary buildings.
- Mechanic operations and work.
- Cyber Liability from data transmissions and identify theft of third-party information.
- Vendors providing services at the airport.

Some airports (or the Entity owner of the airport) may grant rights to a Fixed Base Operator (FBO), a commercial entity, that takes over the obligations to provide some or all of needed aeronautic support services, such as aircraft maintenance or repair, hangaring, tie-down, aircraft parking, fueling services, air taxi, air charter or aircraft rental, crop dusting or other aerial applicators, aircraft sales, aircraft parts sales, flight instruction, pilot training, services for pilots, flight crews, passengers that can include food service, ground transportation, flight planning and concierge services.

Classes of Aviation Liability Exposures:

1. Entities utilizing aircraft
2. Commercial and Regional airlines
3. Charter and cargo operations
4. Corporate Business and aviation exposures
5. Private pilots
6. Aerial applicators
7. Corporate non-owned aircraft liability
8. Variety of light aircraft risks, including non-owned coverage for renter and instructor pilots

It is important to remember that when entering into contracts with this wide variety of service or construction providers, the Entity must review those indemnity agreements and required insurance programs. See other sections of this Manual for guidance.

Aviation Airport Liability / Fixed Based Operator's Liability
Because the risks of airport owners are essentially the same as FBOs the insurance requirements are often similar or even identical.

Aviation airport liability coverages fit the needs for owners and/or operators of private, commercial, or municipal airports as well as fixed based operators (FBO's), against claims resulting from injuries to persons of the general public or physical damage to persons of the general public, provided that these individuals are on the premises of the airport or its related facilities.

The policy may include any or all of the following coverages:

1) Premises and Operations Liability Insurance
2) Personal Injury
3) Premises Medical payments
4) Contractual

Sample Indemnity
The Contractor shall indemnify, defend, and hold harmless the CLIENT, its officers, agents, and employees for any claim, liability, loss, injury, or damage arising out of, or in connection with, performance of this agreement by contractor and/or its agents, employees, or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the CLIENT. It is the intent of the parties to this agreement to provide the broadest possible coverage for the CLIENT. The Contractor shall reimburse the CLIENT for all costs, attorney's fees, expenses, and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend, and hold harmless the CLIENT under this agreement.

Glossary of Terms
Aviation (Aircraft) Liability: Aviation Liability Insurance is an insurance contract which insures the owner of an aircraft against loss sustained on account of having to pay damages for injuries to persons or property inflicted by or in the operation of such aircraft.

Aviation (Aircraft) Liability Requirements: Minimum requirements vary by state however most states do not have a statutory or regulatory requirements.

Summary of Aviation (Aircraft) Liability Insurance coverages policies to be considered:

1. Bodily Injury Liability: Protection for the insured against any bodily injury or death claims brought by members of the public other than passengers in the aircraft.
2. Passenger bodily liability: Protection for claims for bodily injury or death to any passenger in the aircraft at the time of the accident
3. Property damage liability: Protection against claims from others for damage to property, including the loss of use of such property.

4. Medical Payments: Coverage for the reasonable expenses of necessary medical, surgical, ambulance, hospital and professional nursing services resulting from bodily injuries to passengers in the aircraft, and reasonable expenses resulting from death. It is paid regardless of whether the owner is legally liable for such bodily injury.
5. Guest Voluntary Settlement: Most insurers offer this coverage, as part of passenger bodily injury liability and is an offer of settlement to passengers who suffer certain injury, without admitting liability, and in return for a release from further liability.

Recommended Aviation Insurance Limits by Airport Type

Coverage Type	**Small General Aviation Airport** (No scheduled commercial service, limited tenants)	**General Aviation Airport – Active Operations** (Fueling, FBOs, charter, flight schools)	**Commercial / High-Exposure Airport** (Passenger service, cargo, medevac, military, or high traffic)
Airport Owners & Operators Aviation Liability	$10M – $25M per occurrence	$25M – $50M per occurrence	$50M – $100M+ per occurrence
Aggregate Limit	Equal to per occurrence	Equal to or greater than per occurrence	Equal to or greater than per occurrence
Tenant / FBO Aviation Liability Requirement	$5M per occurrence	$10M – $25M per occurrence	$25M – $50M+ per occurrence
Hangarkeepers Liability	Value of aircraft in care, custody, or control	Value of aircraft in care, custody, or control	Value of aircraft in care, custody, or control

What limits to ask for related to Airport Operations

Airport operations range from small general aviation airports to large commercial airports. A leading airport liability underwriter has suggested the following limits in airport operation-related agreements:

Standard Limits of Insurance for Airport tenants, vendors and users

The following recommended limits of insurance are provided for informational purposes only and are offered as a resource to be used together with your professional insurance advisors.

I. NON-AIR SIDE

TYPE OF USER	TYPE OF COVERAGE	LIMITS PER OCCURRENCE	LIMITS GENERAL AGGREGATE
Floor cleaning/ Janitorial	CGL	$5,000,000	$5,000,000
Skycaps/baggage	CGL	$5,000,000	$5,000,000
Taxi-cabs	Automobile CGL	$5,000,000 $1,000,000	$Not applicable $1,000,000
Rent-a-Car	Automobile CGL	$5,000,000 $5,000,000	$Not applicable $5,000,000
Shuttle bus	Automobile CGL	$10,000,000 $10,000,000	$Not applicable $10,000,000
Contractors construction/ demolition	CGL	$5,000,000	$5,000,000
Small Concessionaires	CGL	$1,000,000	$1,000,000

II. AIR SIDE

GENERAL AVIATION			
Fixed Base Operators (FBO's)	Premises Products Hangarkeepers Refueling	$1,000,000 $5,000,000 $1,000,000 $10,000,000	$None $Aggregate products $None (note 1) $Aggregate products
Vehicles	Automobile	$10,000,000	$Not applicable
Airline refueling	Premises Products Hangarkeepers	$50,000,000 $50,000,000 $50,000,000	$None $Aggregate products $None (note 1)
Ground handlers/ Ramp service	Premises Products Hangarkeepers	$10,000,000 $10,000,000 $10,000,000	$None $Aggregate products $None (note 1)
Regional Airlines under 60,000 GTW	Comprehensive Airline Liability	$100,000,000	$Aggregate products
Other Passenger Airlines	Comprehensive Airline Liability	$500,000,000	$Aggregate products
Cargo Airlines Under 60,000 GTW	Comprehensive Airline Liability	$50,000,000	$Aggregate products
Cargo Airlines over 60,000 GTW	Comprehensive Airlines Liability	$250,000,000	$Aggregate products

(1) The Hangarkeepers Liability limit should reflect the per aircraft and occurrence exposures, so in many cases higher limits should be required.

Contract Goals

(a) Agreement that the lessee will hold harmless and indemnify the airport except for the sole negligence of the airport,

(b) Agreement the airport will be named as an additional insured on the lessee's applicable insurance policies, and

(c) Agreement the lessee's policy is primary to any other valid and collectible insurance available to the airport thus avoiding the possible problem of the "other insurance" clause in the airport's policy.

Note that (c) needs to be confirmed by the lessee's carrier. Also please note that (a) may not be appropriate in all States, i.e. indemnifying another party for that party's own negligence. Additionally, some States will allow others to indemnify the airport even for the sole negligence of the airport.

Lessee shall keep and hold the Lessor herein and its officers, directors, agents, servants and employees harmless from any and all liabilities, losses, suits, claims, judgements, fines, penalties, demands or expenses, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs and expert fees), claimed by anyone by reason of injury or damage to persons or property sustained in or about the Airport, as a proximate result of the acts or omissions of the Lessee, its agents servants, or employees or arising out of the operations of the Lessee upon and about the Airport, excepting such liability as may result from the sole negligence of the Lessor, its officers, directors, servants, agents or employees; provided, however that upon filing of any claim with the Lessor for damages arising out of incidents for which Lessee herein agrees to hold Lessor harmless, then and in that event the Lessor shall notify Lessee of such claim and Lessee shall have the right to settle, compromise or defend the same. Lessee shall further use legal counsel reasonably acceptable to the Lessor in carrying out Lessee's obligations hereunder. Any final judgement rendered against the Lessor for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to liability and amount, where the time for appeal therefrom has expired. The indemnity provision set forth herein shall survive the expiration or early termination of this Agreement.

Exhibit 8:
Sample Insurance Requirements for Airport, Airport Operations and FBOs

Insurance

Vendor/Contractor/Operator shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work or in connection with products, materials or services supplied to the Entity and shall include their agents, representatives, employees, or subcontractors. With respect to General Liability, Errors & Omissions, Pollution Legal Liability and Remediation, coverage should be maintained for a minimum of five (5) years after contract completion.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

A. For fixed-based operators (FBO's), flight schools, and/or flying clubs located at the airport:

1. **Airport Liability Insurance**: On an "occurrence" basis, including products and completed operations, property damage, bodily injury with limits no less than **$1/2/3/4/5,000,000** per occurrence, including owned and non-owned aircraft coverage.

B. For aero-nautical and non-aeronautical businesses located at the airport:

1. **Commercial General Liability (CGL)**: Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if Vendor/Contractor/Operator has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.
4. **Pollution Legal Liability and Remediation** and/or Errors & Omissions applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less than **$2,000,000** per claim or occurrence and **$2,000,000** aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage personal injury and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations.
5. **Hangarkeepers Liability**: with a limit not less than **$1,000,000** combined single limit per occurrence and **$1,000,000** aggregate.

C. If the contract is with any Vendor/Contractor/Operator that may provide IT services or software or that might involve the retention of private, non-public information about third parties then add:

1. **Cyber Liability** Insurance, with limits not less than **$2,000,000** per occurrence or claim, **$2,000,000** aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor/Contractor/Operator in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

D. If the contract is with a Tenant or General Lessee, then add:

1. **Property Insurance**: Tenant/Lessee shall maintain not less than **$1,000,000** Legal Liability Coverage (ISO Form CP 00 40 or equivalent) on all real property being leased, including improvements and betterments owned by the Entity, and shall name the Entity as a loss payee. Tenant/Lessee shall also provide property insurance on all personal property and betterments and improvements contained within or on the leased premises. The policy must be written on an "all risks" replacement cost basis, excluding earthquake and flood, with no more than a ninety (90) percent co-insurance requirement, and Tenant/Lessee shall name Entity as a loss payee for its interest in the property.
2. **Interruption of Business Insurance**: Lessee shall, at its sole cost and expense, maintain business interruption insurance by which the minimum monthly rent will be paid to Lessor for a period of up to one (1) year if the premises are destroyed or rendered inaccessible by a risk insured against by a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements.

If the Vendor/Contractor/Operator maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Vendor/Contractor/Operator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Vendor/Contractor/Operator to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Other Insurance Provisions

The General Liability, Automobile Liability, Pollution Legal Liability and Remediation, policies are to contain, or be endorsed to contain, the following provisions:

1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Vendor/Contractor/Operator including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
2. For any claims related to this project or use of facilities, **the (Contractor / Vendor / Operator's) insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, agents, or volunteers shall be excess of the Vendor/Contractor/Operator insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.
3. Each insurance policy required shall provide that coverage shall not be canceled, except with notice to the Entity.

The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Vendor/Contractor/Operator pursuant to the contract. This coverage may also be provided as part of the Pollution Legal Liability and Remediation policy.

If the Airport Liability, General Liability, Pollution Legal Liability and Remediation policy and/or Errors & Omissions coverages are written on a claims-made form:

1. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Entity for review.

Umbrella or Excess Policy

The Vendor/Contractor/Operator may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII.

Verification of Coverage

Vendor/Contractor/Operator shall furnish the Entity with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Vendor/Contractor/Operator obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Waiver of Subrogation

Vendor/Contractor/Operator hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

Subcontractors

Vendor/Contractor/Operator shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Vendor/Contractor/Operator shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Unmanned Aerial Systems – aka "Drones"

The Federal Aviation Administration (FAA) has determined that drones are "currently the most dynamic growth sector within aviation." By 2020 it is estimated that about 300,000 small unmanned aerial vehicles will be used for all types of business purposes. Currently, the FAA has allocated $64 Billion for the modernization of the country's air traffic control systems as well as an expansion of airspace to accommodate the commercial use of drones.

If the Entity has purchased a drone for commercial use, FAA regulations should be followed (note that FAA regulations are subject to change):

- The owner/operator must obtain (as necessary):
    1. A Section 333 grant of exemption,
    2. A Certificate of Waiver or Authorization (COA),
    3. An aircraft registration with the FAA, and/or
    4. A pilot with an FAA airman certificate.

The FAA's final rule for small, unmanned aircraft (Part 107) went into effect on August 29, 2016. It provides specific safety regulations for unmanned aircraft drones weighing less than 55 pounds that are conducting non-hobbyist operations (business users).

California law prohibits entering the airspace of an individual in order to capture an image or recording of that individual engaging in a private, personal, or familial activity without permission.

In addition to regulatory and legal challenges, there are a myriad of complex liability and coverage issues related to insuring the use of commercial drones.

Currently, there are no mandated insurance requirements however operators should assume that their customers and partners will require them to certify that they are insured.

Insurance Requirements and/or Considerations will be needed for the use of UAS's. An operator should consider legal liability insurance as a "minimum". This covers the cost to property repair or injury to persons. Additional coverage may include personal injury (invasion of privacy), non-owned (if you crash someone else's drone), medical expenses, premises liability and war perils such as damage sustained from a malicious act.

Further, coverage is available against physical damage to the drone system itself. This covers the cost to repair equipment, or cover the total loss of either the platform, payload, or ground equipment.

For the manufacturer or service provider (training facility, dealer, consultant, software designer), product liability is available. This would provide coverage in the event the insured product is considered to have caused or contributed to a loss. It is important to note that even if a UAS operation is just getting started and is not yet commercially viable as a business, it still risks exposure in the event of an incident and should have the appropriate insurance coverage.

Safety Management-additional considerations:

1. Choice of platform
2. Experience of the operator(s)
3. Intended use
4. Interaction between the operator and observer
5. Weather and environmental issues
6. Maintaining a safe distance from the UAS
7. Ensuring the airworthiness of the drone
8. Pre-flight/post-flight checks
9. Maintenance of the drone

Procuring the coverage

Currently there are more than 15 insurance companies that provide coverage for the use of UAS's in commercial activities. Before contacting an insurance company, be sure to have information needed in order to procure the coverage including:

1. UAS/Drone Data: model/year built

2. Manufacturer
3. Value
4. How the UAS is launched: Airport runway, catapult, roads, field, vertical takeoff
5. How is aircraft controlled- no pilot/ground-based pilot
6. Proposed USE of aircraft: business, commercial, or pleasure
7. Area of proposed operations
8. Amount of insurance needed: typically, liability limits may be purchased on a combined single limit basis at $500,000, $1,000,000, and $2,000,000 and higher depending on the insurance company and/or requirement. Coverage for the hull (value) and any detachable cameras are also available.

Exhibit 9:
Sample Insurance Requirements for the Use of UAS

Insurance

Owner/Operator shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the ownership, maintenance or use of the Unmanned Aerial System.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

Aviation Liability Insurance: On an "occurrence" basis, including products and completed operations, property damage, bodily injury with limits no less than **$1,000,000** per occurrence, and **$2,000,000** in the aggregate. This coverage may also be provided by endorsement to a **Commercial General Liability** policy. In that event then:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.

If the Owner/Operator maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Owner/Operator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Owner/Operator to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Other Insurance Provisions

A. The Aviation Liability or General Liability policy is to contain, or be endorsed to contain, the following provisions:
   1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations
   2. For any claims related to this project, **the Owner's/Operator's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 12 19 as respects the Entity, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers,

officials, employees, agents, or volunteers shall be excess of the Owner's/Operator's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Umbrella or Excess Policy
The Owner/Operator may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance.

Acceptability of Insurers
Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII.

Verification of Coverage

Owner/Operator shall furnish the Entity with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Owner/Operator's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Waiver of Subrogation
Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Owner/Operator, its employees, agents, and subcontractors.

Subcontractors
Owner/Operator shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Owner/Operator shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 12 19.

Special Risks or Circumstances
Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Exhibit 10:
Sample Insurance Requirements for Chartering for Aircraft

Insurance

Owner/Operator shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the ownership, maintenance or use of the chartered aircraft.

Coverage shall be at least as broad as:

1. **Aviation Liability Insurance**: On an "occurrence" basis, including products and completed operations, property damage, bodily injury with limits no less than **$50,000,000** per occurrence, and **$50,000,000** in the aggregate. If the charter is an international flight, the limits shall be no less than **$250,000,000** per occurrence and **$250,000,000** in the aggregate.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.

If the Owner/Operator maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Owner/Operator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Owner/Operator to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Other Insurance Provisions

The Aviation Liability policy is to contain, or be endorsed to contain, the following provisions:

1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of the ownership, maintenance or use of the chartered aircraft.
2. For any claims related to this charter, **the Owner/Operator's insurance coverage shall be primary and non-contributory** insurance coverage as respects the Entity, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Owner/Operator's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.
3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Umbrella or Excess Policy

The Owner/Operator may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Owner/Operator's primary and excess liability policies are exhausted.

> *NOTE to Agencies: Please see the section on The Myth of "Following Form" Excess Limits Insurance Policies in chapter 2 for additional explanatory information on this very common Excess policy problem that needs to be verified and corrected.*

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII.

Verification of Coverage

Prior to the flight, Owner/Operator shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the policy listing all policy endorsements. All certificates and endorsements are to be received and approved by the Entity before the flight commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Owner's/Operator's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Waiver of Subrogation

Owner/Operator hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

Subcontractors

Owner/Operator shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Owner/Operator shall ensure that Entity is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

CHAPTER SIX:
MARINE RELATED RISKS

SUMMARY

This chapter covers considerations related to Marine Risks including risks involving operations on or around navigable waters, watercraft (vessels), piers, wharves, docks, marina operations and vendors or contractors performing operations for the Public Entity relating to these properties. The coverages required that respond to these risks are unique and specific to Marine Risks. Note that this chapter is directed at Marine Risks in general but is not intended to address the operations of a major seaport. Once a public entity's Marine Risks are identified a specialist insurance professional or specialist legal counsel should be consulted for drafting appropriate insurance requirements.

Marine Risks

Public Entities with exposures on or around navigable water, usually will have marine risks that need to be addressed contractually with the appropriate insurance requirements. These exposures can include:

- Vessels (owned or non-owned)
- Piers, Docks, and Wharves
- Marina Operations
- Vessel Charters (special events involving the public or business-related tours)
- Contractors providing services for water related locations
- Vendors providing services on vessels or over docks, piers, or on marinas
- Water sampling and inspection of underwater facilities

All of these types of operations can trigger the need for marine insurance coverage and contractual risk transfer. It is critical to require the appropriate marine insurance policies and endorsements because the standard property and casualty policies (CGL) usually have exclusions that will remove all coverage for the 'wet' marine risks. To address these risks, agreements need to request marine coverages with specific language. The following is a list of the most common coverages and a brief discussion of the coverage:

Marine General Liability (MGL)

A MGL is a Commercial General Liability (CGL) policy on steroids. Besides all of the common CGL shore-side coverages, it should also include a number of Marine components. This policy will cover both shore-side exposures as well as marine exposures. Unlike a CGL policy that will have a standard ISO policy number, the MGL is usually a manuscript form designed to meet the particular needs of the Insured. You must call out the specific Marine coverages that are needed for your project.

As a part of the contract provisions, you can require either a MGL policy or a CGL policy that has NO waterborne exclusions. Please note that you should require Additional Insured status, Waivers of Subrogation and Primary and Non-Contributory wording under a MGL policy the same way that you would under a CGL policy.

Appropriate MGL coverage *can* include the following:

- Bodily Injury and Property coverage
- Personal Injury Coverage
- Products and Completed Operations
- Contractual Liability
- Terminal Operators Liability
- Wharfingers Liability
- Charterers Liability
- Marina Operators' Liability
- Stevedores Liability
- Sudden and Accidental Pollution Liability
- United States Longshore and Harbor Workers (USL&H) coverage on a contingent basis
- Maritime Employers Liability

Terminal Operators Liability
Coverage for property damage to goods or cargo in the care, custody and control of the operator. If the operation involves passengers such as a cruise line or a ferry operator, this coverage needs to be expanded to include bodily injury. The contract will need to specifically require Bodily Injury coverage.

Wharfingers Liability
Any public entity that owns a pier, dock, or wharf where third parties can dock their vessels, needs this coverage. It provides coverage for the safe berth of vessels.

Charters Liability
This coverage addresses the vicarious liability of the entity chartering the vessel.

This includes liability for physical damage to the watercraft, demurrage, defense costs and third-party liability claims.

Marina Operators' Liability (including Fueling Operations)
This coverage is for the legal liability of the Marina Operator for loss or damage to pleasure watercraft in the insured's care, custody and control for operations including:

- Repair, alterations or maintenance
- Mooring at slips
- Hauling in or out of vessels

- Fueling

This policy also includes coverage for both bodily injury and property damage.

Sudden and Accidental Pollution Liability
It is not unusual for a MGL policy to provide coverage for Sudden and Accidental Pollution arising from the insured's operations or this coverage can be provided by a stand-alone policy. This type of coverage has very strict reporting requirements and any potential claim should be reported as soon as an incident is known.

Stevedores Liability
This is coverage for damage to vessels, equipment, or cargo during the course of loading, unloading or stowage of cargo.

Jones Act
The Jones Act is Federal legislation that protects workers injured at sea. This law allows qualifying sailors who have been involved in accidents or become sick while performing their duties to recover compensation from their employers.

