



Courtyard on the Meadows, San Luis Obispo, CA



Contractual Risk Transfer

User Manual for Affordable Housing Providers

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We serve housing authorities and affordable housing providers along the west coast. We offer low cost liability and property coverage, and provide risk management solutions.

Read Me First

How to Use This Manual

This manual is intended to be a “go-to” resource for employees and advisors of providers of affordable housing that are under the Synchronous Risk Management umbrella.

The manual provides guidance and advice on properly allocating the responsibility for managing risks of financial loss arising from activities involving contracted services. Examples of activities covered include construction, professional services, property management, leases, purchase agreements and many other types of contracts.

This manual will not make anyone a contract expert. Contracts should always be drafted by and/or approved by a qualified attorney. Your organization’s attorney should approve all contract forms and should provide indemnity, hold harmless and waiver language (see more information in the chapter [“Step 2”](#)).

The manual also provides instruction and guidance on assuring that the proper financing of the allocated risks is in place. For some types of contracts, such as construction, the purchaser of services requires the provider of services to fund the risk of financial loss under the contract through the use of insurance. For other types of contracts, such as property management, the financial risk may be allocated more evenly, with both parties assuming some risk and providing some of the insurance. In either case, the purchaser must also have a system to assure that the transferred risks are properly insured. This is accomplished through a [compliance system](#), as described later in this manual.

Manual Formats Available

The manual is available to Synchronous members as a download in PDF format from the [Synchronous](#) website. It will be updated periodically. Users may print a copy of the manual, or may prefer to use the manual in digital format. If used digitally, a PDF reader such as Adobe Acrobat Reader is available for free on the [Adobe website](#). Other readers are available for various systems or platforms.

Throughout this manual, you will find links (indicated by underlined dark blue text) to sources within the document and to external sources such as relevant Internet articles and pages on the [Synchronous](#) website. Within a PDF document using Adobe Acrobat, you can return to the place you left to follow a link by using these key combinations: Alt-Left Arrow (Windows), Command-Left Arrow (Apple).

Introduction



A Broad Perspective on Contractual Risk Allocation (Transfer)

The Principle

The principle behind contractual risk transfer is that the party in the best position to control the risk arising from the contracted activity is also the best party to manage the risk, including financing the risk — principally through insurance.

Construction activity may be the clearest example of this principle. A construction contractor knows the risks of the job, has control of the job site, has (or should have) a risk control program in place to minimize loss, and has (or should have) an insurance program already in place that specifically addresses the risks of loss arising from construction activity. Since both the contractor and the project owner face the possibility of liability claims resulting from the construction activity, and the possibility of loss of property due to damage from insurable [perils](#), it is logical and appropriate, to the extent possible, to use a single insurance program to cover the risks.

Other contractual activities, such as professional services, have a somewhat different risk profile. For professional services the most significant risk usually is professional errors or omissions that result in loss to the party purchasing the professional service. While professional services could result in bodily injury or property damage (e.g., an architect or engineer designs a bridge that collapses resulting in multiple injuries and property damage), various types of insurance (auto, general liability, etc.) may respond to some losses involving the insured professional. However, professional liability insurance also covers economic loss suffered by the professional's client because of an error or omission.

This manual addresses these and other types of contracted activity risks that need some form of allocation in the contract between the parties — the purchaser (of services) and the provider. Because of the difference in risks and in appropriate insurance coverage for different types of activities, the manual covers various types of contracts including:

- Construction
- Leases
- Professional Services
- Vendor Agreements

Terms You Should Know

Additional Insured — a person or Organization not automatically included as an insured under an insurance policy who is included or added as an insured under the policy at the request of the named insured.

Contract, agreement, lease — refer to the written agreements between your organization and the other party; and

Contractor, vendor, permittee, consultant — refer to the other party to your organization's contracts;

Coverage — used synonymously with insurance or protection. Also refers to a specific type of insurance such as: general liability, automobile liability, etc., in context.

Exposure — the state of being subject to loss because of some hazard or contingency.

Hazard — condition or conditions that increase the probability of loss.

Indemnity — compensation to a party for a loss or damage that has already occurred, or to guarantee through a contractual clause to repay another party for loss or damage that might occur in the future.

Indemnitee — a person protected by, or benefiting from an indemnity.

Limit — the total amount of losses to be paid under an insurance policy. There can be more than one type of limit such as a limit per occurrence or a policy aggregate limit.

Organization — refers to the housing authority participating in the written agreement. The term owner may be used to refer to the party purchasing construction services.

Risk — exposure to the chance of injury or loss.

Subrogation — The substitution of one person or group by another in respect of a debt or insurance claim, accompanied by the transfer of any associated rights and duties.

Tort — a civil or private wrong giving rise to legal liability.

Waiver — the surrender of a right or privilege.

Waiver of Subrogation — an agreement between two parties in which one party agrees to waive subrogation rights against another in the event of a loss.

Additional terms used in this manual are defined in the Glossary at the end of this document.

Quick Start

1

Identify & Measure

You must identify and measure the risk before you can manage it.
See [Step 1 — Identify and Measure](#) to help identify and measure risks.

2

Allocate

The indemnity agreement protects you; insurance is just the financing for the protection. You also need waivers so the protection can't be taken away.
See [Step 2 — Allocate the Risk](#)

3

Specify

Match the requirements to the risks you have measured and identified.
See [Step 3 — Specify Insurance Requirements](#) for info about terms, conditions and amounts of insurance.

4

Compliance

Make sure you get the appropriate proof of coverage through certificates, endorsements and other forms as appropriate.
See [Step 4 — Obtain Compliance](#)

5

Maintain Records

Keep the evidence of coverage indefinitely, where it can be found easily.
See [Step 5 — Keep Good Records](