United States Longshore and Harbor Workers (USL&H) Insurance
This is a type of Workers Compensation insurance mandated by the Federal Government for employees doing work on or over navigable water. It has an extremely broad definition and can apply for all work by or over a navigable waterway that are NOT exempted. Some exempted classes of workers include:

- Public Entity Employees;
- Individuals subject to Jones Act: Masters or members of crew;
- Individuals employed exclusively to perform office clerical, secretarial or security work;
- Individuals employed by a marina who are not engaged in construction at the marina except for routine maintenance;
- Employees of suppliers or vendors who are temporarily doing business on the premises and are not engaged in the normal work of the employees covered under this act, i.e. shipyard workers;
- Individuals employed to build recreational vessels under 65 feet in length.

This coverage is characterized by high benefits and high rates. The definitions of 'who is NOT subject' to this Act are general and often confusing. There is a large body of law surrounding the applicability of this complex Act.

The US Department of Labor, Division of Longshore and Harbor Workers' Compensation authorizes insurance carriers and self-insured employers to write this coverage. A list of authorized insurers can be found at: https://www.dol.gov/owcp/dlhwc/lscarrier.htm.

Protection & Indemnity (P&I) Insurance
This is an extremely important coverage for vessels. It covers third party damages (both bodily injury and property damage) caused by a vessel. It is important to note that P&I (which includes Jones Act coverage) should apply to all Masters and Members of the crew

as well as passengers on board the vessel. In addition to damages to third parties, P&I insurance will also provide coverage for wreck removal if the vessel sinks in a navigable waterway or when the removal is compulsory by law. There is also coverage for damage to fixed and floating objects such as docks, piers, bridges, or buoys.

Tower's Legal Liability
This coverage is typically added by an endorsement to the vessel's P&I coverage and extend the liability coverage for operations involving towing of third-party vessels.

Maritime Employers Liability (MEL)
MEL can be written without the USL&H coverage. It functions as P&I for an employee not permanently assigned to a vessel. It is a particularly important coverage for Diving activities.

Hull & Machinery Coverage
Coverage for physical damage to a vessel. Hull & Machinery coverage can also include an important coverage for damage caused by collision of the vessel with another vessel (known as the "running down" clause).

Vessel Pollution Liability
Vessels carry all types of fuel, lube oil and/or solvents for the use of the vessel. Whenever P&I coverage is mandated, also required is Vessel Pollution Liability with limits equal to the P&I. It will also provide coverage for fines and penalties due to contamination caused by the vessel.

Excess Marine Liability
Provides excess limits of liability coverage that typically "follow" form over a "primary" scheduled marine liability policy. It does not provide broader coverage than is found in the primary policy.

Bumbershoot
Provides excess limits over both Marine and Non-Marine liability policies and is typically broader than the "primary" policies that are scheduled on the Bumbershoot. This policy can drop-down subject to an SIR/deductible if the "primary policy limit is exhausted in the payment of claims.

Marine Professional Liability
This coverage may be necessary, for example, if a Marine engineer is involved in a rebuilding project of a wharf, dock or pier or other circumstances where a professional is involved in marine-related trades.

Coverage Guidelines:

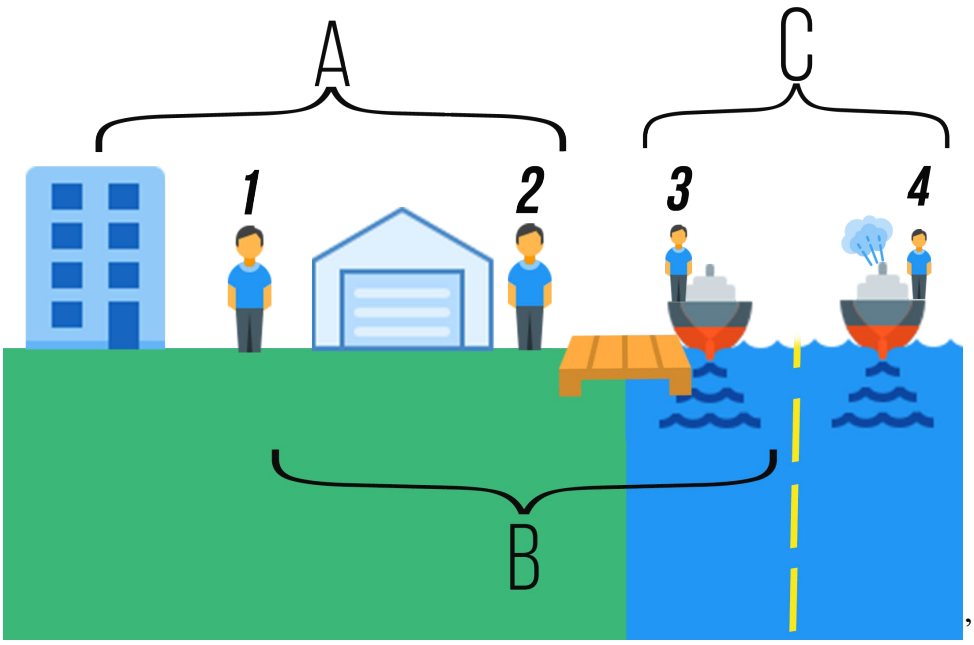


Figure 1: Marine Exposure Risk Illustration

Coverage Guidelines for Marine Exposure

- For employees working aboard vessels, obtain Maritime Employers Liability (MEL) coverage or Protection & Indemnity (P&I) Crew coverage as applicable.
- Where the Longshore and Harbor Workers' Compensation Act situs applies, secure Longshore coverage, even if the employees or operations are excluded by status.
- For all operations on offshore rigs or platforms, ensure Outer Continental Shelf Lands Act (OCSLA) coverage is provided.
- Marine policies work on a broad uberrimae fidei (utmost good faith) standard, it is important to broadly disclose

General Marine Insurance Exposures & Coverages

- Workers' Compensation (WC): Covers land-based employees for work-related injuries. **Most commonly "A" in figure above**

- Longshore and Harbor Workers' Compensation Act (Longshore): Provides coverage for employees working on navigable waters or adjoining areas (piers, docks, terminals). **Most commonly "B" in figure above**
- Maritime Employers Liability (MEL): Protects employers against liabilities for crew members and employees working aboard vessels, including Jones Act exposures. **Most commonly "C" in figure above**

- Protection & Indemnity (P&I): Liability coverage for vessel owners/operators, including injury to crew, passengers, and third parties, as well as damage to cargo and other property. **Most commonly "C" in figure above for the crew.**

- OCSLA (Outer Continental Shelf Lands Act): For employees working on offshore rigs/platforms.

- Hull Insurance: Covers physical damage to vessels and sometimes collision (also can be in the P&I)

Summary Checklist for Port Authority Risk Managers:
If **YES** to any of the following questions, then the contract should require **USL&H**:

1. Is the work location on a pier, wharf, dry dock, or terminal area adjoining navigable water?
2. Is the work being performed **over** the water (e.g., hanging off a pier)?
3. Does the work involve traditional maritime activities like ship repair or loading/unloading?

If **YES** to any of the following questions, then the contract should require **MEL**:

1. Will the contractor/tenant operate a vessel (barge, tug, skiff) to complete the work?
2. Will employees be assigned to a vessel for a significant portion of their duties?
3. Is there a risk of injury while an employee is "at sea" or navigating a vessel within port waters?

If **NO** to the preceding 6 questions, you may exclude these coverages and rely on Statutory **Workers Compensation**.

Exhibit 11:
Sample Insurance Requirements for Marine Risk Exposures

Sample Insurance Requirements: (Landside): For landside activities without water or waterside exposure, the contractual requirements outlined in Chapter X will suffice. Examples of such activities include the removal of fencing and gates, as well as the installation of sidewalks, lighting, and security cameras on the landside

Sample Insurance Requirements (Waterside): Whenever an activity involves vessels, divers, piers, docks, wharves, or work on a navigable waterway, simply using the standard Property and Casualty contract requirements will not be adequate. Appropriate marine insurance wording must be incorporated to secure the appropriate coverage. The following are examples of the types of activities that will require special wording:

Construction Projects: Construction projects on the water (with or without vessels) have unique exposures. Your Request for Proposals from Contractors should include a description of the types and limits of insurance likely to be required for the project. While the contractor will be responsible for determining the actual means and methods of the project, your insurance specifications should be broad enough to encompass the likely marine exposures.

The following is the type of project that would require marine liabilities:

The Public Entity owns a dock next to a restaurant. The restaurant leases the dock from the Public Entity so that its patrons can tie their vessels to it. The dock is in serious need of repair. The lease stipulates that the Public Entity will be responsible for keeping the dock in good repair. The Public Entity is going to request bids for a construction project to:

- Repair broken rails and replacement of the handrails;
- Since several vessels have hit the dock, the Public Entity's Engineer wants all of the pilings to be inspected for damage and recommend which pilings should be repaired;
- Paint the entire dock;
- Upgrade the walkway to the restaurant and install new signage that will direct guests to the restaurant.

The total estimated cost for the project is $300,000. The work is clearly on and over a navigable waterway. Even if the Contractor chooses to try and perform all of the work from the shore/dock, there are several marine coverages that will be more clearly addressed by a MGL policy as well as the more standard coverage that the Public Entity would require for any type of construction project:

MINIMUM SCOPE AND LIMITS OF INSURANCE

Coverage shall be at least as broad as:

Marine General Liability (MGL) OR Commercial General Liability with no waterborne exclusions including coverage for:

A. Contractual Liability

B. Products and Completed Operations

C. Bodily Injury and Property Damage

D. Terminal Operators/Wharfingers Liability

E. Sudden and Accidental Pollution

F. USL&H (potentially)

G. MEL (potentially)

In addition to the above coverage components, the Public Entity should be named as an Additional Insured, there should be a Waiver of Subrogation in the Public Entity's favor as well as Primary and Non-Contributory wording.

Vessel Hull & Machinery, P&I, Vessel Pollution Liability

It is highly likely that the Contractor will need to use some type of barge or vessel to complete this project. Our recommendation is that if you are uncertain if the contractor will use vessels to perform the work, then call out the potential coverage necessary to address this exposure. It is better to waive the requirement than to not to have the appropriate coverage. The following types of insurance should be required:

A. Protection & Indemnity Insurance (including crew): Liability for any third-party bodily injury or property damage caused by the vessel. This includes injury to the crew. Minimum limits acceptable are $1,000,000. For larger projects, higher limits would be recommended.

B. Vessel Pollution Liability: For barges or vessels of any size, require Vessel Pollution Liability with limits equal to the required P&I limits.

C. Hull & Machinery (H&M): Vessels, like automobiles, are insured for their Actual Cash Value. H&M, in addition to providing physical damage coverage for the vessel, will also provide Collision coverage for damage that could be caused to other vessels.

The Public Entity should be named as an Additional Insured on the P&I and Vessel Pollution Liability. There should be a Waiver of Subrogation in favor of the Public Entity as well as Primary and non-contributory wording.

USL&H: If the work being performed for the Public Entity will take place on or over a navigable waterway. In addition, these employees would not fall into one of the exempt classifications. Therefore, all of the Contractor's employees as well as any subcontractor employees will need to be insured under USL&H and not State workers' compensation acts. Limits should be statutory. Please note that many times smaller subcontractors, such as painters, will request that the requirement of USL&H coverage be waived for them. These types of injury cases have been litigated over the years and the courts have found that USL&H does apply to these types of operations.

Maritime Employers Liability (MEL): This coverage is particularly important for diving activities, such as to inspect pilings for docks, piers, wharves, and bridges as well as underwater pipelines such as water treatment plant outflow pipelines. The standard limit is $1,000,000. Divers are a special class, and this activity is classified as ultra-hazardous. Typically, the remedy for an injured diver is MEL. In addition to requiring MEL insurance, the Public Entity should insert a provision stipulating the divers employed for their project must be commercially certified. A recreational certification will not be sufficient.

Marine operations can be more expensive due to the usually higher exposure to injury and property damage. As a result, the required insurance tends to be more expensive than for projects on dry land; however, the insurance protections are important and should not be ignored. This chapter describes the types of coverage available and necessary.

Marina Operations Example: The Public Entity owns a Marina. They have hired an operator to run the facility. In addition to providing moorage slips, the marina has the following additional operations:

- Chartering of small watercraft;
- Fueling Operations: Marina personnel fuel vessels at a special fuel dock;
- A small grocery store that sells ice, beer, wine and food;
- Hauling and Launching of vessels;
- Wet and dry storage of vessels;
- A boat ramp for individuals to launch their own vessels;
- Parking areas for cars, trailer and other vehicles while people use the marina facilities.

The Public Entity is looking for a new operator for their facility. What types of insurance should be required?

Marine General Liability: This type of policy can incorporate all of the coverage necessary to adequately insure the operator and provide the Public Entity with Additional Insured status, Waiver of Subrogation and Primary and Non-Contributory wording. The types of coverage that should be included:

A. Bodily Injury and Property Damage;

B. Premises Liability;

C. Contractual Liability;

D. Products and Completed Operations;

E. Liquor Liability for the sale of beer and wine;

F. Marina Operators Legal Liability: This coverage can be provided as a part of the MGL, or it can be addressed thru a stand-alone policy. This coverage will respond to damage caused to vessels while they are being launched or removed from the water. It will also respond to damaged non-owned vessels while they are moored at the marina;

G. Sudden & Accidental Pollution: This is important coverage due to the fueling operations;

H. Owned Vessels coverage: This coverage can also be endorsed onto a MGL policy OR it can be provided on a separate policy. It should include Protection and Indemnity (P&I) coverage at a minimum. Since marina patrol and maintenance vessels are small, it is likely that Vessel Pollution Liability will not be included in the policy. Hull & Machinery is optional, unless the Public Entity is requiring the operator to insure Entity owned vessels. In addition, the marina is chartering small vessels to others. These vessels will also require P&I coverage.

Since this is a Marina Operation, USL&H will not be required for the Operator's employees or vendors coming onto the premises.

The Public Entity should be named as an Additional Insured, waivers of subrogation should be provided along with primary and non-contributory wording. Limits of liability: The minimum limits are $5,000,000 per occurrence/$5,000,000 aggregate. For this type of operation, a $5,000,000 per occurrence limit is more realistic due to the fueling operations, rental of vessels to others and the sale of liquor.

Watercraft Charter: The Public Entity is proud of their waterfront. They want to Charter a vessel to provide weekly tours through the summer months. The vessel will tie-up to a dock owned by the Entity. They will charter a vessel with a crew for this activity. What insurance does the Entity need? What insurance should the Owner of the vessel provide to the Entity?

- **Insurance Coverage that Entity should have:** The Public Entity owns the dock and is allowing the vessel to tie-up to it. Also, passengers will be using the Public Entity's dock for loading and unloading of the vessel. The Public Entity should have:
  - Terminal Operators/Wharfingers Liability: The limit of liability should be $10,000,000 per claim/$10,000,000 aggregate.
  - Charterers Liability: This coverage will defend and indemnify the Public Entity if they are named in a claim by a third party for bodily injury or property damage arising from the Charter agreement.

  It is highly likely that the owner of the vessel will require evidence of coverage for the above. They will also want to be named as an Additional Insured and have Waivers of Subrogation. These types of requests can be met.

- **Vessel Owner/Operator's Insurance:** The Owner/Operator should have the following coverages. The Charter Owner/Operator is providing the vessel and the crew to operate it. They should provide the Public Entity with evidence of the following types of insurance:
  - Protection and Indemnity Insurance (including the crew and passengers): The limits for this type of operation are highly dependent on the number of passengers that will be carried on the vessel. The minimum limit is $1,000,000. However, if the vessel will carry greater than 25 passengers, then we would recommend limits of liability of at least $10,000,000 per claim. The Public Entity should be named as an Additional Insured and Waivers of Subrogation should be provided.

- Vessel Pollution Liability: Evidence of this coverage should be provided. The limits required should be equal to the P&I limits required. The Public Entity should be named as an Additional Insured and a Waiver of Subrogation should be provided.
- Hull & Machinery: The Hull & Machinery should be insured at the vessel's market value.

Port Authority Minimum Insurance Requirements for Cargo Operators:

Minimum Insurance Requirement

This exhibit includes a general section applicable to cargo operators, including ocean carriers and stevedoring firms. Additionally, we have developed a specialized section specifically for ocean carriers and stevedoring firms to address their unique maritime requirements.

General Section:

1. **Workers Compensation:**
    a. User shall provide workers compensation insurance as required by the State, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.
2. **General Liability:**
    a. User shall provide CGL insurance covering all operations on Authority property with a Combined Single Limit of **$2,000,000**. Coverage shall include Broad Form Contractual Liability, Bodily Injury, Property Damage, and Personal/Advertising Injury. If separate limits apply, each must meet the **$2,000,000** minimum requirement.
3. **Automobile Liability:**
    a. User shall provide automotive liability Insurance to cover any auto owned, leased, borrowed or otherwise used by the Contractor, with limits no less than **$25,000,000** per accident for bodily injury and property damage.
4. **Protection and Indemnity Insurance & Hull Coverage:**
    a. If any boats, barges, ships, or other watercraft are used in connection with the work to be performed on Authority property, User shall provide Protection and Indemnity Insurance and Hull Coverage with the running down clause covering such watercraft. The policy limit for the Protection and Indemnity policy shall be **$1,000,000** for each accident and shall include coverage for **crew in coordination with the Jones Act** and for **wreck removal**.
5. **Property or Inland Marine Coverage:**
    a. Property or Inland Marine Insurance shall be carried by and be the responsibility of User as User may deem advisable on any personal property, cargo, equipment, furnishings, additions and improvements, betterments, or any other property stored or maintained within or attached to Authority terminal facilities by User. Except as caused by its own negligence, the Authority is not responsible for personal property, cargo, equipment,

furnishings, machinery, additions or improvements, betterments, or any other property which is owned by User or in the User's care, custody, or control.[1]

Minimum Insurance Requirement Applicable to Ocean Carriers

Complementing the insurance requirements listing above, Ocean Carriers calling a Port Authority must also, at their own cost and expense, maintain and shall procure evidence that the following insurance coverages are in force and in good standing covering their operations on Authority Terminal Facilities:

1. Ocean Carriers shall provide to the Authority evidence of **Protection and Indemnity and Hull Coverage** with the running down clause covering any watercraft used in a service calling the Authority. Such coverage shall include wreck removal. The policy limit for the protection and Indemnity Coverage shall be not less than **$5,000,000** for each accident and shall include **Jones Act/crew coverage.**

Minimum Insurance Requirement Applicable to Stevedoring Firms

Complementing the insurance requirements listing above, Stevedoring Firms must also, at their own cost and expense, maintain and shall procure evidence that the following insurance coverages are in force and in good standing covering their operations on Authority Terminal Facilities:

1. **United States Longshore and Harbor workers Act coverage,** and such coverage shall include an endorsement waiving the right to subrogate against the Authority.
2. **Terminal Operators Legal Liability** coverage in an amount of not less than **$5,000,000** to cover Stevedoring Firm's operations on Authority terminal facilities.
3. If Stevedoring Company provides vessels or other floating equipment in connection with its work, it shall provide to the Authority evidence of **Protection and Indemnity and Hull Coverage** with the running down clause covering any watercraft used. Such coverage shall include wreck removal. The policy limit for the Protection and Indemnity coverage shall be not less than **$5,000,000** for each accident and shall include **Jones Act/crew** coverage.

OTHER INSURANCE PROVISIONS:

Insurance Procurement:

The Contractor shall, at its sole cost and expense, procure and maintain the insurance coverages described herein for the duration of operations and any applicable warranty or liability period.

Insurance Services Office Memo:

For any policies related to this contract, the policy or policies shall be as least as broad as that provided by the latest edition of the Policy promulgated by the Insurance Services Office (ISO).

Additional Insured Status:

The Entity, its officers, officials, employees, and volunteers are to be covered as insureds on all liability policies, where permissible by law, with respect to liability arising out of work or

[1] https://gaports.com/blog/mto/insurance/

operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.

Primary and Non-Contributory Status:
For any claims related to this contract, all insurance required herein shall apply on a primary and non-contributory basis with respect as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This also applies to any Excess or Umbrella liability policies. All excess or umbrella policies shall have a drop-down provision and shall follow form to the underlying policy.

Waiver of Subrogation
Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

The Immunity Clause Endorsement:
The contractor, its subcontractors and its insurers shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of any court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, directors, officers, agents or employees, their affiliates, successors and/or assigns, the governmental[2] nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority. The Port Authority is an intended third-party beneficiary of the agreement between the Contractor, and each of its respective subcontractors and insurers, with the direct right to enforce the agreement with respect to this provision.

Specialty Insurance – Railroad Protective:
If any work is being performed within 50 feet of a railroad track, a standard Commercial General Liability policy is generally insufficient, and a Railroad Protective Liability policy or a specific endorsement is required. You must either require the contractor to purchase a standalone Railroad Protective Liability policy in the name of the railroad or ensure their CGL policy is endorsed with the CG 24 17 (Contractual Liability — Railroads) to delete that exclusion.

Notice of Cancellation:
Provide 30 days cancellation notice to the Port Authority, prior to Cancellation of Coverage

Insurer Qualifications:
Insurers shall be rated no less than A- / VII by A.M. Best or equivalent.

Evidence of Insurance:
Certificates of Insurance and required endorsements shall be provided prior to commencement of operations and upon renewal.

CHAPTER SEVEN:
SPECIAL SITUATIONS

SUMMARY

This chapter covers a number of situations in which special commercial insurance should be required or when personal lines insurance may be acceptable.

Park and Recreation Exposures:

Teaching, Coaching, and Childcare

An often-overlooked exposure for public entities that run day care, provide after school programs, or provide coaches for recreational activities is the potential for claims of abuse or molestation, and this exposure that is not covered by standard general liability policies. Sexual Abuse and Molestation (SAM) coverage may be endorsed to a standard liability policy, or it may be obtained on a specially purchased stand-alone policy, though obtaining coverage may be difficult for some exposures. More information on this and other school youth exposures is found in Chapter 8.

For this exposure, use Exhibit 13, for Instructors, that includes requirement for SAM coverage. For professional liability exposures including teaching consider adding SAM coverage to Exhibit 2, for professional liability.

Instructors

Many public entities offer a wide variety of recreational classes and programs, from creative writing to yoga, dance, tennis, and karate lessons. And while many of these activities are considered low risk, many are not. In spite of this, many entities do not practice the contract and insurance recommendations contained in this manual; indeed, many do not require a written contract with instructors. Recreational activity instructors may also be individuals working part-time or as a hobby It is recommended that at very least the entity require a written contract containing a scope of work, with a hold harmless in favor of the entity and a waiver of claims against the entity. For high-risk activities and full-time instructors, it is recommended that the entity also require general liability coverage with additional insured protection. Note that coverage for instructors is available for specific classes, similar to special events coverage. See Exhibit 13 for recommended insurance specifications.

Facility Rentals

Facility rentals often involve entering into contracts with private individuals, including parks, meeting halls, or historic buildings for holding weddings or other private gatherings. As private individuals (and some small nonprofit organizations) do not normally purchase commercial liability insurance, other forms of financial guarantee may be needed.

Many homeowner insurers will provide additional insured coverage to another party if requested. An individual who purchases a homeowner's policy or tenant's package policy can ask their insurance agent to provide the additional insured endorsement if available. Be aware that most private individuals do not carry large amounts of liability insurance. Unless the homeowner purchases personal umbrella liability coverage, limits on the homeowner's or

tenant's package policy are likely to be in the vicinity of $300,000 to $500,000. However, the risks involved in a private party event may be just as severe as those in a commercial contract.

See Exhibit 12 for a set of recommended insurance specifications that allow for homeowner's insurance.

One possible alternative to an endorsement on a homeowner's policy is to require the purchase of Special Event coverage. For those Entities that frequently rent or lease facilities, Special Event coverage may be attractive. Coverage is negotiated by your Entity, and a master policy is issued to your Entity by the insurer. Each tenant applies for and pays the premium on coverage for the special event. The insurer issues a binder for that event only. Coverage applies to the event holder as well as the Entity. The advantage of Special Event coverage is that your Entity can determine coverage and limits. Contact your risk management advisor for information concerning the availability of a Special Events insurance program for your Entity. If a special event policy is utilized, then the limit of coverage is dedicated to that event and is the aggregate limit available. For low risk and smaller events, a limit of $1 million per occurrence and $1 million aggregate is likely acceptable.

Special Events & Short-Term Rentals

Public entities also sponsor a wide variety of special events or allow them to be held on their property. For each event not sponsored by the entity, a permit should be issued to a legitimate sponsoring organization that contains a hold harmless and a requirement for general liability insurance naming the entity as an additional insured. Where the sponsoring organization contracts with others to hold the event, the entity should require the sponsor to obtain agreements with hold harmless and insurance language to include the Entity as well as naming additional insured. For high-risk events your Entity may also want to request proof of insurance and additional insured status directly from that party. Special event coverage is also available to protect the renter and your agency, including one program offered by Alliant. Ask your insurance advisor or search the Internet for Special Event Coverage for more details.

Where the special event will also entail closing off streets for parades, craft fairs, farmers markets, etc., the entity should also require a traffic safety plan approved by a qualified engineer delegated such authority by the public entity's governing body. This will provide design immunity in the event of a claim alleging unsafe or ineffective traffic safety precautions. Please refer to the California Manual on Uniform Traffic Control Devices or other resources for more information.

Political protests, rallies, or signage are subject to permitting and insurance requirements with some restrictions. The government can't prohibit marches on public sidewalks or rallies in most public parks or plazas and may not be able to restrict a small demonstration that does not present serious safety or competing use concerns. Check with your legal counsel and local ordinances for guidance on this issue and see ACLU reference "Know Your Rights: Free Speech, Protests & Demonstrations" for their instructions to protestors.

Exhibit 12 may be used for both short-term rentals of facilities and for outdoor special events. Note that the specifications also address the issue of liquor liability insurance. As a general rule, any person who is in the business of manufacturing, distributing, or selling alcohol must have liquor liability coverage. This includes a caterer who is supplying alcohol or a non-profit

selling beer or wine at a street fair to raise money. These entities should also have a permit issued by the local Alcohol Bureau of Control (ABC) board. Otherwise, if the renter is supplying alcohol for no charge, their coverage should include host liquor liability, and most general liability policies do provide such coverage.

Carnival Rides

State Fairs are as American as apple pie, and a cornerstone of every fair are the carnival rides. What should be seamless fun for every guest, however, does not occur without proper planning and preparation. The California Division of Occupational Safety and Health (OSHA) has guidelines and requirements for carnival rides. State inspectors are required to inspect all portable amusement rides before they are initially put into operation for public use, and thereafter at least once a year. They must also be inspected upon every disassembly and reassembly. These inspectors are required to report every accident resulting in anything greater than ordinary first aid administration.

OSHA further sets specific, yet common, insurance requirements for administration of amusement park rides. However, this regulation applies to permanent rides, which shifts the focus from a pop-up carnival or fair to a formal amusement park, such as Six Flags. OSHA requires the entity to obtain coverage of at least $1,000,000 per occurrence.

In addition to coverage for the rides themselves, it's crucial to remember other necessary coverages, including workers' compensation, commercial auto for any transportation or rides or parts, and inland marine for the property while on site, to protect from fire, theft, or vandalism.

Other related questions which should be addressed prior to opening the carnival include whether this event will generate income, parking responsibilities (your entity or left to the vendors), the desired number of participants and/or spectators, and the entrance fee.

For more information, review the OSHA website, www.dir.ca.gov/DOSH, as well as Chapter 3.2 of the California Code of Regulations. Also, for information regarding amusement parks and ride safety, visit saferparks.org.

Food Trucks/Farmers Markets

Food trucks and farmers markets pose unique challenges. Food trucks involve inherent mobility, so in addition to commercial general liability insurance with products and completed operations coverage and workers' compensation coverage, commercial auto liability and auto physical damage policies are key. There are also commercial package polices that cover both liability and property exposures since there are many items within the truck vital to food storage, preparation and presentation that should be covered as a loss to any main item, such as an oven or refrigerator, could cause an interruption in that truck's operations.

Farmers markets also pose inherent risks. The entity hosting the farmers market and the vendors themselves require appropriate and comprehensive coverage. Understanding the agreement between the host entity and vendors is crucial, too, so that each party knows who is responsible for what. If your entity is hosting the market or it is on your property each of the

vendors needs to provide an agreement with hold harmless language and insurance requirements to include additional insured status. The biggest exposure for the property owner is from injuries related to unsafe conditions such as uneven surfaces, spills, and market debris. Less likely but potentially more serious are illnesses arising from food, or equipment theft or damage. The host will need to maintain safe conditions as well as define the vendor's responsibilities for maintenance to reduce claims arising from the event.

If your entity is thinking about hosting food trucks or a farmers' market, you should draft an appropriate hold harmless agreement and review Exhibit 12, for short-term facility rental.

California State University (CSU) Special Events Resource Guide (SERG)

The California State University (CSU) system features 23 campuses and over 100 auxiliary non-profit organizations. These universities range from large to small, urban to rural, and span the entire state. They host an incredible variety of events designed for student and community enrichment, and each event presents both common and unique challenges.

To address as many obstacles as possible from a broad perspective, CSU has published a Special Events Resource Guide to aid the event coordinators in planning and preparation to ensure their event runs smoothly. More information on how CSU and how it navigates special events can be found on the CSU Risk Management Authority website here: **csurma.org.**

While the primary focus of the guide is aimed at the CSU, nearly all of it can be readily applied to other organizations. All events carry certain risks your entity will want to be protected from, however great or minor they may seem. The SERG offers comprehensive analysis of each element of an event.

International Insurance Requirements

Insurance requirements with vendors and contractors outside the United States or involving your own entity's incidental international operations, such as foreign travel, require special attention. Here we provide some broad concepts for your consideration.

- **Contracting with International vendors and contractors coming to your location** We periodically see agreements involving contractors or consultants located outside the United States. Usually this involves a specialist consultant or perhaps technical contractor for installation of equipment. These contractors likely don't have a domestic U.S. insurance program if they are not regularly working in the United States. You will need to review the contract with your insurance advisor or broker to determine whether the coverage is appropriate. Similar to your entity's liability coverage that likely responds to claims from occurrences anywhere in the world but only for claims brought in the United States jurisdiction, your vendor/contractor may not have coverage for claims brought in the United States. Your advisor/broker can assist in sorting out the coverage nuances.
- **Contracting with International vendors and contractors for operations outside the United States** – Your entity may engage in an agreement that involves operations in a foreign jurisdiction. Note that some jurisdictions require the contracting entity to provide coverage similar to workers' compensation even when you engage third parties. Special attention should be paid to the insurance requirements of that

jurisdiction and your insurance advisor or broker can assist in sorting out the coverage nuances.

- **Foreign Travel by your entity's employees or officials** – Many public entities have employees traveling abroad on entity related business. This might be public officials engaging in trade development, such as a "sister city" exchange or be related to a procurement from a foreign supplier. Also, many schools engage in school sponsored international travel. We recommend that your organization procure foreign travel insurance. For very limited travel, a travel assistance, accident, and sickness policy procured trip by trip may be sufficient. But a more comprehensive foreign travel package program is a better option. A package policy can combine coverages for traveler's assistance, accident, and sickness with general and non-owned auto liability, as well as foreign voluntary compensation and kidnap and extortion coverages. A foreign package policy can serve as the first line of protection for your entity for matters taking place outside the U.S. and is of great value when situations arise.

It is important to engage with your insurance advisors and brokers to gain a better understanding of contracts involving international exposures. Insurance broker professionals should have access to resources with experience in the jurisdiction you are addressing and can help protect your entity from unintended risks.

Contracts Involving Cash/Receipts Handling – Fidelity Bonds & Crime Insurance

Separately in this manual we have discussed the use of surety bonds as they relate to construction projects (bid, performance, and payment bonds). Historically, another form of surety involved "bonding" of certain employees or contractors who handle cash. Under these bonds, a loss of cash or securities would be paid to the entity by the surety company which would then seek to recover the funds from the person causing the loss. More recently, the insurance industry has offered "Crime Insurance Policies" which include employee dishonesty and theft, disappearance and destruction of money and securities. When an entity is contracting with a third party who will be handling of cash or other forms of receipts, such as credit card transactions, it is important that the entity require a crime insurance policy with limits suitable for amount at risk. For example, a vendor handing parking receipts or fine collections could be handling a significant amount of the entity's funds over the duration of the contract. Suitable risk management controls should be in place to limit the amount of any one loss.

Other Specialized Professional Liability Insurance

There are a variety of specialized professional services that may require a unique type of professional liability coverage. The reader is advised to use Exhibit 2 for the insurance specifications but may need to customize the language based on the unique exposure presented. One such exposure is investment banking, and the following is provided as a sample of how to address it in the contract.

Investment Bankers Errors and Omissions Insurance

At all times during the term of this Agreement, Consultant agrees to maintain Investment Bankers Errors and Omissions Insurance coverage for claims arising from the negligent acts,

errors, or omissions for services or operations performed by the Consultant under this Agreement. The Consultant shall ensure both that (1) any policy retroactive date is on or before the date of commencement of the Project; and (2) any policy has a reporting period of at least two years after the date of completion or termination of this Agreement. The Consultant agrees that, for the time period defined above, any changes that reduce coverage will be presented to Entity for review.

Garagekeeper's Legal Liability Insurance

This protects parking lot operators who provide valet parking, car dealers, and garage owners against liability for damage to vehicles in their care, custody, or control. The garagekeeper who accepts another's property for repair or keeping becomes a bailee. The law imposes certain legal responsibilities on a bailee. These responsibilities are normally excluded by general liability policies under the care, custody, or control exclusion. Therefore, this coverage is needed. In addition, if the service provider also tows cars to/from servicing locations the insurance should include "on-hook" coverage for accidents or damage occurring while a vehicle is in tow.

Security Guards – Armed & Unarmed

Security guards present a unique professional liability exposure based on their potential interaction with the public in preventing crime. Standard commercial liability coverage must be endorsed to provide extended coverage for this exposure, including claims of personal injury and violation of civil rights including wrongful detention and discrimination. More likely, a professional service will have a customized package policy for security guards to include these additional coverages. Given the unique nature of these polices we recommend obtaining a copy of the Declarations and confirmation of coverage to include violation of civil rights. We recommend a minimum limit of $3 million for unarmed and $5 million for armed guards. Schools and similar organizations that hire police officers to serve as School Resource Officers should do so through the officer's agency and confirm the agency is providing coverage for their employee.

Exhibit 12:
Insurance Requirements for Rental of Facilities

Renter shall procure and maintain for the duration of the rental period insurance against claims for injuries to persons or damages to property which may arise from or in connection with the rental of the facilities and the activities of the renter, his guests, agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as Insurance Services Office (ISO) Form CG 00 01 covering Commercial General Liability (CGL) on an "occurrence" basis, including property damage, bodily injury, and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit.

If the use includes athletic activities, Renter shall provide evidence that the CGL includes coverage for injuries to athletic participants, evidence of Participant Liability Waivers that name the Entity and, if applicable, Accident Insurance.

If the Renter maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Renter. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the rental of the facility. General liability coverage can be provided in the form of an endorsement to the Renter's insurance at least as broad as ISO Form CG 20 11 12 19 or if not available, CG 20 43 12 19.

Primary Coverage

For any claims related to this contract, the Renter's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Renter's insurance and shall not contribute with it. This also applies to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

The Renter may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation
Renter hereby grants to Entity a waiver of any right to subrogation which any insurer of said Renter may acquire against the Entity by virtue of the payment of any loss under such insurance. Renter agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

Acceptability of Insurers
Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Verification of Coverage
Renter shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) to Entity before work begins. All certificates and endorsements are to be received and approved by the Entity *at least five days* before Renter commences activities.

Liquor Liability
If Renter will be supplying alcoholic beverages, the general liability insurance shall include host liquor liability coverage. If Renter is using a caterer or other vendor to supply alcohol that vendor must have liquor liability coverage. If Renter intends to sell alcohol either the Renter or vendor providing the alcohol for sale must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol.

Homeowners Insurance
In some cases, the Renter's homeowner's liability insurance may provide coverage sufficient to meet these requirements. Renter should provide these requirements to his or her agent to confirm and provide verification to the Entity.

Special Events Coverage
Special events coverage is available for an additional fee to provide the liability insurance required by this agreement. Renter can obtain additional information and cost from Entity.

Special Risks or Circumstances
Entity reserves the right to modify these requirements based on the nature of the risk, prior events, insurance coverage, or other special circumstances.

Exhibit 13:
Insurance Requirements for Instructors

Instructor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Instructor, his agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be *at least as broad as*:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including property damage, bodily injury and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if Instructor has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **$1,000,000** per **accident for** bodily injury and property damage. (**Note** – required only if auto is used in performance of work).
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease. (**Note** – required only if Instructor has employees).
4. **Sexual Abuse or Molestation (SAM) Liability:** If the work will include contact with vulnerable populations such as minors or the elderly, and the CGL policy referenced above is not endorsed to include affirmative coverage for sexual abuse or molestation, Contractor shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than **$1,000,000** per occurrence or claim.

If the Instructor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Instructor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Instructor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. **The Entity, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Instructor including materials, parts or equipment furnished in connection with such work or operations.
2. For any claims related to this contract, the **Instructor's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, agents, and volunteers. This requirement shall also apply to any Excess or Umbrella liability policies.
3. The Insurance Company agrees to **waive all rights of subrogation** against the Entity, its elected or appointed officers, officials, agents, and employees for losses paid under the terms of any policy which arise from work performed by the Instructor for the Entity. This provision also applies to the Instructor's Workers' Compensation policy. This provision applies regardless of whether or not an endorsement has been issued.
4. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Umbrella or Excess Policy

The Instructor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Entity.

Claims Made Policies (note – may be applicable only to SAM liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Instructor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Instructor shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) to the Entity before work begins. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, at any time.

Homeowner's Insurance
In some cases, the Instructor's homeowner's liability insurance may provide coverage sufficient to meet these requirements. Instructor should provide these requirements to his or her agent to confirm and provide verification to the Entity.

Special Events Coverage for Instructors
Special events coverage is available for an additional fee to provide the liability insurance required by this agreement. Instructor can obtain additional information and cost from the Entity.

Special or Low Risk Activities
Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. The Entity reserves the right to modify or waive insurance requirements for certain low risk recreational activities.

CHAPTER EIGHT:
SCHOOLS AND OTHER YOUTH-SERVING ORGANIZATIONS

SUMMARY

This chapter covers considerations related to Education Risks including risks involving school operations, usage of campus facilities, extracurricular activities, off-campus coverage, and specialized programs custom to any education level or purpose.

Of all the types of public entities, entities with an education mission including schools, colleges and universities tend to encompass nearly every type of risk described in this manual. Education operations are so varied and can include a marine biology field trip (see the Marine chapter), use of a drone (see the Aviation chapter), and computer technology (see the Cyber chapter). Moreover, because in many cases, education risks involve interaction with minors, it is critical that educational organizations contract to protect both the organization and its assets but more importantly, the youth involved. While the general principles described in this manual are equally applicable to educational organizations, this chapter highlights areas for special attention in these organizations' contracting agreements.

We have included in Appendix D a sample minimum insurance requirements matrix suggested for use by schools.

Use of Facilities

Most school campuses are hubs of their communities and there are requirements in some jurisdictions that the facilities be open to use.

The usage of on-campus facilities at many educational institutions is about as wide-ranging as any other line of business. From athletic events to fine art exhibitions to book or bake sales, it is almost as common to have outsiders on campus as it is students. When hosting or sponsoring an event on campus, it is recommended that your client fills out a proper application and permit for use of facilities. This agreement should include the applicant's name and purpose, what specific facilities will be used and how, the nature of the event, the date and time range, fees, and estimated attendance – among many other factors. For a more in-depth analysis of such evets, we recommend you read the Special Events Resource Guide, referenced in this Manual in Chapter 7.

One aspect of allowing third parties to use your facilities that should never be forgotten is the importance of a facilities use agreement that includes insurance requirements similar to the Exhibits in this manual and hold harmless and indemnification agreements, referenced in Appendix C. Additionally, your campus should make the user or other third parties aware of their obligations, both those under your own policies, as well as any mandated by law. Stress that the user is not allowed to make any permanent changes to the physical environment they are leasing, and that they are to exercise proper care at all times before, during and after the event.

An easy way to provide security to your organization is by having any third-party facilities user complete an application. This application can be brief – highlighting dates/hours of use, purpose,

person(s) in charge, facility(ies) to be used, estimated attendance, and any other special needs this user may have. Further, on the same application, include an indemnification and hold harmless agreement, which is put into effect by the applicant's signature on their application.

See Exhibit 12 for sample insurance requirements.

Third Party Instructors

(Note: this discussion follows from the discussion of the previous chapter and is intended for specific consideration in the school environment.)

Third Party Instructors are analogous to independent contractors. A common example found on school campuses are speech pathologists. They are often hired on a limited basis for a set wage or fee, and many work independently without a parent company. Though they are accredited through a certified organization, they often do not have their own liability coverage and are typically excluded from standard school general liability policies. A speech pathologist, who often has one-on-one interactions with students behind closed doors, is a prime example of a third-party instructor for whom your organization needs to verify or secure coverage.

A common issue raised about this coverage is the cost to the instructor or school. A policy might cost $10,000 when they are only paying the specialist $20,000. Special events coverage may be available for much less, though if the instructor is providing service to a number of clients, they need coverage of their own, including SAM liability if applicable, and can spread the cost. Such specialists should be reminded that in the event of a claim arising from their services they are just as likely to be personally named in a suit as the school itself.

See Exhibit 13 for sample insurance requirements.

Special Events

School campuses naturally attract special events. Please refer to the Chapter 7 Special Situations and we also recommend searching online for the California State University's Special Event Resource Guide (SERG). We provide basic information below to help frame some of the issues.

Most schools, colleges and universities have a well-crafted and practiced risk management program for their core operations. Special events bring risks that stretch beyond a school's risk management and insurance program. Some types of events to pay extra attention to:

- Carnivals – Carnivals bring in the outside public and may include amusement rides. These rides require specific permitting and distinct insurance. See Chapter 7 for further discussion.
- Helicopters and Drones – Events that include use of aircraft including "unmanned aerial vehicles" (UAV's aka "drones") will require special insurance described in Chapter 5. Also, keep in mind that campus fields are regularly used for emergency support, such as wildfire response bases. Mutual aid arrangements with other public entities should have a written agreement to indemnify the school as well as a hold harmless/additional insured endorsement from the aviation insurer.
- Concerts – Musical events can range from very low to very high risk. Some classifications of artists such as heavy metal and rap will incur very high premiums. Be sure to define security and traffic control responsibilities. See the CSU SERG manual for ideas.

Student Placement Agreements

The California Education Code section 51769 addresses students in programs being considered employees under the Labor Code. This section states that the school district or administrator, or student apprenticeship program itself, "shall be considered the employer . . . of persons receiving this training unless the persons during the training are being paid a cash wage or salary by a private employer." There is an exception, however, for registered student apprentices when the school district, or any school administered by the State Department of Education, purchases and provides workers' compensation insurance, or unless the person/firm under whom the students are garnering work experience or training provides such insurance. It is important that student placement agreements define whether the school or host has an obligation to cover liabilities arising from the placement, including workers' compensation.

Tug-of-wars between schools and host entities over who should bear the risk on student placement agreements has become more common. These placement agreements typically involve a goal of a student receiving real world experience via an externship, internship or other formal and informal training programs. As a general rule, the authors would advise that the host organization is in the best position to manage risk since it is the host organization's work site. That said, the training may be essential to the student's degree program and the school, college or university will have a need to facilitate the placements. For example, degree programs in nursing, allied health and K-12 teacher certification have mandatory practicum requirements for in the field hours of training.

In certain instances, the potential host organization may refuse to accept student trainees unless the educational organization agrees to indemnify and insure for liability arising from the placements, including arising from the acts of students under the supervision of the host organization. There is a developed market for student trainee liability coverage (including general and professional liability, but not auto liability) for the nursing, allied health and teaching professions. Beyond the liability coverages, there is the issue of who will provide workers' compensation coverage if that is required. Most of these placements involve no pay to the trainee, so workers' compensation generally doesn't apply. However, the authors are aware that workers' compensation coverage for student trainees may be required in certain jurisdictions. When workers' compensation is required, that can result in a thorny negotiation as to which entity will provide the coverage. In the end, where the liability lands is likely the product of negotiating clout, i.e. how badly does the host organization need future trainees versus how badly an educational organization needs a specific placement agreement. Once a decision is made as to which organization (or the student) is taking the liability, there will need to be a discussion with the responsible party's coverage providers about how best to provide coverage.

Sexual Abuse and Molestation (SAM) Liability

The majority of general liability policies do not include coverage for sexual abuse or molestation. Abuse protection must be added on as an endorsement. Despite the expense, such coverage is necessary anytime your employee or a hired third party may interact with children, regardless of how unlikely. If a school hires anyone – full time or contract work – they must be given proper child abuse mandated reporter training. The California Penal Code section 11165.7 defines who is a mandatory reporter with over 50 different types of persons, 9 of which directly relate to schools.

Such examples include teachers, aides, administrators, school officers/officials, athletic coaches, arts and drama instructors, janitors, and even hired third parties such as transportation companies and their employees. This insurance manual is not intended to provide risk management programs for protection of youth.

As described above it is essential that contractors be required to have coverage for Sexual Abuse or Molestation (SAM) liability. SAM liability may be endorsed to a standard liability policy or it may be obtained on a specially purchased stand-alone policy. If a contractor attempts to confirm SAM liability coverage by showing their policy does not exclude the exposure (i.e. is silent rather than having an affirmative coverage grant), the authors recommend that the school require written confirmation of coverage from the contractor's insurer or insurance agent/broker. The problem with relying on silence to trigger coverage is that most insurers will decline a SAM based on the intentional acts exclusion and other exclusions for criminal activities. The level of diligence in confirming the coverage may depend on the nature and duration of the contract, but note that SAM claims for a single person or even incident have cost schools millions of dollars.

Educators Legal Liability (ELL) is designed to cover a broad range of non-bodily injury/non-property damage liability claims made against the administrators, employees, and staff members of both schools and colleges. ELL, which is also known as "school board legal liability insurance," is a hybrid of traditional directors and officers and errors and omissions coverages. Typical claims covered by ELL include wrongful termination, wrongful dismissal, failure to grant tenure, and negligent counseling. SAM coverage is traditionally provided as well but now often subject to lower limits and/or higher retentions.

Transportation Risks

Schools typically have a substantial transportation exposure from busses. Even where a school operates owned buses, it likely contracts for additional transportation needs, such as field trips and special events. We strongly recommend requiring all transportation contractors to provide a minimum auto liability limit of at least $5 million. If the school contracts for vehicle maintenance or repairs, Garage Liability coverage should be required at a $1 million limit and Garage Keepers Legal Liability should be required to at least $75,000.

Beyond contracted transportation, there are a number of exposures related to parental volunteers transporting students to athletic and other events. It is beyond the scope of this manual as these exposures are not contracted. Suffice it to say that a school should have a comprehensive program to screen and register volunteer drivers and ensure their personal auto insurance is in place.

See Exhibit 14 for sample insurance requirements.

Exhibit 14: Insurance Requirements for Bus and Transportation Contracts

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL)**: Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation**: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.
4. **Sexual Abuse or Molestation (SAM) Liability**: If the CGL policy referenced above is not endorsed to include affirmative coverage for sexual abuse or molestation, Contractor shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than **$1,000,000** per occurrence or claim.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or 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 Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL and SAM policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the

Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation and provide a copy to the Entity, but this provision applies regardless of whether or not an endorsement has been issued.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to provide proof of ability to pay losses and related expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies (note – should be applicable only to SAM liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all**

policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

CHAPTER NINE:
VERIFY COVERAGES

SUMMARY

Your Entity should require the responsible party to submit acceptable proof of insurance before work can begin or premises are occupied. As proof of coverage, most insurance agents are accustomed to preparing, signing, and submitting an insurance industry-designed certificate of insurance. In addition to the certificate(s), you should require endorsements to the policy for additional insured status on the general liability policy and other requested protection, such as a waiver of subrogation endorsement for Workers' Compensation. For major projects, or to be as certain as possible about coverage and compliance with requirements, you should obtain a copy of the complete insurance policy and read it carefully.

A contractor's insurance agent or broker will provide verification of compliance with your insurance specifications by issuing a Certificate of Insurance and any endorsements that may be needed to comply with other requested insurance provisions, including additional insured status for your entity. Because of their importance in verifying coverage and securing your entity's rights as an additional insured on the Contractor's policy, this Chapter will focus on these documents.

Typical Contractors Insurance Program

<table>
<tr><td colspan="4">$5 million
Umbrella or Excess Liability</td><td>Unlimited Contract $ "Statutory"</td><td colspan="2">REPLACEMENT COST</td></tr>
<tr><td rowspan="2">$1 MIL</td><td rowspan="2">BUSINESS AUTO POLICY</td><td rowspan="2">COMM'L GENERAL LIABILITY</td><td rowspan="2">EMPLOYERS LIABILITY</td><td rowspan="2">WORKERS' COMPENSATION</td><td rowspan="2">PROPERTY, INCLUDING BUILDER'S RISK (AKA COURSE OF CONSTRUCTION)</td><td rowspan="2"><u>BONDS</u>
• BID
• PERFORMANCE
• PAYMENT</td></tr>
<tr><td>Deductible</td></tr>
</table>

Verification of Coverage Process and Service Providers

Now that your Entity has established appropriate indemnity and insurance requirements with precise "triggering" language in contracts, it's important to verify that the documents provided by contractors meet the requirements of the agreement. We recommend that your entity:

1. Have an established process to obtain and verify insurance documentation
2. Include steps to follow-up as needed for additional or corrected documentation
3. Include steps to evaluate risks and document waiver of non-compliance
4. Treat the contractor insurance documentation as if it were an insurance policy of your own in your records retention policy.
5. Follow the process

We have described that it is important to have more than certificates of insurance. Your entity needs documents that show the entity is an Additional Insured, Subrogation has been waived, it is Primary & Non-Contributory, etc. This means you need to see the necessary documents, and that could include the declarations page and endorsements page with the schedule of forms, or even a complete copy of the policy, especially for Excess policies. While contracts for big projects certainly require detailed attention, there are many cases of small agreements, even purchase orders, resulting in losses of tens of millions of dollars, and some of these losses could have been transferred had thorough verification of coverage been applied.

The process of verification can be time consuming. Some organizations have engaged third parties to perform the verification process, including initial review, compliance follow-up, and verification of renewal documentation. These services can relieve your entity's staffing but do come at a cost, which can add up depending on the level of service and number of agreements reviewed and tracked. The authors believe that advancing technology, use of machine learning and perhaps "artificial intelligence" will continue streamline the verification, compliance and tracking process. In fact, Automated Insurance Verification has been launched by one of the authors to facilitate this transition. Visit http://www.automatedinsuranceverification.com/ to learn more.

Certificates of Insurance Guidelines

You will be receiving certificates of insurance from various tenants, vendors, and contractors, such as those hired to perform tenant improvements, alterations, and additions. Consequently, it is essential that you be able to understand these certificates and compare the information provided to the applicable insurance requirements in a lease or other contract.

The following guidelines are designed to assist you with this process.

GENERAL INFORMATION

What is a certificate?

A certificate of insurance is a document that gives evidence of the insured's financial ability (via an insurance policy) to respond to a claim. No coverage benefits are afforded to the certificate holder; the certificate merely confirms that the subject company carries insurance.

Why are certificates needed?

Certificates give evidence that the other party has appropriate insurance to cover the claims for which they are responsible.

When are certificates needed?

Certificates are needed when another party (such as a contractor janitorial service, security service, etc.) performs services on your behalf or has property in its care, custody, or control (e.g. leasing your premises or your equipment).

Who should provide the certificate?

The other party's insurance agent, broker, or risk management department should provide the certificate to you, and it should be signed by an authorized representative of the issuer.

Certificates of Insurance
Section 384 of the California Insurance Code clarifies the role of certificates of insurance in relation to the insurance policies which they describe:

> A certificate of insurance or verification of insurance provided as evidence of insurance in lieu of an actual copy of the insurance policy shall contain the following statements or words to the effect of:
>
> **This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein.** Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance 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.

This wording means that if the certificate is not accurate, the insurer is not required to conform to the certificate. Also, any statements made on the certificate, such as cancellation notice provisions or naming your Entity as an additional insured, do not affect the policy.

Occasionally, insurance agents or insurers may make errors when issuing certificates of insurance. The most common errors involve description of additional insureds and notice of cancellation. When these errors on the certificate conflict with terms found in the policy, the policy governs, according to California law. Customized endorsements used by public entities may no longer be accepted by insurers. As a result, asking for an entity's custom endorsements will likely delay the verification of coverage process. The sample custom endorsement may best be used as a baseline to compare what is provided by the contractor rather than a mandatory form. Sample Certificates, including an annotated version describing the various provisions, are provided in the Appendix. Note the wording on the reverse side of the certificate.

LIABILITY INSURANCE CERTIFICATES

Certificate of General Liability Insurance

Basis - The certificate should indicate whether coverage is being provided on an occurrence basis or on a claims-made basis. Most general liability insurance policies are written on an occurrence basis.

Limits - The certificate should specify amounts of coverage conforming to the requirements of your contract.

Coverages - The certificate should specify whether coverage is provided by a Comprehensive General Liability policy or a Commercial General Liability policy. It should also indicate whether special coverages required by the contract have been included.

Certificate of Excess Liability Insurance

Limits - If the other party's general liability, automobile, and employers' liability, etc. policies provide less than the limits required by you, the certificate of insurance may (and should) give evidence of an excess policy to provide the additional limits.

Coverages - The certificate should indicate whether excess liability coverage is provided on an excess form or an umbrella form.

A number of organizations have attempted to streamline online coverage verification. Robert Marshburn has helped develop one of those tools which can be found at www.AutomatedInsuranceVerification.com.

Additional Insured (Liability Policies)

If you are named as an additional insured, the endorsement should clearly state that you are an additional insured and for what purpose. Contractors who work on numerous projects should issue endorsements for **"Any and all work performed"** also known as **"blanket endorsements,"** to ensure that documents are not missed on an individual contract. Typically, the language of a certificate of insurance provided by the other party does not control the terms of an insurance policy. In an appropriate case, it may be desirable to specify that the other party's insurance policy is primary and non-contributing and that your policy is excess.

You should strongly consider being named as an additional insured on the other party's policy when:

1. It is a contractor or vendor working on your behalf.

2. It is directing or controlling the work of any of your employees in a situation where injury might result.
3. It is leasing space in a building or on property you own.
4. It is conducting a special event, i.e. wedding, parade, etc., and utilizing your Entity's facilities.

Indemnity is covered in your Vendor/Contractors Insurance under the definition of an "Insured Contract" in the CGL under which the named insured (the Vendor/Contractor you hired) assumes the tort liability of the Entity to pay for injury or damage to a third party.

Indemnification is not limited to the definitions of the Additional Insured endorsements.

However, the defense costs associated with enforcing an Indemnification clause are usually considered damages and are deducted from the available policy limits.

Include that these are insurable Indemnity items ONLY, and attorneys may want to include non-insurable items.

In contrast, the Additional Insured Endorsements provide direct access to the Insurance carrier of your Vendor/Contractor, and defense costs are paid in addition to, and do not deduct from, the policy limits.

The preferred method of recovery is through the insurance company as an additional insured. Problems could arise later if not reported to the insurance company in a timely manner.

Primary Language

All policies for general liability should state that the insurance is primary, and that any insurance policy owned by your Entity will be considered as excess and non-contributory to the underlying policy such as coverage at least as broad as ISO CG 20 01 04 13.

PROPERTY INSURANCE CERTIFICATES

Certificate of Property Insurance

This certificate is needed when another party has been made responsible for providing insurance on property you own or for which you are responsible. This certificate also pertains to tenants, where it is specifically required by contract.

A certificate of property insurance should show:

Property Covered - The certificate should provide an appropriate description of all property for which insurance is required;

Limits - The certificate should evidence appropriate amounts of coverage for the property and applicable deductibles;

Coverages - The certificate should provide appropriate coverages for the risk of loss to which the property is subject. This is usually expressed as "all risks" or "special form;"

Interests - The certificate should indicate the nature of your interest, i.e. owner, lender, or landlord in the insured property and your status under the policy; and

Loss Payee - If you are named as a loss payee, the certificate should clearly state you are a loss payee and for what purpose. By being named as a loss payee, you will have the right under the policy to be reimbursed for a loss to your property directly by the insurance carrier. Usually, in the event of a covered loss, the carrier will issue a payment jointly to the loss payee and the insured.

WORKERS' COMPENSATION INSURANCE CERTIFICATES

Most often, you should require evidence of workers' compensation coverage from your vendors and subcontractors. Please note that you cannot be added as an additional insured to a workers' compensation policy.

Limits - The certificate should specify that the policy provides the statutorily required benefits of workers' compensation and the minimum amount of employers' liability coverage required by your contract.

Waiver of Subrogation - The insurance policy should be endorsed with a waiver of subrogation in favor of your Entity. This language protects your Entity from claims for contribution resulting from injuries sustained by contractor employees.

Additional Insured Endorsements

Requiring your entity to be named as an Additional Insured under a contractor's insurance policy provides an extra layer of protection by giving your entity direct rights of coverage under that policy. As illustrated below, the Hold Harmless clause gives you one avenue for protection, but you must go through the contractor's obligation to you (defined as an "Insured Contract" in the liability policy) to obtain funds from the insurer.
The additional insured endorsement gives you a *second contract*, direct with the insurer, to pursue payment. This allows you to circumvent potential difficulties with the contractor and greatly improves your ability to obtain a legal defense for any potentially covered claims. In addition, under the pre-2004 endorsements discussed below, the coverage provided your entity may be broader than the contractor's obligations under the Hold Harmless. This second avenue of coverage, and potentially broader indemnity, are what make Additional Insured status so desirable.

You should always require being named as an additional insured on the other party's policy when:

1. They are a contractor or vendor working on your behalf.
2. They are directing or controlling the work of any of your employees in a situation where injury might result.
3. They are leasing space in a building or on property you own.
4. They are conducting a special event, i.e. wedding, parade, bounce house, etc., and utilizing your Entity's facilities.

Additional Insured Endorsement Forms

If you are named as an Additional Insured, the endorsement should clearly declare your status and for what purpose. Contractors who work on numerous projects for your entity should provide

endorsements for "any and all work performed" to ensure that documents are not missed on an individual contract.

The Additional Insured endorsement for contractors form has changed ***materially*** since the 11 85 version that is most recommended. The preferred ISO form numbers is **CG 20 10 11 85** (the 11 85 in the number sequence is the "edition date," November 1985). That form states:

> **WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of ***"your work"*** for the insured by or for you. (emphasis added)

The phrase "your work" encompasses coverage for both **"ongoing operations"** (damages that occur *while the contractor is on the job*) and the **"products-completed operations hazard"** (damages that *arise from defects in the contractor's product or work* after the product is sold or the work is completed).

Beginning in October 1993, the CG 20 10 ISO form was changed to cover only "ongoing operations" *and a new form, CG 20 37, was introduced to provide the products and completed operations coverage.* Both forms were updated again in 1997, and 2001, with significant changes in 2004 and 2013. The most recent changes were made in 2019, along with the introduction of new endorsements that generally expand coverage to "upstream" parties, including those without a direct contractual relationship, or privity, with the contractor.

The 1993, 1997, and 2001 versions of the **CG 20 10** form read:

> **WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of ***"your ongoing operations"*** performed for that insured. (emphasis added)

The 2001 version adds a specific exclusion for completed operations.

Since the CG 20 10 form excludes completed operations, it is recommended that for contractors your entity also request the **CG 20 37** form (CG 20 37 10 01), which contains coverage for products and completed operations. The 10 01 version of this form reads:

> **WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only **with respect to liability arising out of "your work"** at the location designated and described in the schedule of this endorsement performed for that insured **and included in the "products-completed operations hazard."** (emphasis added)

The term "arising out of" gives the additional insured the ability to directly access the contractor's insurance coverage, *even when solely negligent*, due to numerous court decisions that have held as long as the claim "arose out of" the contractor's work it was potentially covered, even if the contractor's actions did not contribute to the damages.

As a result, ISO ***updated the language in the 07 04 editions of the endorsements to eliminate the "arising out of" language,*** replacing it with the following for the CG 20 37 07 04 form:

> **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 **"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." (emphasis added)

The 2004 form requires that damages be caused, in whole or in part, by the contractor in order for coverage to apply to the additional insured. *This attempts to limit coverage to the vicarious liability of the additional insured arising from the contractor's negligence and eliminate coverage for the additional insured's sole negligence.* The new form also restricts coverage to bodily injury or property damage and for the first time adds the qualifier "additional" insured in the Who Is An Insured definition in the policy.

The 2004 version of CG 20 10 maintains the exclusion for completed operations, but replaces "your ongoing operations" with a different definition, including:

> 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.**

The changes in 2013 further limited the coverage available to the additional insured, to coverage and *limits required by contract, and to the extent permissible under state anti-indemnification laws.* This means **if the coverage and limits are not required in your contracts, there is no coverage** even if the insurance would have otherwise provided it! It is imperative that you review your contracts with your legal and risk management teams to ensure they include appropriate insurance requirements.

In addition to restricting coverage in the existing endorsements, ***ISO introduced a new endorsement in 2013 to provide Automatic AI status for "upstream" parties*** *who do not have privity with the contractor:*

CG 20 38 04 13: Additional Insured – Owners, Lessees or Contractors – ***Automatic Status for Other Parties*** When Required in Written Construction Agreement (emphasis added).

While addressing a genuine concern this endorsement is limited to *ongoing operations coverage* for "upstream" parties who do not have privity with the insured contractor *but for whom the contractor is conducting operations*. **The endorsement does not provide completed operations coverage or apply to operations not performed *for* the AI,** including under a permit.

In 2019 ISO revised and introduced a number of Additional Insured Endorsements, several of which are designed to further address coverage for "upstream" parties to the contract, such as property owners, general contractors, and public entities, who do not have a direct contractual relationship with the contractor and/or for whom no work is being performed.

The 2019 revisions to the 2013 AI endorsements were slight, removing the phrase "shown in the Declarations" and instead refer to "applicable limits" in order to account for limits of insurance that may be applicable under an endorsement or other provision of the policy. Some endorsements include other minor editorial revisions. These changes result in no impact on coverage

The biggest and most positive change is the addition of a number of automatic status endorsements, including one that provides Completed Operations coverage. With these additions we now have more flexibility in obtaining appropriate AI coverage from contractors for more parties.

There are two major types of Additional Insured Endorsements for contractors under commercial general liability policies:

1 – Liability for **"Ongoing Operations"** while the work is being done; and
2 – Liability for **"Completed Operations"** after the work is completed

There are two basic ways to accomplish this:

1 – The Additional Insured and the location and description are **"Scheduled"**, or individually named, on the Additional Insured Endorsement, or
2 – The Endorsement applies on an **"Automatic Status"** basis, but only if it is required in a written contract or agreement "With You".

Previously ISO provided "Automatic" coverage by use of the long-standing CG 2033 or the newer CG 2038 Additional Insured Endorsements. *Coverage applies only if it is required in a written contract or agreement "With You" and only for Ongoing Operations liability.*

However, two new Additional Insured Endorsement forms give "Automatic Status" for Additional Insureds for Completed Operations (emphasis added):

CG 20 39 12 19 Additional Insured – Owners, Lessees Or Contractors – Automatic Status When Required In Written Construction Agreement ***With You*** (Completed Operations)

Extends "Automatic" Completed Operations coverage, *designed to work with the CG 2033* that extends "Automatic" Ongoing Operations coverage to Additional Insureds. As noted above, it must be required in a written Contract or agreement "with you" (not another Contractor or Sub) to trigger the AI coverage.

CG 20 40 12 19 Additional Insured – Owners, Lessees Or Contractors – Automatic Status For ***Other Parties*** When Required In Written Construction Agreement (Completed Operations)

Extends "Automatic" Completed Operations coverage, *designed to work with the CG 2038* that extends "Automatic" Ongoing Operations coverage to Additional Insureds *even if they have no Contract "with you",* but only if it is required to cover you in a written Contract or agreement by the Contractor hiring them.

Prior to this, the only way to obtain an Additional Insured Endorsement for Completed Operations was by means of the CG 2037 that covers liability for parties named individually on the endorsement, i.e., it could not be on an "Automatic" basis.

Another important issue to understand: the Contract "With You" Requirement:

For the CG 2033, the "Automatic" coverage is not effective unless the Contract that requires it is "with you" i.e., **the Sub of a Contractor cannot cover you with the CG 2033 since the Sub's Agreement is with the Contractor, not with you.**

The CG 20 38 04 13 solved this problem. It also gives "Automatic" Ongoing Operations coverage from a Sub to cover you as an Additional Insured even if they have no Contract "with you", as long as it is required to cover you in a Contract by the Contractor hiring them.

If the Sub of a Contractor you hire only has the CG 2033, and not the CG 2038, then you must be named individually on the CG 2010 in order to obtain "ongoing operations" coverage from that Sub since the Sub's Contract is not "with you."

In 2019 ISO also introduced two Automatic Status endorsements *for general use, not tied to construction*:

CG 20 42 12 19 Additional Insured - Automatic Status for Designated Operations

A. Section II - Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) for whom you have agreed to add under any contract or agreement, but only with respect to liability for:

1. "Bodily injury" or "property damage" not included in the "products-completed operations hazard" or

2. "Personal and advertising injury"

caused by, in whole or in part, your acts or omissions or the acts or omissions of those acting on your behalf ***in the performance of your operations as described in the Schedule above.***

CG 20 43 12 19: Additional Insured – Automatic Status When Required in Written Contract or Agreement

This new endorsement is *similar to the one above but does not require listing the operations* in the endorsement schedule. However, both of these new endorsements include an exclusion for professional services and list a number of examples, including but not limited to legal, engineering, law enforcement, firefighting, and body piercing services.

And lastly, ISO introduced an Automatic AI Endorsement for Vendors:

CG 20 44 12 19: Additional Insured – Vendors – Automatic Status When Required in Agreement; provides traditional vendor coverage per terms of contract and endorsement.

Summary – Additional insured endorsements *for contractors*, in order of preference:

- *Best:* CG 20 10 11 85 covers all bases (or CG 20 26 11 85). This edition date is now extremely difficult to obtain in most all except large public works projects.
- *Very Good:* **Both** CG 20 10, or CG 20 26, or CG 20 33, ***10 01 Editions***, or CG 20 38 04 13 (includes Subs coverage that the 20 33 may not); **and** CG 20 37; 10 01 Edition date
- Good: **Both** CG 20 10, or CG 20 26, or CG 20 33, ***07 04 Editions***, or CG 20 38 04 13 (includes Subs coverage that the 20 33 may not); **and** CG 20 37; 07 04 Edition date
- *OK, but not Preferred:* 04 13 or 12 19 Edition dates of **Both** CG 20 10, or CG 20 26, or CG 20 33, or CG 20 38 (includes Subs coverage that the 20 33 may not); **and** CG 20 37.

The 2013 editions are becoming the "standard' date in Additional Insured Endorsements and may be what is available.

For use of property (owners/lessees exposure), or other contracts where there is no risk of damage from completed construction or operations (such as a training instructor) Form CG 20 10 10 01, for ongoing operations, is sufficient by itself.

For Additional Insured protection of "upstream" owners, general contractors, etc., use the following guidelines:

- If you ***have privity of contract*** with the insured, **AND** the insured is performing work on your behalf, *request both of the following*:

  CG 20 33 Additional Insured-Owners, Lessees or Contractors-Automatic Status When Required in a Written Construction Agreement With You **–** for ongoing operations; and

  CG 20 39 Additional Insured – Owners, Lessees Or Contractors – Automatic Status When Required In Written Construction Agreement With You (Completed Operations)

- If you have ***no privity of contract*** with the insured performing the work **AND** they are performing work on your behalf you need *Scheduled* endorsements for both ongoing operations and completed operations:

  CG 20 10 Additional Insured - Owners, Lessees Or Contractors – Scheduled Person or Organization; for ongoing operations, and

  CG 20 37 Additional Insured – Owners, Lessees Or Contractors – Completed Operations

Or if you prefer the *Automatic Status* in Contract approach:

CG 20 38 Additional Insured – Owners, Lessees Or Contractors – Automatic Status For Other Parties When Required In Written Construction Agreement; for ongoing operations; and

CG 20 40 Additional Insured – Owners, Lessees Or Contractors – Automatic Status For Other Parties When Required In Written Construction Agreement (Completed Operations)

- If you have ***no privity*** *of contract* ***and no work*** *performed on your behalf* by the insured but want AI coverage for a *designated operation,* ask for this endorsement:

  CG 20 42 Additional Insured – Automatic Status For Designated Operations; provides ongoing operations coverage only

And lastly – this endorsement can be used with ***no privity, work or a designated operation***, it only has to be required in a written contract:

CG 20 43 Additional Insured – Automatic Status When Required In Written Contract Or Agreement; provides ongoing operations coverage only

Both of these new Automatic AI endorsements contain professional liability exclusions for a long list of services, including legal, medical, law enforcement, and firefighting.

The table below provides a summary of the AI endorsements to be used for the situations as described above. Note there is no AI endorsement currently providing Completed Operations coverage to a party with no privity and no work being performed for them.

Insured Relationship to AI for Coverage	**Doing Work *For* AI with a Contract requirement regardless of Privity**		**Doing Work *For* AI, with Privity, but no Subs**	**No Contract "With You" (No Privity) & No Work *For* Additional Insured**	
Type of Endorsement	**Scheduled**	**Automatic***	**Automatic****	**Automatic***	**Designated**
Ongoing Ops Form #	20 10	20 38	20 33	20 43	20 42 & 20 26
Completed Ops Form #	20 37	20 40	20 39	NONE from ISO	NONE from ISO

* ONLY if required in a written contract or agreement ** ONLY if required in a written contract "With You" (Privity)

For Automatic Status, Form Numbers 20 38 and 20 40 should be required rather than the 20 33 and 20 39

Use form 20 33 and 20 39 ONLY when you are SURE there are NO Subs being used that have NO Contract "With You"

***ALL Automatic** forms **must be required** in a "**written** contract or agreement" or there is **NO** Additional Insured coverage!

Automatic or "Blanket" AI Endorsements

Many insurers will issue endorsements providing Automatic Status as an Additional Insured (often called "blanket" endorsements), meaning they will cover your entity as an additional insured as long as it is ***required in a written contract***. The CG 20 33 and CG 20 38 Additional Insured Endorsements mentioned above are examples of automatic or blanket endorsements. This eliminates the need to customize the endorsement to name your entity and/or the project. *Many insurers have this automatic language written into their policies* and will not need to issue an endorsement. However, you should *request a copy of that section of the policy for verification*.

The ***policy language or endorsement may also agree to provide primary coverage and a waiver of subrogation, as long as it is required in the contract.*** The ISO CG 20 01 is an example of a primary coverage endorsement, and you should require coverage "at least as broad as" this endorsement. This will satisfy the "as long as it is required in a written contract or agreement" provision to trigger the coverage. This is perfectly acceptable and may provide for broader coverage than you may receive from a standard endorsement as long as you use the specifications provided in this manual to comply with the "written contract or agreement" requirement. Be aware, however, that ***some insurers use customized "blanket" endorsements or policy language that may be more restrictive*** in terms of reporting requirement or use of independent legal counsel. Review the terms carefully and consult with your risk management advisor when faced with non-standard language.

Permits

Many times an agency will issue a permit allowing the permittee to conduct business within the agency's jurisdiction. This permit may not be a traditional contract with a third-party vendor, but the permit may require that the permittee carry insurance and include the agency as an additional insured.

ISO provides two AI endorsements to address permits or authorizations, the CG 20 12 for general use and the CG 20 13 for permits related to specific hazards on the insured's premises. Note the CG 20 12 endorsement *excludes Completed Operations coverage and work performed for the agency* (emphasis added):

CG 20 12 12 19: Additional Insured – State or Governmental Agency - Permits or Authorizations

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".

And the CG 20 13 refers only to specific hazards on the insured's premises:

CG 20 13 12 19: Additional Insured – State or Governmental Agency - Permits or Authorizations Relating to Premises

This insurance applies ***only with respect to the following hazards*** for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization ***in connection with premises you own, rent or control*** and to which this insurance applies:

1. The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or

2. The construction, erection or removal of elevators; or

3. The ownership, maintenance or use of any elevators covered by this insurance.

At this time there is no AI endorsement for permits that provides Completed Operations coverage to the permit-issuing agency. The only avenue is through the indemnity agreement in the permit that would allow the agency to access coverage through the contractor's obligation to hold the agency harmless from damages related to any defective work product.

More information is available from Alliant or other industry references listed in Appendix E.

Other Endorsements

Along with the additional insured endorsement, other provisions in the recommended insurance specifications may require an endorsement to provide the required protection. The following is a brief discussion of these requirements, with sample endorsements after the descriptions.

Primary Insurance – The recommended ISO CG 00 01 commercial general liability form does not automatically provide primary coverage to your entity as an additional insured. However, ISO now provides an endorsement that provides such coverage, the ISO CG 20 01 04 13. Also, forms that contain "blanket" additional insured language often do provide primary coverage to the additional insured, as long as it is required under contract. The reader is advised to include the recommended primary language in their insurance specifications with language such as "coverage

at least as broad as ISO CG 20 01 04 13" and confirm their status via endorsement or policy language.

The recommended policy form for auto liability typically provides primary coverage to your entity, as long as it is required by contract. In addition, State Insurance Code provisions provide that the policy that most specifically describes the subject auto is primary and that should be the policy of the vehicle's owner. Taken together, the general rule in California and most other states is that "the insurance follows the car", and therefore, there is no need for a separate endorsement. One major exception is for vehicle owners who are in the business of renting, leasing, selling or servicing automobiles. For rental vehicles, the driver's insurance is primary, and unless required by written contract, most Garagekeeper's insurance will also be excess over any other insurance available to the driver.

As with the additional insured endorsement, the reader is advised to include the primary requirement in their contract specifications and verify the status with an endorsement, policy language, or other written confirmation from the insurer or agent.

Waiver of Subrogation – In cases where your entity is an additional insured on the auto and general liability policies *and* your contract contains a waiver of subrogation, you should not need an endorsement. Most policies, including property insurance, allow their insured to waive subrogation prior to a loss.

A waiver of subrogation should also prevent the contractor's Workers' Compensation insurer from pursuing your entity. However, the standard Workers' Compensation policy form does not allow the insured to waive subrogation. Most insurers will agree to waive subrogation if requested, but many will charge the contractor and additional premium to do so. Contractors should notify their insurer of the requested waiver of subrogation and obtain their consent. The reader is advised to make sure such notice has been made, and for construction contracts to obtain an endorsement confirming the waiver has been obtained.

Waivers Should Be Used with Caution. Some insurance policies void the coverage if the insured agrees to waive the insurer's subrogation rights without prior approval. Other policies permit waivers. You should carefully review the policies and/or call your risk management advisor for assistance when dealing with waivers of subrogation.

Notice of Cancellation – This manual no longer includes suggested language requiring a notice of cancellation endorsement as insurers will rarely provide them. Nevertheless, the only way to ensure notice is by endorsement, and it is recommended that one be obtained for construction contracts, leases, and any other contracts in which the maintenance of insurance is considered critical.

Customized Endorsements

Insurer Supplied – Some insurers will provide additional insured status, primary coverage, and waiver of subrogation on their own customized forms. When in doubt, or if you are having trouble obtaining the appropriate endorsements, the reader is advised to provide the ISO sample form desired, as an illustration of the requested coverage and as a guide to reviewing any customized endorsements provided by the insurer. The reader is advised to review any customized endorsements very carefully, as they will often provide less than the recommended coverage. If in doubt, have your insurance provider review for you to make sure you get what you requested.

Entity Supplied – As indicated in the Foreword to this manual, it is rarely possible to obtain underwriter acceptance of entity supplied endorsement forms. The following is a customized endorsement as an example of what a public entity could require. Our experience is that insurers no longer accept these endorsements because they are not filed as required by many state departments of insurance. However, the sample endorsement on the next page can be used as a guide for comparing the endorsements issued by the insurer.

A WORD OF CAUTION: MULTIPLE COVERAGE SINGLE ENDORSEMENTS

We are noticing a number of insurance companies that have created various types of "Multiple Coverage Endorsements" that activate coverages previously provided by individual endorsements into a single omnibus endorsement, rather than an individual endorsement for each coverage issue.

These Multiple Coverage Single Endorsement Coverages are effective ONLY IF they are specifically REQUIRED in a Written Contract or Agreement between the parties!
These can include coverages for such things as Automatic Additional Insured for Ongoing and / or Completed Operations, Primary and Non-Contributory, Waiver of Subrogation, and so on for these various Types of Coverage Endorsements that are considered elsewhere in this manual.

As with any Endorsement on any policy, these can be to the good or harm of the Entity Risk Transfer interests. Each one of these Multiple Coverage Endorsements must be considered carefully compared to see if they are "at least as broad as" the corresponding coverage provided by the standard individual ISO endorsements since they are all customized by each company and are non-standard endorsements!

A WORD OF CAUTION: VENDOR SUPPLIED TERMS AND AGREEMENTS

For procurement procedures, do NOT allow vendors to incorporate their provisions or conditions such as from Sales terms to be to be incorporated into service agreements or purchase orders from them with limitations or exclusions for their liability, indemnifications, and additional insured endorsements (as well as other non-insurance provisions such as credit terms, late fees, etc.).

You want to control all of these Provisions that should be supplied whenever possible by the Agreements or Purchase Orders from the Entity that transfers the risk back to the Vendor/Contractor and protects the entity, and wherever possible NOT use the vendor supplied sales terms, purchase orders, or amendments.

This blanket endorsement modifies insurance provided under the following:

Named Insured: _____ **Effective Work Date(s):** _____

Insuring Company: _____ **Policy No.:** _____

Description of Work/Locations/Vehicles:

_____

AGENCY NAME AND ADDRESS:

_____

ADDITIONAL INSURED:

The Agency, its elected or appointed officers, officials, employees and, volunteers are included as additional insureds with regard to damages and defense of claims arising from: (Check all that apply)

☐ **General Liability: (**a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. {Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85}

☐ **Auto Liability:** the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Agency, its elected or appointed officers, officials, employees or volunteers.

☐ **Other:** _____

PRIMARY/NON-CONTRIBUTORY: This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS: Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its elected or appointed officers, officials, employees, or volunteers.

CANCELLATION NOTICE: The insurance afforded by this policy shall not be suspended, voided, or canceled except after thirty (30) days' prior written notice, (ten (10) days if canceled due to non-payment), by certified mail return receipt requested has been given to the Agency. Such notice shall be addressed as shown above.

WAIVER OF SUBROGATION: The insurer(s) named above agree to waive all rights of subrogation against the Agency, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the Agency.

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.

SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____, **(print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.**

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required on endorsement furnished to the Agency)

ORGANIZATION: _____
TITLE: _____
ADDRESS: _____
TELEPHONE: (_____) _____ **DATE ISSUED**: _____

APPENDIX A:
Risk Assessment

Potential High-Risk Situations or Special Insurance Required

- ❑ Crowd exposures
- ❑ Heavy equipment
- ❑ Plumbing
- ❑ Computer hardware or software
- ❑ Work involving vehicles
- ❑ Work near water, docks, wharves
- ❑ Work involving watercraft
- ❑ Work involving aircraft
- ❑ Medical services
- ❑ Marine work of any kind
- ❑ Legal services
- ❑ Construction management
- ❑ Other professional services
- ❑ Handling of funds or assets
- ❑ Zoning or planning services
- ❑ Inspection services
- ❑ Use or serving of alcohol
- ❑ Electrical work
- ❑ Work with natural gas
- ❑ Work near roads
- ❑ Work near railroads
- ❑ Work near airports
- ❑ Work near waterways
- ❑ Underground work or excavation
- ❑ Any pollution or environmental exposure
- ❑ Use of caustics, flammables explosives
- ❑ Maintenance or inspection services
- ❑ Armed guards, use of armored cars
- ❑ Design engineering or architectural services
- ❑ Surveys, soil engineering, topographical surveys
- ❑ Work involving utilities/provision of service
- ❑ Work involving boilers, pressure vessels, turbines

Severity-Related Questions for the Contract Risk Analyst

- How many persons will be involved in the activity?
- What will be the nature of their work?
- How many are exposed to injury from one event?
- Can persons not associated with the project/activity be harmed?
- What is the exposure to natural disaster (earthquake, flood, windstorm, etc.)?
- What effects would a disaster have on the property or people involved?
- What would be the economic consequences of a delay (to the Entity)?
- What is the value of Entity property associated with the activity?
- Can other businesses or entities by harmed/shut down by an occurrence?
- What is the value of the property adjacent to or affected by the activity?
- What types of vehicles will be used, if any? Do they carry passengers?
- How many people will occupy/use the finished product/structure?
- How many could be harmed from an occurrence at the site?
- Could injuries result later from latent defects or poor design?
- Is there any exposure to disease, carcinogens, structural failure, crowd panic, fire, crashes, explosions or other occurrences with catastrophic potential?

The objective of these questions is to find the lurking catastrophe in the contracted activity or its aftermath. Some real-life examples of extremely severe loss incidents could include:

- Communicable disease (such as Legionnaire's disease) distributed by a ventilating system.
- Collapse of a structure (such as the 1981 Hyatt-Kansas Public Entity skywalk).
- Multiple casualties from riots such as at various popular music concerts or international soccer games.
- Plane crashes.
- Ferry sinking.
- Failure of parking structures during earthquakes.

You should determine such issues as:

- What type of activities will take place during the term of the contract?
- Who could be harmed by these activities?
- What property could be damaged, and how severely?
- What is the maximum likely loss for each activity?
- Is there a possible pollution exposure?
- Are crowds likely to be involved?

- Will inherently dangerous activities, such as blasting, be a part of this project?
- Is the risk sufficient to reject bids not meeting specifications exactly?
- How likely is it that my Entity would be a defendant in the event of a loss?
- Should we agree to a mutual waiver of subrogation?

To obtain answers to some of these questions, you may need to confer with your Entity's legal counsel or risk management advisor. The identification of risks involved in the contemplated activity is possibly the most important part of the process of managing risks in contract situations. It requires time and thought.

Checklist for Evidence of Insurance

Certificate(s) of Insurance:

- ❑ Evidence provided for each type of insurance required in the contract (e.g., "Commercial General Liability", Auto Liability, Workers Compensation with Statutory Limits, and Professional Liability or E&O per the contract specifications)
- ❑ General liability is on an "occurrence" basis, not "claims-made."
- ❑ Auto liability covers "any auto" (or non-owned & hired if contractor has no autos).
- ❑ Limits are at least as high as the minimum required in the contract.
- ❑ Workers Compensation provides Statutory Limits & Employers' Liability of $1 million
- ❑ Policies are current and will be suspended (tickler filed) for renewal follow-up if the contract period runs beyond the policy expiration date.
- ❑ Excess liability policies have coverage periods concurrent with primary policies.
- ❑ Insured name is the same as Contractor named in the contract.
- ❑ The insurer's A.M. Best and Standard & Poor's ratings meet or exceed the Entity's minimum requirements.
- ❑ The insurer is admitted in California, or non-admitted is acceptable ___ yes ___ no.
- ❑ No self-insured retention (SIR) on liability policies. Any must be disclosed & approved.
- ❑ Descriptions of operations, locations, etc. are correct.
- ❑ Certificate Holder (your entity) is correct, with attention to correct person.
- ❑ Certificate provides for 30-day notification (10 days for non-payment) to Entity of changes or cancellation.
- ❑ Certificate includes signature of authorized representative.

Endorsement(s)

- ❑ **Additional Insured Status** - e.g., Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if forms with later edition dates provided
- ❑ **Primary Coverage such as ISO CG 20 01 04 13**
- ❑ **Waiver of Subrogation**
- ❑ **Notice of Cancellation**
- ❑ **"Blanket" Endorsement covering one or more of the above endorsements required.**
- ❑ **Entity-supplied endorsement provided and signed.**

(Sample follow-up letter if insurance verification incomplete)

Entity of XYZ

Date of Letter

ABC Construction Company
c/o Insurance Agent _____
_____
_____

Re: Compliance with Insurance Requirements

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

- ❑ Need original (or certified copy) of (certificate) / (endorsement) / (policy)
- ❑ Need original signature
- ❑ Additional insured incorrect, should read: _____
- ❑ Description of (operation) / (location) incorrect
- ❑ Insufficient limits
- ❑ (Deductible) / (SIR) not approved
- ❑ Wrong coverages, i.e., _____
- ❑ Wrong forms, i.e.,_____
- ❑ Insurer does not meet minimum requirements
- ❑ Policy has expired or is about to expire
- ❑ Required waiver of subrogation not included
- ❑ Primary language required such as ISO CG 20 01 04 13
- ❑ Other information:

_____
_____
_____

Please make the necessary changes and return the correct documentation to me. No order to proceed will be issued until the correct forms have been submitted.

Sincerely,

_____
Entity of XYZ

CODES USED IN BUSINESS AUTO POLICIES

1. **ANY AUTO.** *(This is the broadest coverage and includes all other categories shown below)*.
2. **OWNED AUTOS ONLY.** Only those autos owned by the Named Insured (and, for liability coverage, any non-owned trailers while attached to power units owned by the Named Insured). This includes autos acquired after the policy begins.
3. **OWNED PRIVATE PASSENGER AUTOS ONLY.** Only the private passenger autos owned by the Named Insured. This includes those private passenger autos acquired after the policy begins.
4. **OWNED AUTOS OTHER THAN PRIVATE PASSENGER AUTOS.** Only those autos owned by the Named Insured which are not of the private passenger type (and, for liability coverage, any non-owned trailers while attached to owned power units). This includes autos, not of the private passenger type, acquired after the policy begins.
5. **OWNED AUTOS SUBJECT TO NO-FAULT.** Only those autos owned by the Named Insured which are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes autos whose ownership entitles the Named Insured to have no-fault benefits in the state where they are licensed or principally garaged.
6. **OWNED AUTOS SUBJECT TO A COMPULSORY UNINSURED MOTORISTS LAW.** Only those autos owned by the Named Insured which, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject uninsured motorists' insurance. This includes autos acquired after the policy begins, provided they are subject to the same state uninsured motorists' requirement.
7. **SPECIFICALLY DESCRIBED AUTOS.** Only those autos described in the policy for which a premium charge is shown (and, for liability coverage, any non-owned trailers while attached to those described power units).
8. **HIRED AUTOS ONLY.** Only those autos leased, hired, rented, or borrowed by the Named Insured. This does not include any auto leased, hired, rented, or borrowed from employees or members of their households.
9. **NON-OWNED AUTOS ONLY.** Only those autos owned, leased, hired or borrowed by the Named Insured which are used in connection with business. This includes autos owned by the Named Insured's employees or members of their households, but only while used in the Named Insured's business.

APPENDIX B:
Common Insurance Industry Forms

- ACORD Certificates of Insurance:
  - Standard form
  - Annotated form
- Primary and Non-Contributory Endorsement
- ISO standard endorsements
  - CG 20 10, CG 20 33, CG 20 37, CG 20 38, CG 20 26, CG 20 39, CG 20 40, CG 20 42, CG 20 43, CG 35 08, CG 40 47 and CG 40 48
- ISO endorsement: State or Political Subdivisions
- ISO endorsement: Waiver of Subrogation
- Four ISO endorsements used to amend policy limits:
  - Amendment of Limits of Insurance (Designated Project or Premises)
  - Amendment of Limits of Insurance
  - Amendment – Aggregate Limits of Insurance (Per Project)
  - Amendment – Aggregate Limits of Insurance (Per Location)
- Four State Compensation Insurance Fund Forms:
  - Certificate of Workers' Compensation Insurance
  - Additional Insured Employer
  - Waiver of Subrogation
  - Certificate Holders' Notice (Cancellation Notice)
- ISO policy for General Liability on an "Occurrence" basis
- Form MCS-90 – Endorsement for Motor Carrier Policies of Insurance for Public Liability
- Railroad Protective Liability Coverage Form
- Performance Bond
- Payment Bond Public Works

Certificate of Liability Insurance (Standard Form)

ACORD

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 have ADDITIONAL INSURED provisions or 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	NAIC #
INSURED	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

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						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N / A						E.L. EACH ACCIDENT	$
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

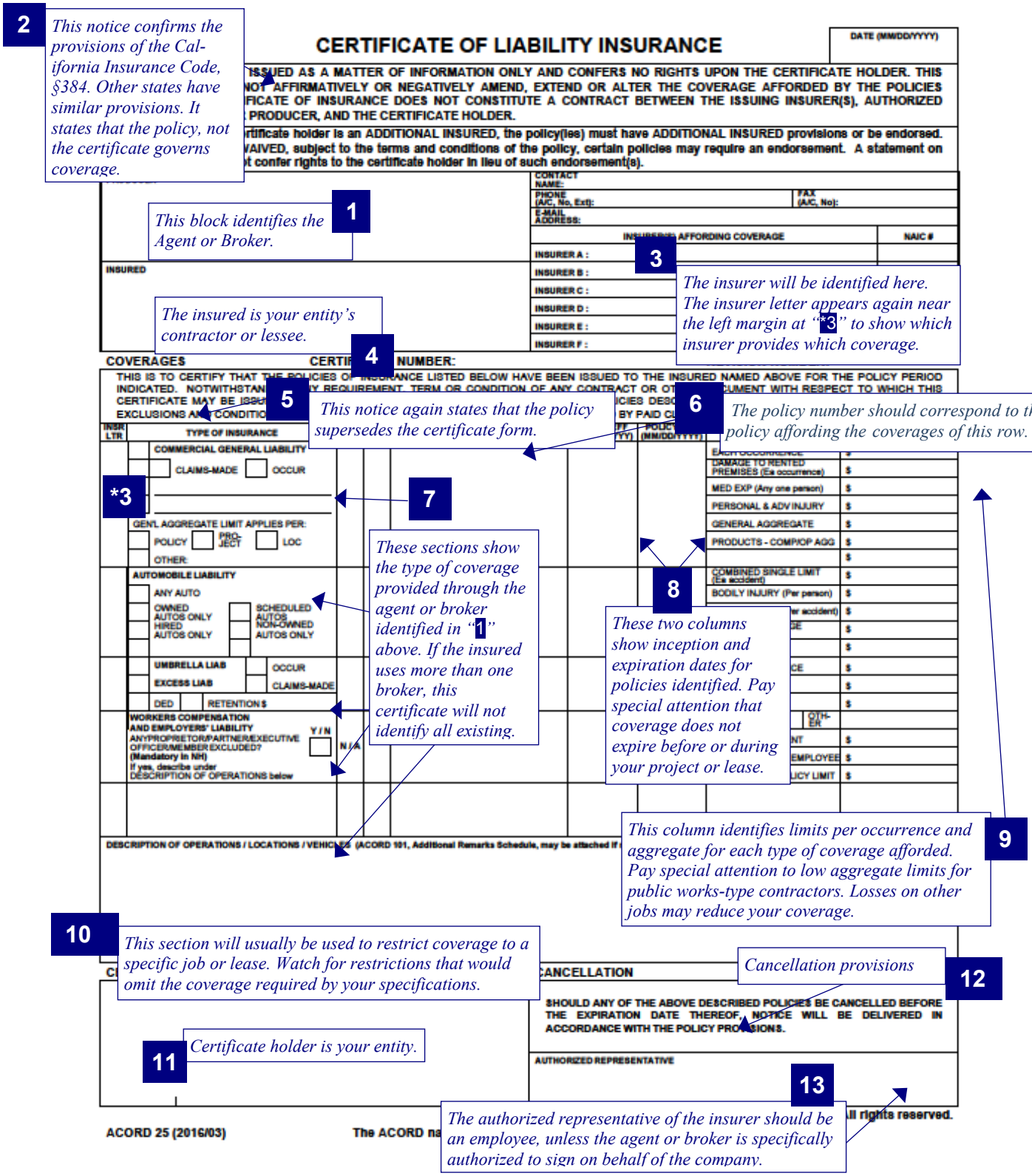
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	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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Certificate of Liability Insurance (Annotated Form)



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COMMERCIAL GENERAL LIABILITY
CG 20 01 04 13

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.

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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.

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C. 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.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 07 04

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.

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.

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POLICY NUMBER: COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Modifications to ISO form CG 20 10 11 85:

1. The Insured scheduled above includes the Insured's officers, officials, employees and volunteers.
2. This insurance shall be primary as respects the Insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the Entity.

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COMMERCIAL GENERAL LIABILITY
CG 20 33 04 13

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.

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. 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.

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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 you have entered into with the additional insured; 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.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 07 04

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

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.	

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".

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

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.

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COMMERCIAL GENERAL LIABILITY
CG 20 38 04 13

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. 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

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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.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 42 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - AUTOMATIC STATUS FOR DESIGNATED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description Of Operation(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 any person(s) or organization(s) for whom you have agreed to add under any contract or agreement, but only with respect to liability for:

1. "Bodily injury" or "property damage" not included in the "products-completed operations hazard"; or
2. "Personal and advertising injury";

caused by, in whole or in part, your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your operations as described in the Schedule above.

B. The insurance afforded to such additional insured described in Paragraph **A.** above:

1. Only applies to the extent permitted by law; and
2. Will not be broader than any coverage requirement in a contract or agreement to provide for such additional insured.

C. With respect to insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to rendering of or failure to render any professional service. This includes but is not limited to:

1. Legal, accounting or advertising services;
2. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
3. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
4. Engineering services, including related supervisory or inspection services;
5. Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;
6. Any health or therapeutic service treatment, advice or instruction;
7. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
8. Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;
9. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
10. Body piercing services;
11. Services in the practice of pharmacy;
12. Law enforcement or firefighting services; and
13. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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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 failure to render any professional service.

D. 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.** above; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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COMMERCIAL GENERAL LIABILITY
CG 20 43 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – AUTOMATIC STATUS WHEN REQUIRED IN WRITTEN CONTRACT OR 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 any person(s) or organization(s) for whom you have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an additional insured only with respect to liability for:

1. "Bodily injury" or "property damage" not included in the "products-completed operations hazard"; or
2. "Personal and advertising injury";

caused by, in whole or in part, your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your operations.

B. The insurance afforded to such additional insured described in Paragraph **A.** of this endorsement:

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.

C. With respect to insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to rendering of or failure to render any professional service. This includes but is not limited to:

1. Legal, accounting or advertising services;
2. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
3. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
4. Engineering services, including related supervisory or inspection services;
5. Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;
6. Any health or therapeutic service treatment, advice or instruction;
7. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
8. Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;
9. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
10. Body piercing services;
11. Services in the practice of pharmacy;
12. Law enforcement or firefighting services; and
13. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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 failure to render any professional service.

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D. 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.**; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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COMMERCIAL GENERAL LIABILITY
CG 35 08 01 26

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – GENERATIVE ARTIFICIAL INTELLIGENCE

This endorsement modifies insurance provided under the following:

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. The following is added to Paragraph 2. **Exclusions** of **Section I – Coverages – Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

"Bodily injury" or "property damage" arising out of "generative artificial intelligence".

B. For the purposes of this endorsement, the following definition is added to the **Definitions** section:

"Generative artificial intelligence" means a machine-based learning system or model that is trained on data with the ability to create content or responses, including but not limited to text, images, audio, video or code.

SAMPLE

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ISO | Commercial General Liability Forms | 01/01/26

COMMERCIAL GENERAL LIABILITY
CG 40 47 01 26

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - GENERATIVE ARTIFICIAL INTELLIGENCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily injury" or "property damage" arising out of "generative artificial intelligence".

B. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising injury" arising out of "generative artificial intelligence".

C. The following definition is added to the Definitions section:

"Generative artificial intelligence" means a machine-based learning system or model that is trained on data with the ability to create content or responses, including but not limited to text, images, audio, video or code.

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COMMERCIAL GENERAL LIABILITY
CG 40 48 01 26

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – GENERATIVE ARTIFICIAL INTELLIGENCE (COVERAGE B ONLY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. **Exclusions** of **Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to:

"Personal and advertising injury" arising out of "generative artificial intelligence".

B. The following definition is added to the **Definitions** section:

"Generative artificial intelligence" means a machine-based learning system or model that is trained on data with the ability to create content or responses, including but not limited to text, images, audio, video or code.

SAMPLE

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 12 04 13

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.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 13 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

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 additional provision:

This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

1. The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
2. The construction, erection or removal of elevators; or
3. The ownership, maintenance or use of any elevators covered by this insurance.

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.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 26 12 19

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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COMMERCIAL GENERAL LIABILITY
CG 20 39 12 19

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 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 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 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 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.

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COMMERCIAL GENERAL LIABILITY
CG 20 40 12 19

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.** or **2.** 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 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 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.

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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.

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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.

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COMMERCIAL GENERAL LIABILITY
CG 24 53 12 19

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.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 01 07 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF LIMITS OF INSURANCE (DESIGNATED PROJECT OR PREMISES)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

	Limits Of Insurance	
General Aggregate Limit	$ _____	
Products-Completed Operations Aggregate Limit	$ _____	
Personal & Advertising Injury Limit	$ _____	
Each Occurrence Limit	$ _____	
Damage To Premises Rented To You Limit	$ _____	Any One Premises
Medical Expense Limit	$	Any One Person
Designation Of Project Or Premises:		

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The limits of insurance shown in the Declarations are replaced by the limits designated in the Schedule with respect to the project or premises entered above. These limits are inclusive of and are not in addition to the limits being replaced.

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POLICY NUMBER: **COMMERCIAL GENERAL LIABILITY**
CG 25 02 07 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF LIMITS OF INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

	Limits Of Insurance	
General Aggregate Limit	$ _____	
Products-Completed Operations Aggregate Limit	$ _____	
Personal & Advertising Injury Limit	$ _____	
Each Occurrence Limit	$ _____	
Damage To Premises Rented To You Limit	$ _____	Any One Premises
Medical Expense Limit	$ _____	Any One Person

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The limits of insurance shown in the Declarations are replaced by the limits designated in the Schedule or in the Declarations as subject to this endorsement with respect to which an entry is made.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 03 05 09

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 that 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 that 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.

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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.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 04 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(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 operations at a single designated "location" shown in the Schedule above:

1. A separate Designated Location General Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
2. The Designated Location 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 Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated "location" 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 Location General Aggregate Limit.

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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 operations at a single designated "location" 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 Location 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 Location General Aggregate Limit.

D. For the purposes of this endorsement, the **Definitions** Section is amended by the addition of the following definition:

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

E. The provisions of Section **III** – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

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Reproduction of State Compensation Insurance Fund Form

STATE COMPENSATION INSURANCE FUND	**P.O. BOX 807, SAN FRANCISCO, CALIFORNIA 94101** **CERTIFICATE OF WORKERS' COMPENSATION INSURANCE**
	POLICY NUMBER: **CERTIFICATE EXPIRES:**

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 day's written notice to the employer.

We will give you 30 day's advance notice should this policy be canceled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. 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.

_____
PRESIDENT

(Note: following text is typewritten addition to printed form)

THE STATE COMPENSATION INSURANCE FUND WAIVES ANY RIGHT OF SUBROGATION ENDORSEMENT #2570. AGAINST (ENTITY) _____, ITS OFFICIALS, EMPLOYEES AND VOLUNTEERS BY REASON OF ANY PAYMENT UNDER THIS POLICY.

ENDORSEMENT #0015 ENTITLED ADDITIONAL INSURED EMPLOYER EFFECTIVE 07-20-87 IS ATTACHED TO AND FORMS A PART OF THIS POLICY. ADDITIONAL INSURED EMPLOYER: _____.

ENDORSEMENT #2065 ENTITLED 30 DAY CANCELLATION NOTICE EFFECTIVE 07-20-87 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

LIABILITY OF THE STATE COMPENSATION INSURANCE FUND IS LIMITED TO $3,000,000 FOR ALL DAMAGES FOR ONE OR MORE CLAIMS RESULTING FROM EACH ACCIDENT OF OCCURRENCE ARISING OUT OF ANY ONE EVENT.

_____
EMPLOYER

Reproduction of State Compensation Insurance Fund Form

STATE COMPENSATION INSURANCE FUND	**ADDITIONAL INSURED EMPLOYER ENDORSEMENT AGREEMENT**
Home Office San Francisco	All Effective Dates are at 12:01 AM Pacific Standard Time or the Time Indicated at Pacific Standard Time

ANYTHING IN THIS POLICY TO THE CONTRACT NOTWITHSTANDING, IT IS AGREED THAT

EMPLOYER:	NAMED OF ADDITIONAL INSURED (ONE NAME PER ENDORSEMENT)

IS HEREBY NAMED AS AN ADDITIONAL INSURED EMPLOYER ON THIS POLICY BUT ONLY AS RESPECTS EMPLOYEES WHOSE NAMES APPEAR ON THE PAYROLL RECORDS OF

(POLICY NAME)

(HEREIN CALLED THE PRIMARY INSURED) WHILE THOSE EMPLOYEES ARE ENGAGED IN WORK UNDER THE SIMULTANEOUS DIRECTION AND CONTROL OF THE PRIMARY INSURED AND THE ADDITIONAL INSURED EMPLOYER.

IT IS FURTHER AGREED THAT THE PAYMENT OF THE FULL PREMIUM DUE AND PAYABLE UNDER THIS POLICY SHALL REMAIN THE SOLE RESPONSIBILITY OF THE PRIMARY INSURED.

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HALED TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS POLICY OTHER THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BE HELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO 0015

Reproduction of State Compensation Insurance Fund Form

STATE COMPENSATION INSURANCE FUND	**ADDITIONAL INSURED EMPLOYER ENDORSEMENT AGREEMENT**
Home Office San Francisco	All Effective Dates are at 12:01 AM Pacific Standard Time or the Time Indicated at Pacific Standard Time

ANYTHING IN THIS POLICY TO THE CONTRARY NOTWITHSTANDING, IT IS AGREED THAT THE STATE COMPENSATION INSURANCE FUND WAIVES ANY RIGHT OF SUBROGATION AGAINST:

(SPECIFY 3RD PARTY REQUESTING WAIVER: ONE NAME PER ENDORSEMENT)

WHICH MIGHT ARISE BY REASON OF ANY PAYMENT UNDER THIS POLICY IN CONNECTION WITH WORK PERFORMED BY:

(POLICY NAME)

IT IS FURTHER AGREED THAT THE INSURED SHALL MAINTAIN PAYROLL RECORDS ACCURATELY SEGREGATING THE REMUNERATION OF EMPLOYEES WHILE ENGAGED IN WORK FOR THE ABOVE EMPLOYER.

IT IS FURTHER AGREED THAT PREMIUM ON THE EARNINGS OF SUCH EMPLOYEES SHALL BE INCREASED BY _____%.

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HALED TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS POLICY OTHER THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BEHELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO 2570

Reproduction of State Compensation Insurance Fund Form

STATE COMPENSATION INSURANCE FUND	**ADDITIONAL INSURED EMPLOYER ENDORSEMENT AGREEMENT**
Home Office San Francisco	All Effective Dates are at 12:01 AM Pacific Standard Time or the Time Indicated at Pacific Standard Time

ANYTHING IN THIS POLICY TO THE CONTRARY NOTWITHSTANDING, IT IS AGREED THAT THIS POLICY SHALL NOT BE CANCELED UNTIL:

(SPECIFY NUMBER) _____ DAYS

AFTER WRITTEN NOTICE OF SUCH CANCELLATION HAS BEEN PLACED IN THE MAIL BY STATE FUND TO CURRENT HOLDERS OF CERTIFICATE OF WORKERS' COMPENSATION INSURANCE.

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HALED TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS POLICY OTHER THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BEHELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO 0015

COMMERCIAL GENERAL LIABILITY
CG 00 01 04 13

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **II** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** – Definitions.

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B.**

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

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2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

(a) The supervision, hiring, employment, training or monitoring of others by that insured; or

(b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph **(1), (2)** or **(3)** above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph **(1)** above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

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f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

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(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

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 ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

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(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section **III** – Limits Of Insurance.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **(3), (4), (5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III** – Limits Of Insurance.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B.**

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

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i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

(1) Advertising, broadcasting, publishing or telecasting;

(2) Designing or determining content of web sites for others; or

(3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a., b.** and **c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

(1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

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COVERAGE C – MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(a) The accident takes place in the "coverage territory" and during the policy period;

(b) The expenses are incurred and reported to us within one year of the date of the accident; and

(c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage **A.**

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

a. All expenses we incur.

b. Up to $250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $250 a day because of time off from work.

e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

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g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

b. This insurance applies to such liability assumed by the insured;

c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

(a) Cooperate with us in the investigation, settlement or defense of the "suit";

(b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(c) Notify any other insurer whose coverage is available to the indemnitee; and

(d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

(a) Obtain records and other information related to the "suit"; and

(b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION II -- WHO IS AN INSURED

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **(1)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

(a) Owned, occupied or used by;

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

a. Medical expenses under Coverage **C;**

b. Damages under Coverage **A,** except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

c. Damages under Coverage **B.**

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3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph **2.** above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
   a. Damages under Coverage **A;** and
   b. Medical expenses under Coverage **C**
   because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. **Bankruptcy**
   Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.
2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit**
   a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
   (1) How, when and where the "occurrence" or offense took place;
   (2) The names and addresses of any injured persons and witnesses; and
   (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
   b. If a claim is made or "suit" is brought against any insured, you must:
   (1) Immediately record the specifics of the claim or "suit" and the date received; and
   (2) Notify us as soon as practicable.
   You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
   c. You and any other involved insured must:
   (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
   (2) Authorize us to obtain records and other information;
   (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
   (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
   d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.
3. **Legal Action Against Us**
   No person or organization has a right under this Coverage Part:
   a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
   b. To sue us on this Coverage Part unless all of its terms have been fully complied with.
   A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

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b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph **a.** above; or

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in Paragraph **a.** above;

(2) The activities of a person whose home is in the territory described in Paragraph **a.** above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph **a.** above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in Paragraph **a., b., c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in Paragraph **a., b., c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

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However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses.

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

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MCS-90: Motor Carrier Public Liability

FORM MCS-90 Revised 01/05/2017 **OMB No.: 2126-0008 Expiration: 01/31/2020**

USDOT Number: _____ **Date Received:** _____

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0008. Public reporting for this collection of information is estimated to be approximately 2 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRA, Washington, D.C. 20590.

United States Department of Transportation
Federal Motor Carrier Safety Administration

Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980

FORM MCS-90

Issued to _____ **of** _____
(Motor Carrier name) *(Motor Carrier state or province)*

Dated at _____ **on this** _____ **day of** _____, _____

Amending Policy Number: _____ **Effective Date:** _____

Name of Insurance Company: _____

Countersigned by: _____
(authorized company representative)

The policy to which this endorsement is attached provides primary or excess insurance, as indicated for the limits shown *(check only one)*:

- ○ *This insurance is primary and the company shall not be liable for amounts in excess of $* _____ *for each accident.*
- ○ *This insurance is excess and the company shall not be liable for amounts in excess of $* _____ *for each accident in excess of the underlying limit of $* _____ *for each accident.*

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA , to verify that the policy is in force as of a particular date. The telephone number to call is: _____.

Cancellation of this endorsement may be effected by the company of the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements under 49 U.S.C. 13901, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, DC).

Filings must be transmitted online via the Internet at http://www.fmcsa.dot.gov/urs.

(continued on next page)

FORM MCS-90 Page 1 of 3

MCS-90: Motor Carrier Public Liability (cont'd)

FORM MCS-90 Revised 01/05/2017 **OMB No.: 2126-0008 Expiration: 01/31/2020**

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions or which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Property Damage means damage to or loss of use of tangible property.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of anyone accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

(continued on next page)

MCS-90: Motor Carrier Public Liability (cont'd)

FORM MCS-90 Revised 01/05/2017 **OMB No.: 2126-0008 Expiration: 01/31/2020**

SCHEDULE OF LIMITS — PUBLIC LIABILITY

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (in interstate or foreign commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Property (nonhazardous)	$750,000
(2) For-hire and Private (in interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403.	$5,000,000
(3) For-hire and Private (in interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,000 or more pounds).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,000 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	$5,000,000

*The schedule of limits shown does not provide coverage. The limits shown in the schedule are for information purposes only.

FORM MCS-90 Page 3 of 3

COMMERCIAL GENERAL LIABILITY
CG 00 35 04 13

RAILROAD PROTECTIVE LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **II** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** – Definitions.

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any occurrence and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverage **A**.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" occurs during the policy period; and

(2) The "bodily injury" or "property damage" arises out of acts or omissions at the "job location" which are related to or are in connection with the "work" described in the Declarations.

c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. **Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. **Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages assumed in a contract or agreement that is a "covered contract".

c. **Completed Work**

"Bodily injury" or "property damage" occurring after the "work" is completed. The "work" will be deemed completed at the earliest of the following times:

(1) When all the "work" called for in the "contractor's" contract has been completed.

(2) When all the "work" to be done at the "job location" has been completed.

(3) When that part of the "work" done at the "job location" has been put to its intended use by you, the governmental authority or other contracting party.

This exclusion does not apply to "bodily injury" or "property damage" resulting from the existence of or removal of tools, uninstalled equipment or abandoned or unused materials.

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d. Acts Or Omissions Of Insured

"Bodily injury" or "property damage", the sole proximate cause of which is an act or omission of any insured other than acts or omissions of any of "your designated employees". This exclusion does not apply to injury or damage sustained at the "job location" by any of "your designated employees" or employee of the "contractor", or by any employee of the governmental authority or any other contracting party (other than you) specified in the Declarations.

e. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law. This exclusion does not apply to any obligation of the insured under the Federal Employers Liability Act, as amended.

f. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at or from the "job location":

(1) Due to the past or present use of the "job location" by you or for you or others for the handling, storage, disposal, processing or treatment of waste; or

(2) Due to the dumping or disposal of waste on the "job location" by the "contractor" with the knowledge of you or any of "your designated employees"; or

(3) On which you or "contractors" working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the "job location" in connection with such operations by you, the "contractor" or "your designated employee". However, this subparagraph does not apply to:

(a) "Bodily injury" or "property damage" arising out of fuels or lubricants for equipment used at the "job location".

(b) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(4) On which you or "contractors" working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

g. Damage To Owned, Leased Or Entrusted Property

"Property damage" to property owned by you or leased or entrusted to you under a lease or trust agreement.

h. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

COVERAGE B -- PHYSICAL DAMAGE TO PROPERTY

1. Insuring Agreement

We will pay for "physical damage to property" to which this insurance applies. The "physical damage to property" must occur during the policy period. The "physical damage to property" must arise out of acts or omissions at the "job location" which are related to or in connection with the "work" described in the Declarations. The property must be owned by or leased or entrusted to you under a lease or trust agreement.

2. Exclusions

This insurance does not apply to "physical damage to property":

a. Completed Work

Occurring after the "work" is completed. The "work" will be deemed completed at the earliest of the following times:

(1) When all the "work" called for in the "contractor's" contract has been completed.

(2) When all the "work" to be done at the "job location" has been completed.

(3) When that part of the "work" done at the "job location" has been put to its intended use by you, the governmental authority or other contracting party.

This exclusion does not apply to "physical damage to property" resulting from the existence of tools, uninstalled equipment or abandoned or unused materials.

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b. **Acts Or Omissions Of Insured**

The sole proximate cause of which is an act or omission of any insured other than acts or omissions of any of "your designated employees".

c. **Nuclear Incidents Or Conditions**

Due to nuclear reaction, nuclear radiation or radioactive contamination or to any related act or condition.

d. **Pollution**

Due to the discharge, dispersal, seepage, migration, release or escape of "pollutants" excluded under Exclusion f. Pollution, Coverage **A**.

SUPPLEMENTARY PAYMENTS – COVERAGE A

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

1. All expenses we incur.
2. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
3. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
4. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
5. Expenses incurred by the insured for first aid administered to others at the time of an accident, for "bodily injury" to which this insurance applies.
6. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $250 a day because of time off from work.
7. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

These payments will not reduce the limits of insurance.

SECTION II – WHO IS AN INSURED

1. You are an insured.
2. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers and directors.
3. Your stockholders are insureds, but only with respect to their liability as stockholders.
4. Any railroad operating over your tracks is an insured.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
   a. Insureds;
   b. Claims made or "suits" brought; or
   c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for the sum of all damages because of all "bodily injury", all "property damage" and all "physical damage to property".
3. Subject to Paragraph 2. above, the Each Occurrence Limit is the most we will pay for the sum of all damages because of all "bodily injury", all "property damage" and all "physical damage to property" arising out of any one occurrence.
4. Subject to Paragraph 3. above, the payment for "physical damage to property" shall not exceed the lesser of:
   a. The actual cash value of the property at the time of loss; or
   b. The cost to repair or replace the property with other property of like kind or quality.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – CONDITIONS

A. The following Conditions apply to Coverages **A** and **B**:

1. **Assignment**

   Assignment of interest under this Coverage Part shall not bind us unless we issue an endorsement consenting to the assignment.

2. **Bankruptcy**

   Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

3. **Cancellation**

   a. You may cancel this policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this policy by mailing or delivering to you, the "contractor" and any involved governmental authority or other contracting party designated in the Declarations, at the respective mailing addresses last known to us, written notice of cancellation at least 60 days before the effective date of cancellation.

c. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

d. If this policy is cancelled, any unearned premium will be refunded. If we cancel, the refund will be pro rata. If you cancel, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

e. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. **Changes**

This policy contains all the agreements between you and us concerning the insurance afforded. You are authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

5. **Inspections And Surveys**

a. We have the right to:

(1) Make inspections and surveys at any time;

(2) Give you reports on the conditions we find; and

(3) Recommend changes.

b. We are not obligated to make inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

(1) Are safe or healthful; or

(2) Comply with laws, regulations, codes or standards.

c. Paragraphs a. and b. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

d. Paragraph b. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

6. **Other Insurance**

The insurance afforded by this policy is:

a. Primary insurance and we will not seek contribution from any other insurance available to you except if the other insurance is provided by a contractor other than the designated contractor for the same operation and "job location"; and

b. If the other insurance is available, we will share with that other insurance by the method described below.

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

7. **Premium And Premium Audit**

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Contract cost, the premium base shown in the Declarations, means the total cost of the operations described in the Declarations.

c. The premium shown in the Declarations as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the "contractor" designated in the Declarations. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the contractor designated in the Declarations.

In no event shall the payment of premium be your obligation.

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8. **Transfer Of Rights Of Recovery Against Others To Us**

   If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. **When We Do Not Renew**

   If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

   If notice is mailed, proof of mailing will be sufficient proof of notice.

B. The following Conditions apply to Coverage **A** only:

1. **Legal Action Against Us**

   No person or organization has a right under this policy:

   a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

   b. To sue us on this policy unless all of its terms have been fully complied with.

   A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

2. **Duties In The Event Of Occurrence, Claim Or Suit**

   a. You must see to it that we are notified as soon as practicable of an occurrence which may result in a claim. To the extent possible, notice should include:

      (1) How, when and where the occurrence took place;

      (2) The names and addresses of any injured persons and witnesses; and

      (3) The nature and location of any injury or damage arising out of the occurrence.

   b. If a claim is made or "suit" is brought against any insured, you must:

      (1) Immediately record the specifics of the claim or "suit" and the date received; and

      (2) Notify us as soon as practicable.

      You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

   c. You and any other involved insured must:

      (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

      (2) Authorize us to obtain records and other information;

      (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

      (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

   d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. **Separation Of Insureds**

   Except with respect to the Limits of Insurance, this insurance applies:

   a. As if each Named Insured were the only Named Insured; and

   b. Separately to each insured against whom claim is made or "suit" is brought.

C. The following Conditions apply to Coverage B only:

1. **Appraisal**

   If you fail to agree with us on the value of the property, or the amount of loss, either you or we may make written demand for an appraisal of the loss within 60 days after proof of loss is filed. In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the value of the property and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

   a. Pay its chosen appraiser; and

   b. Bear the other expenses of the appraisal and umpire equally.

   If we submit to an appraisal, we still retain our right to deny the claim.

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2. **No Benefit To Bailee**

   No person or organization, other than you, having custody of the property will benefit from this insurance.

3. **Insured's Duties In The Event Of A Loss**

   You must:

   a. Protect the property, whether or not the loss is covered by this policy. Any further loss due to your failure to protect the property shall not be recoverable under this policy. Reasonable expenses incurred in affording such protection shall be deemed to be incurred at our request; and

   b. Submit to us, as soon after the loss as possible, your sworn proof of loss containing the information we request to settle the loss and, at our request, make available the damaged property for examination.

4. **Legal Action Against Us**

   No person or organization has a right under this policy to sue us on this policy unless all of its terms have been fully complied with and until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.

5. **Payment Of Loss**

   We may pay for the loss in money, but there can be no abandonment of any property to us.

SECTION V – DEFINITIONS

1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Contractor" means the contractor designated in the Declarations and includes all subcontractors working directly or indirectly for that "contractor" but does not include you.
3. "Covered contract" means any contract or agreement to carry a person or property for a charge or any interchange contract or agreement respecting motive power, or rolling stock equipment.
4. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
5. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
6. "Job location" means the job location designated in the Declarations including any area directly related to the "work" designated in the Declarations. "Job location" includes the ways next to it.
7. "Physical damage to property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, bridges or buildings.
8. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
9. "Property damage" means:

   a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

   b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.

10. "Suit" means a civil proceeding in which damages because of "bodily injury" or "property damage" to which this insurance applies are alleged. "Suit" includes:

    a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

    b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

11. "Work" means work or operations performed by the "contractor" including materials, parts or equipment furnished in connection with the work or operations.
12. "Your designated employee" means:

    a. Any supervisory employee of yours at the "job location";

    b. Any employee of yours while operating, attached to or engaged on work trains or other railroad equipment at the "job location" which are assigned exclusively to the "contractor"; or

    c. Any employee of yours not described in Paragraph a. or b. above who is specifically loaned or assigned to the work of the "contractor" for the prevention of accidents or protection of property.

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Performance Bond

BOND NO. _____
PREMIUM: _____

WHEREAS, The _____, (hereinafter designated as "Obligee") and _____ (hereinafter designated as "Principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____ , and identified as project _____ is hereby referred to and made a part hereof; and

WHEREAS, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement;

NOW, THEREFORE, We, the principal and _____ as surety, are held and firmly bound unto the hereinafter called "The Obligee," in the penal sum of _____ dollars ($ _____) lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally firmly by these presents.

The condition of this obligation is such that if the above bound principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and perform and at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Obligee, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specification accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named, on

By _____
PRINCIPAL
By: _____
PRINCIPAL
By: _____
ATTORNEY-IN-FACT

Payment (Labor & Materials) Bond

BOND NO._____

KNOW ALL MEN/WOMEN BY THESE PRESENT that we,_____ as Principal (also referred to herein as "CONTRACTOR"), and _____ as Surety, are held and firmly bound unto _____, hereinafter called "OWNER," in the sum of _____Dollars ($_____), for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

The condition of the above obligation is such that, whereas said Principal has been awarded and is about to enter into the annexed Contract for the _____ [NAME OF PROJECT], in accordance with OWNER's Call for Bids documents and Principal's Bid Dated _____, and to which reference is hereby made for all particulars, and is required by said "OWNER" to give this bond in connection with the execution of said Contract;

NOW, THEREFORE, if said CONTRACTOR, its Subcontractors, its heirs, executors, administrators, successors, or assigns, shall fail to pay (a) for any materials, provisions, equipment, or other supplies used in, upon, for or about the performance of the WORK contracted to be done under the Contract, or (b) for any work or labor thereon of any kind contracted to be done under the Contract, or (c) for amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the Contract, or (d) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the CONTRACTOR and its Subcontractors under Section 13020 of the Unemployment Insurance Code with respect to such work and labor, in each case, as required by the provisions of Sections 9550-9566 inclusive, of the Civil Code of the State of California and acts amendatory thereof, and sections of other codes of the State of California referred to therein and acts amendatory thereof, and provided that the persons, companies, corporations or other entities so furnishing said materials, provisions, provender, equipment, or other supplies, appliances, or power used in, upon, for, or about performance of the Work contracted to be executed or performed, or any person, company, corporation or entity renting or hiring implements or machinery or power for or contributing to said Work to be done, or any person who performs work or labor upon the same, or any person, company, corporation or entity who supplies both work and materials therefor, shall have complied with the provisions of said laws, then said Surety will pay in full the same in an amount not exceeding the sum hereinabove set forth and also will pay, in case suit is brought upon this bond, a reasonable attorney's fee, as shall be fixed by the Court. This bond shall inure to the benefit of any and all persons named in Section 9100 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

PROVIDED, that any alterations in the WORK to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of said Contract Documents, shall not in any way release said CONTRACTOR or said Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract Documents release either said

CONTRACTOR or said Surety, and notice of such alterations or extensions of the Agreement is hereby waived by said Surety.

IN WITNESS WHEREOF, the Principal and the Surety have executed this instrument in duplicate this _____ day of _____, 20_____.

_____	_____
Surety	Principal
By: _____	By: _____
_____	_____
Print Name/Title	Print Name/Title
_____	_____
Address	Address
(_____)_____	(_____)_____
Telephone Number	Telephone Number
_____	_____
Email Address	Email Address

NOTARIAL CERTIFICATE OF ATTORNEY IN FACT AND SEAL OF SURETY MUST BE ATTACHED.

APPENDIX C:
Sample Hold Harmless Agreements

The second step in the process of contractual risk transfer outlined in this manual is to use good hold harmless language to provide your entity the broadest protection possible in the event of a claim or suit arising from the contractor's services, work product, or activities. Hold harmless language should be included in all types of agreements, including permits, purchase orders, and leases. As used in this section "hold harmless" agreements typically include agreements to "hold harmless, defend and indemnify" with each of these three terms having a distinct legal meaning. Also, we have provided here some analysis of California statutes, and these may be similar to other jurisdictions but should be reviewed in the context of each state's laws and regulations.

In contract, the language that transfers the risk from one organization to another is commonly referred to as the hold harmless clause. Note that a hold harmless clause may also be referred to as an indemnification clause. This clause should specifically spell out the responsibilities of your entity and the contractor. It will identify which types of losses the parties to the agreement will be responsible for.

Often times, the hold harmless language will be a "mutual hold harmless" clause which is a frequent practice when two or more public agencies are signatories to agreements. There is a genuine need for caution with this type of "mutual hold harmless" since they may cancel each other out and provide no protection for either Entity. If the scope of the hold harmless is not specified for each Entity and they cancel each other out, the attorneys for the carriers involved will regard the opposing party without the good will the original drafters had in mind when they adopted the "mutual hold harmless" language.

This practice is not recommended when you are contracting with private organizations and the agreements should require contractors to assume all of the liability imposed by the actions of the agreements to the extent possible. This type of liability transfer will generally be recognized and upheld in the legal system as long as the inherent risk transferred is commensurate with the compensation to the contractor. We strongly recommend that legal, risk management, and other disciplines within your organization collaborate to create hold harmless agreements that are acceptable to your entity.

The following hold-harmless agreement wordings are provided as examples only. Innumerable alternatives to these forms are possible, each alternative having a different purpose depending on the wishes of the parties. **Drafting hold harmless language in contracts is a crucial part of the risk transfer process and should not be undertaken without the advice and assistance of legal counsel.**

Indemnity and hold harmless provisions are regulated by the California Civil Code and case law interpreting the Code sections. Under CA Civil Code Section 1668,

> All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Under CA Civil Code Section 2773,

> An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

CA Civil Code Section 2782(b) provides that

> Except as provided in Sections 2782.1, 2787.2, and 2782.5, provisions, clauses, covenants or agreements contained in, collateral to or affecting any construction contract with a public agency which purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency shall be void and unenforceable.

Section 2782.1 makes an exception where the contract is not being performed for the public agency, but the public agency as an accommodation allows the contractor to enter upon its property or adjacent to its property. Section 2782.2 permits the owner of a project to indemnify a professional engineer if certain conditions are met. Section 2782.5 permits parties to a construction contract to negotiate and expressly agree with respect to the allocation, release, liquidation, exclusion, or limitation as between the parties of any liability (a) for design defects, or (b) of the promisee to the promisor arising out of or relating to the construction contract.

California case law has analyzed indemnity clauses as falling under these three classifications. (However, some cases indicate that the intent of the parties controls the case regardless of these classification cases). Section 2782.8 was amended as of January 1, 2018, and declares unenforceable all contracts under which a public agency seeks indemnity from specified professionals, unless the underlying claim arises out of negligence, recklessness or willful misconduct of the design professional. Effective January 1, 2009, California added 2782.9. Subsection (a) states

> All contracts . . . or agreements . . . entered into after January 1, 2009, for a residential construction project on which a wrap-up insurance policy . . . is applicable, that require [a] . . . subcontractor or other participant to indemnify, hold harmless, or defend another for any claim or action covered by that program, arising out of that project are unenforceable.

A wrap-up insurance policy, as defined by the California Insurance Code §11751.82(b) is a policy "written to cover risks associated with a work of improvement" covering two or more contractors or subcontractors.

Example 1 - Type I Indemnity Language

This is the recommended type of indemnity for most contracts, with sample language:

> Contractor shall hold harmless, defend and indemnify Entity and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the Entity.

The contractor promises your Entity to assume all risk of loss resulting from the project, including losses caused by the joint negligence of your Entity and the contractor or its subcontractors. The only exceptions are for your sole negligence or willful acts.

Caution regarding Type 1: While this type of agreement provides the broadest protection for the Entity, it is no longer allowed in a construction related contract (defined in CA Civil Code Section 2783), after January 1, 2013. Example 2 (below) should be used instead.

Example 2 – Intermediate Form – For Construction Contracts

For public entity construction related contracts, you must also have an exception for your active negligence. Sample language, with emphasis added:

> Contractor shall hold harmless, defend, and indemnify Entity and its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, 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 active negligence, sole negligence, or willful misconduct of the Entity.

In this second example, the Entity receives indemnification if it was not negligent or if its negligence was only passive. There is a great deal of case law on the active/passive distinction, but essentially active negligence is affirmative participation in causing the harm, or failure to prevent a known danger. Conversely, passive negligence is failure to detect a danger which the Entity is under a duty to detect, such as a dangerous condition on its property created by the contractor.

There is great variety of language used to arrive at this type of intermediate form because any indemnity contract which does not specifically refer to the indemnitee's negligence will be construed as this type of general clause, not providing indemnity for active negligence. So, if the contract promises indemnity for losses, however caused, regardless of responsibility for negligence, arising from use of the premises, facilities or services, or caused by any person or persons, the wording will be interpreted as a general indemnity clause and would be void and unenforceable. At the end of this appendix, is a broader discussion of indemnity clauses found within construction agreements, titled "Construction Indemnification – Indemnification provisions in Construction Contracts".

Example 3 - Limited Form

> Contractor agrees to protect, indemnify, and save harmless Entity and its officers, officials, employees, and volunteers from and against all claims, demands, and causes of action by Contractor's employees or third parties on account of personal injuries or death or on account of property damages arising out of the work to be performed by contractor hereunder and resulting from the negligent act or omissions of Contractor, Contractor's agents, employees, or subcontractors.

This example is the most limited, Type 3, of indemnity agreement because it only provides indemnity for any passive negligence of the Entity cause in whole or in part by the negligent Contractor, but not from passive negligence of the Entity caused by other contractors (this would be Type 2).

Example 4 – Design Professional Contract Language

A significant restriction for public entity contracts with "Design Professionals" CA Civil Code §2782.8 became effective as of January 1, 2007, and limits the indemnity language a public agency may use by stating:

> *"design professional services contracts that purport to indemnify, including the cost to defend, the public agency by a design professional against liability for claims against the public agency are unenforceable, except claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional."*

"Design professional" includes all of the following: licensed architects, landscape architects, professional engineers, and professional land surveyors. It does not include and therefore may not apply to construction management or inspection services.

The code, as previously referenced, was amended again in 2009, holding residential contracts with wrap-up insurance policies are unenforceable. The most recent amendment to §2782.8 applies to contracts and agreements entered into on or after January 1, 2018. Such design professional contracts are unenforceable,

> "except to the extent that the claims against the indemnitee arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault. However . . . [if] one or more defendant is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. The duty to indemnify, including the duty and the cost to defend, is limited as provided in this section. This section shall not be waived or modified by contractual agreement, act, or omission of the parties."

The main concern raised by the amendment relates to the proportionate percentage of fault attributed to the design professional. Such determination is made by a combination of adjusters, attorneys, insurers, mediators and ultimately the courts. Further complications arise because this determination often doesn't come until after trial, which of course requires all parties to incur legal fees, regardless of whether those will be repaid.

Another issue is whether payment of such legal fees occurs at the outset of litigation, or after litigation has been concluded. Because this section was amended as of January 1, 2018, it will likely be some time before courts reach conclusions on its interpretation. The lack of case law and corresponding unknowns regarding issues under this code make it nearly impossible to know who will be responsible for what defense costs and at what point(s) in litigation. Contractors may be required to pay defense costs at the outset and thus pay more than their proportionate share, to use statutory language, resulting in necessary reimbursement from the public entity. Conversely, the design professional likely accepts responsibility negating the public entity's obligation to front defense costs and hope for reimbursement afterwards.

Because case law and statutory interpretation are understandably silent, initial negotiations regarding such payments and their timing are of the utmost importance. Though the statute clearly states design professionals have a duty to defend proportionate to their level of fault, the parties are left to determine the rest.

Some options for the parties to consider when deciding how to interpret this statute include:

1. The duty to defend is triggered when the claim arises, design professional pays costs when claim is tendered and design professional's cost to defend is determined after claim is resolved. Design professional makes a payment for defense costs in proportion to their fault, or

2. The duty to defend exists, but the amount of defense costs is determined once the design professional's proportional liability is established or agreed upon, or

3. Some pro-rata basis is agreed upon between the parties for paying defense costs, with final determination of the amount of the parties' proportionate share when that has either been agreed upon or established through settlement, mediation, arbitration or trial.

To sum up, here are the options that an entity would use in its indemnity agreement.

1. Duty to defend is triggered when claim is tendered to the design professional. Any over-payment for defense costs is rebated to design professional at the conclusion of the case or is otherwise determined through settlement, mediation or arbitration or trial.

2. Duty to defend exists from beginning, but payment of defense costs is deferred until the conclusion of the case or when the design professional's proportionate share is determined through settlement, mediation or arbitration.

3. The parties agree to share defense costs on some pro-rata basis or equally during the litigation and once each party's proportionate share is determined, the party paying more than agreed share gets a refund.

Option 4. This should be included in any defense cost agreement per the statue, that when a bankruptcy occurs, the parties meet and confer over how the remaining defense costs are to be handled. (Likely on some pro-rata basis based on the proportion of fault of the remaining parties.)

Option 1 is best for public agency; option 2 is best for design professional; and option 3 may be a fair distribution of potential costs and rebate at conclusion of case to party that pays more than its proportionate share.

An appropriate hold harmless for public entity contracts with design professionals may read as follows:

Pursuant to the full language of California Civil Code §2782, design Professional agrees to indemnify, including the cost to defend, entity and its officers, officials, employees, and volunteers from and against any and all claims, demands, costs, or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional and its employees or agents in the performance of services under this contract, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the Public Entity; and does not apply to any passive negligence of the Public Entity unless caused at least in part by the Design Professional. The Public Entity agrees that in no event shall the cost to defend charged to the Design Professional exceed that professional's proportionate percentage of fault. This duty to indemnify shall not be waived or modified by contractual agreement or acts of the parties.

For design/build contracts or liability that may arise from activities of the design professional not related to professional services, you may want to use two separate hold harmless agreements. Example 4 should be followed for design professional liability, and example 2 should be your guide for all other liability in the contract. Also consider separate contracts, one for the design and one for the build, if appropriate.

Summary - Hold Harmless Language - Depends on Contract

- **General Contracts** – Example 1 - Type I Indemnity
  - All claims arising from all acts or omissions, except those arising from agency's sole negligence or willful acts.
- **Construction Contracts** – Example 2 - Intermediate Form
  - All claims arising from all acts or omissions, except those arising from agency's sole or active negligence or willful acts.
- **Design Professional Contracts** – Example 4 - Per Civil Code

  All claims that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Design Professional, any sub consultant, anyone directly or indirectly employed by them, or anyone that they control, except those arising from the sole negligence, active negligence, or willful acts of the Public Entity; and does not apply to any passive negligence of the Public Entity unless caused at least in part by the Design Professional.

- **Limited Forms – Example 3 – Based on Bargaining Power**

Contractors and professional service providers may balk at your entity's preferred hold harmless language and suggest changes. Be aware of language that is not as broad as recommended above and involve legal counsel in any proposed changes. You should give up any protections grudgingly, but at times you may have to accept less than you would like.

Many contractors will attempt to limit their responsibility only to negligent acts, or only the portion of the damages they cause by inserting qualifiers such as "to the extent caused by" their actions, or to limit the types of damage to bodily injury or property damage, or otherwise try to limit their obligations to what their insurance will cover. Sample language, with emphasis added:

- All claims for property damage and bodily injury, including death, arising out of the work to be performed by contractor hereunder and resulting from the negligent acts or omissions of Contractor, Contractor's agents, employees or subcontractors.

- Note on Use of Mutual Hold Harmless Agreements
  - Most of the time you shouldn't do it!
  - If you are paying for a service, you should be indemnified by the other party.
  - Can be more confusing than helpful.
  - You WANT to be indemnified even if you are a percentage at fault. [Not possible on construction for active fault (Type 1; Type 2 & 3 are allowed); and Design Professional Contracts (only Type 3 allowed)]

- If you WANT to pay your share you can always agree to be "fair" later.
- Matter of bargaining power. Best you can get?
- OK for joint use/activity, use of other's facilities, but make sure scope of work and responsibility for indemnity is clear!

Release Agreement

If you have a defined group of persons who might be exposed to the harm (for example, participants in an athletic event on Entity property), a release agreement can be prepared. Generally, a release agreement must be prominently displayed, no smaller than 8- to 10-point type. The language cannot be overly complex, nor can it be buried in other verbiage. A standard release might read as follows:

> In consideration of the acceptance of my application for entry into the above event, I hereby waive, release, and discharge any and all claims for damages for death, personal injury, or property damage which I may have, or which hereafter accrue to me, against the Entity as a result of my participation in the event. This release is intended to discharge the Entity, its officers, officials, employees, and volunteers, any other involved municipalities or public agencies from and against any and all liability arising out of or connected in any way with my participation in the event, even though that liability may arise out of the negligence or carelessness on the part of persons or Entities mentioned above. I further understand that accidents and injuries can arise out of the event; knowing the risks, nevertheless, I hereby agree to assume those risks and to release and to hold harmless all of the persons or agencies mentioned above who (through negligence or carelessness) might otherwise be liable to me (or my heirs or assigns) for damages. It is further understood and agreed that this waiver, release, and assumption of risk is to be binding on my heirs and assigns.

The above language was adapted from a case which cited release language with approval. However, note that the release might still be avoided by a plaintiff if the injury occurs in an unforeseeable way, not typical or common to the activity.

Construction Indemnification



Indemnity is an obligation to pay for the loss of another party. Thus, the purpose of an indemnification provision is to shift this loss payment obligation in accordance with the agreement of the contracting parties. The party that assumes the loss payment obligation is the indemnitor, while the party that receives the benefit of that loss payment obligation is the indemnitee.

(a) Different Types of Indemnification Provisions

Whether an indemnitor's loss payment obligation is triggered by the occurrence of a loss, and the extent of that loss payment obligation, depends on the type of indemnification provision at issue. There are three generally recognized forms of indemnification provisions—broad form, intermediate form, and limited form. Importantly, different states have different laws governing these provisions, known as anti-indemnity legislation. Accordingly, to ensure an indemnification provision is enforceable, it is necessary to determine the state law governing the contract, and the forms of indemnification provisions prohibited by that state's law.

Broad form indemnification provisions are the most widely prohibited of the indemnity agreements. Under a broad form provision, the indemnitor assumes the loss payment obligation for all liability, regardless of who is at fault for the loss. In other words, the indemnitor assumes the entire risk of loss.

Intermediate form indemnification provisions are not quite as onerous as broad form provisions, but they are often prohibited by anti-indemnity legislation, depending on the type of intermediate form provision used. Under "full" intermediate indemnification provisions, the indemnitor assumes the loss payment obligation for all liability, so long as the indemnitor is just partially at fault. Put another way, if the indemnitor is only one percent at fault for the loss, it has an obligation to pay for the entire loss. On the other hand, under "partial" intermediate indemnification provisions, the indemnitor assumes the loss payment obligation only to the extent of the indemnitor's fault. Thus, for instance, if the indemnitor is fifty percent at fault, it has an obligation to pay for fifty percent of the loss. Full intermediate indemnification provisions are widely prohibited, while partial intermediate indemnification provisions are typically permissible.

Finally, limited form indemnification provisions are permitted under the law of any state. Under limited form provisions, the indemnitor assumes the loss payment obligation only if it is solely at fault. In other words, the indemnitor is not liable to the indemnitee if the indemnitee is even partially at fault.

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APPENDIX D:
Sample Checklists

These checklists are included in the manual as examples of how the user might wish to organize its contract and specifications review.

We would like to thank Robert Marshburn for his Additional Insured ISO Forms Matrix.

We would like to thank Joseph Risser for his self-designed checklist entitled "Project Name/Purchase."

ISO COVERAGES for Parties Other than the Named Insured

CAUTION! Non-ISO Manuscript Policies or Modified Definitions or Endorsements differ from the standard ISO coverages below! Be very careful!

Contractual Liability Insurance covering Named Insured (Indemnitor) for City Indemnification
BEWARE of endorsements amending, excluding, or changing Contractual Liability coverage or the "insured contract" definition (such as CG 21 39 deleting "f.") that provides the liability coverage for the Named Insured for Indemnity obligations assumed by Contract (Contractual Liability).

ADDITIONAL INSURED Forms: Insured Relationship to AI Required to Trigger Coverage:

Insured Relationship to AI for Coverage	Doing Work *For* AI with a Contract requirement regardless of Privity		Doing Work *For* AI with Privity**, but NO Subs	No Contract "With You" (No Privity) & No Work *For* Additional Insured	
Type of Endorsement	**Scheduled**	**Automatic***	**Automatic****	**Automatic***	**Designated**
Ongoing Ops Form #	20 10	20 38	20 33	20 43	20 42 & 20 26
Completed Ops Form #	20 37	20 40	20 39	NONE	NONE

* ONLY if required in a written contract or agreement ** ONLY if required in a direct written contract "With You" (Privity)

For Automatic Status, Form Numbers 20 38 and 20 40 should be required rather than the 20 33 and 20 39

Use form 20 33 and 20 39 ONLY when you are SURE there are **NO Subs being used that have NO Contract "With You"

ADDITIONAL INSURED ENDORSEMENT Forms: Edition Date Coverage Comparison:
(CG 20 01 adds Primary & Non-Contributory)

Ongoing Operations (During Construction)	Completed Operations (After Construction)	Covers "arising out of"; not just "caused by" Insured	Covers only "caused by" Named Insured coverage. ALL 07.04, 04.13 & 12.19
Named AI- CG 2010 & 2026#—All editions	CG 2010 & 2026# **11.85 Edition only**	YES—all except Editions after 07.04	CG 2010 & 2026# 07.04, 04.13* & 12.19*
Automatic CG 2033 All & 2038 4.13* & 12.19*	CG 2033 & 2038 All editions = NO Coverage	YES—all except Editions after 07.04	CG 2033 07.04 & CG 2038 04.13* & 12.19*
Named AI - CG 2037 **& Automatic** AI 2039 & 2040 = NO Coverage	CG2037, 2039 & 2040 ALL editions*	YES 2037 10.01 only; NO for 07.04 & 04.13* & 12.19*	CG 2037 07.04, 04.13* & 12.19*

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1. **EXAMINE CAREFULLY** Non-ISO Additional Insured Endorsements to see how they differ from the above for coverage in each of the categories in the 4 columns and 3 rows (like Counterfeit Money).
2. CG 20 26 (or CG 20 11) covers "Designated" Additional Insured for rental of premises; CG 20 12 = AI for Permits.
3. Automatic forms require a specific "written contract or agreement" to trigger policy coverage!
4. ***ALL** of the 04.13 & 12.19 Additional Insured Endorsements **will NOT:**

(a) provide broader coverage or
(b) pay higher limits than required by the written Contract or Agreement!

The Contract **must explicitly require** the limits and extent of coverage or there is NO coverage **even if the** policy would otherwise provide the coverage!

No clear Contract requirement = NO COVERAGE!

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Project Name/Purchase: _____

Check One: ☐ Construction ☐ Services (specify) _____

☐ Purchase ☐ Lease (specify) _____

Insurance Company Ratings, Coverage and Limit Guideline

BEST Secure Ratings						**NOT RECOMMENDED**		
Superior	A++	A+	Excellent	A	A–	**Very Good**	**B++**	**B+**

BEST Financial Size Categories		**NOT RECOMMENDED**
Class XI – XV	Class VII – X	**Class I - VI**

Coverage **Minimum Limit Guidelines**

Form	**Basis**	**High Risk**	Medium Risk	**Low Risk**	**NOT RECOMMENDED**		Approved Amount	N/A
CGL	Occurrence	$5 million	$2 million	$1 million	**$500,000**	**$250,000**		
	Aggregate	$10 million	$5 million	$2 million	**$1 million**	**$500,000**		
BAC	Occurrence		$2 million	$1 million	**$500,000**	**$250,000**		
WC and EL		Statutory Limits						
		$1 million			**$500,000**	**$250,000**		
++++ Option for sole proprietors and excluded employees ++++								
	Health Ins	Employment related injuries not excluded						
	Disability	Comparable to Statutory limits						
CC/BR		Completed Project Value						
Property		Full Replacement-No Coinsurance						
E&O/PL	Occurrence*	$10 million	$5 million	$1 million	**$500,000**	**$250,000**		
	Aggregate	$10 million	$5 million	$1 million	**$500,000**	**$250,000**		
Pollution	Occurrence*	$10 million	$5 million	$1 million	**$500,000**	**$250,000**		
	Aggregate	$10 million	$5 million	$1 million	**$500,000**	**$250,000**		
*Claims Made			5-year tail	3-year tail	**1 year tail**	**no tail**		

Indicate approved amount unless recommended coverage is not applicable

Recommendation _____ Date _____

Project Manager/Purchasing Agent

Approval _____ Date _____

Director Facilities Planning/Director Support Services

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Sample Insurance Requirements Matrix For Public Entities

(Recommended Minimum Amounts)

Chap.	Description			Certificate of Insurance	Additional Insured
1	**Building Contractors**				
	General Liability	$5,000,000		X	X
	Automobile Liability	$1,000,000		X	
	Workers' Compensation	Statutory		X	*
	Employer's Liability	$1,000,000		Included	
	Professional Liability	$1,000,000		X	
2	**Contractors: Painters, Plumbers, Landscapers, etc.**				
	General Liability	$2,000,000		X	X
	Automobile Liability	$1,000,000		X	
	Workers' Compensation	Statutory		X	*
	Employer's Liability	$1,000,000		Included	
3	**Environmental Contractors or Consultants**				
	General Liability	$2,000,000		X	X
	Automobile Liability	$1,000,000		X	
	Workers' Compensation	Statutory		X	*
	Employer's Liability	$1,000,000		Included	
	Pollution Liability and/or Asbestos Pollution Liability and/or Professional Liability	$1,000,000 (occurrence); $2,000,000 (aggregate)		X	X
4	**Consultants/Professional Service Providers: auditor, engineer, insurance broker, specified medical practitioners, etc.**				
	General Liability	$2,000,000		X	X
	Automobile Liability	$1,000,000		X	
	Professional Liability(other than physicians)	$1,000,000		X	
	Medical Malpractice(physicians, dentists, psychologists)	$1,000,000		X	
	Workers' Compensation	Statutory		X	*
	Employer's Liability	$1,000,000		Included	
	Sexual Abuse or Molestation	$1,000,000		X	X
5	**Suppliers and/or Vendors**				
	General Liability	$2,000,000		X	X
	Automobile Liability	$1,000,000		X	
	Workers' Compensation	Statutory		X	*
	Property Insurance	Replacement Value		X	
6	**Bus Transportation and/or Contractors**				
	General Liability	$2,000,000		X	X
	Automobile Liability	$5,000,000		X	

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	Workers' Compensation	Statutory		X	*
	Employer's Liability	$1,000,000		Included	
	Sexual Abuse or Molestation	$1,000,000		X	X
7	**Use of Facilities: Private Citizens, Organizations or Non-business groups, etc.**				
	General Liability	$1,000,000		X	X

*** Waiver of Subrogation Required**

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Contract Review Checklist

HOLD HARMLESS / INDEMNIFICATION REVIEW

1. Contract Date/Parties:			
2. Party(ies) Accepting Risk:			
3. Type of Risk Accepted	☐ Negligence	☐ Other	
4. Breadth of Risk Accepted	☐ Own	☐ Joint	☐ Sole
5. Nature of Damage/Injury Accepted:	☐ Direct	☐ Consequential	
Property Damage:	☐ Our property	☐ Other party's property	☐ Property of third persons
Bodily injury/personal injury:	☐ Our employees	☐ Other party's employees	☐ Third party employees

INSURANCE REVIEW

No answer means either it is not mentioned in the contract or it is specifically rejected.

		Required of you		Required of Other Party	
1. Liability Insurance		YES	NO	YES	NO
a. Is it required?					
b. Limits of Liability		$	$	$	$
c. Special coverages required					
d. Occurrence vs. claims made coverage					
e. Named as additional insured					
f. Cross liability					
g. Contractual limits required					
h. Cancellation notice	# of days:				
i. Certificate or other evidence					
j. Other: _____					
2. Workers' Compensation		YES	NO	YES	NO
a. Is it required?					
b. Contractor's employee / borrowed servants					
c. Waiver of subrogation					
d. Federal acts					
e. All states and employer's stop gap					
f. Cancellation notice	# of days:				
g. Certificate or other evidence					
h. Other: _____					
3. Property Insurance		YES	NO	YES	NO
a. Is it required?					
b. Valuation method required		☐ ACV	☐ RV	☐ ACV	☐ RV
c. Additional named insured / additional insured					
d. Waiver of subrogation					
e. Cancellation notice	# of days:				
f. Certificate or other evidence					
g. Other: _____					
4. Automobile Liability Insurance		YES	NO	YES	NO
a. Is it required?					
b. Valuation method required					

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c. Additional named insured / additional insured							
d. Waiver of subrogation							
e. Cancellation notice	# of days:						
f. Certificate or other evidence							
g. Other: _____							

For additional details see www.AutomatedInsuranceVerification.com

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Risk Analysis Worksheet

Activity Contemplated in Contract	General Liability	Automobile Liability	Workers' Comp.	Errors & Omissions	Builder's Risk	Aircraft Liability	Special Coverage
Advertising, publication	✓ (1)						
Aircraft; use, ownership or maintenance of			✧ (Statutory)			✓ (10)	
Animals; care use of , maintenance of	✓ (1)		✧ (Statutory)				× (?)
Caustics; use or handling of	✓ (3)	✧ (5)	✧ (Statutory)				× (3+)
Childcare	✓ (5)	✧ (1)	✧ (Statutory)				× (5+)
Construction, remodeling	✓ (5)	× (5)	✓ (Statutory)	× (1+)	× Value		
Crowd (more than 10 persons)	✓ (5+)	✧ (1)	✧ (Statutory)				
Docks/wharves; use, ownership or maintenance of	✧ (5)	✧ (1)	✧ (Statutory)				✓ (5)
Electricity use of, electrical work, repair	✓ (3)	✧ (1)	✧ (Statutory)		✧Value		
Emission or discharge of potentially	✓ (5)	✧ (1)	✧ (Statutory)				✓ (5+)
Explosives; use of, storage, transportation or handling	✓ (10)	✧ (5)	✧ (Statutory)		✧Value		× (5)
Flammables, usage of	✓ (5)	✧ (1)	✧ (Statutory)				
Food; service, sales	✓ (3)	✧ (1)	✓ (Statutory)				
Medical services, skilled	✓ (1)	✧ (1)	✧ (Statutory)	✓ (3+)			× (?)
Nuclear/radioactive material; use of	✓ (1)						× (5)
Plumbing/sewer; maintenance, construction, repair	✓ (3+)				✧Value		
Professional services, other than medical or design	✓ (1)	✧ (1)	✧ (Statutory)	✓ (1+)			
Professional services; engineering, architectural	✓ (1)	✧ (1)	✧ (Statutory)	✓ (1+)	✧Value		
Railroads; use, ownership or maint. of, operations near							✓ (RR sets)
Security Guards	✓ (3)	✧ (1)	× (Statutory)	✓ (3+)			
Toxics; use or handling of	✓ (3)	✧ (5)	✧ (Statutory)				× (5+)
Trucking, transportation, solid waste hauling	✧ (1+)	✓ (5+)	✧ (Statutory)				
Tunneling; excavation	✓ (10)	✧ (1+)	✧ (Statutory)		✧Value		×
Watercraft; use, ownership, maintenance of	✧ (1)		✧ (Statutory)				✓ (1+)
Weapons; use, ownership or maintenance of	✓ (5+)	✧ (1)	✧ (Statutory)				✧ (?)
Welding, cutting with torch	✓ (5)	✧ (1)	✧ (Statutory)		✧Value		

Key: ✓ = Required × = Probably required ✧ = May be required ***Courtesy of the California Joint Powers Risk Management Authority***

Identify the types of risks involved in the contract you are analyzing.
For each required category of insurance, use the activity with the highest risk number to determine limits to require.

APPENDIX E:
Resources

The following is an overview of references and resources on the subject of insurance requirements in contracts, as well as resources on public entity and general risk management practices.

International Risk Management Institute, Inc. (IRMI), www.irmi.com. Excellent resource for glossary of insurance terms, reference manual for additional insured issues, construction risk management, and a wide variety of insurance and risk management topics.

Public Agency Risk Managers Association (PARMA), www.parma.com. California association dedicated to public agency risk management education. Annual conference and regional chapters provide opportunities for learning and networking.

Public Risk and Insurance Association (PRIMA), www.primacentral.org. National association dedicated to public agency risk management. Annual conference and other training opportunities, with many good resources on its website.

California Association of Joint Powers Authorities (CAJPA), www.cajpa.org. California association dedicated to public agency risk pool standards and education, with annual conference every September. Also tracks legislative issues of interest.

Association of Governmental Risk Pools, AGRiP, www.agrip.org. National association dedicated to public agency risk pooling standards and education. Holds conferences at various times throughout the year.

Risk and Insurance Management Society, RIMS, www.rims.org. National association of risk managers, good resource for continuing education, benchmarking data, and enterprise risk management.

Insurance Education Association (IEA), www.ieatraining.com. Excellent resource for a wide variety of training, especially workers' compensation certification, ARM, CPCU and other designation courses, and workshops on current topics.

American Institute Chartered Property Casualty Underwriters (CPCU) and Insurance Institute of America, www.aicpcu.org. Resource for obtaining many professional designations in risk management and insurance, including the CPCU and ARM designations.

Public Agency Safety Management Association, www.pasmaonline.org. California association focused on occupational safety and workers' compensation issues.

Insurance Journal, www.insurancejournal.com. National, multi-regional, and international insurance news stories happening throughout the country and the world.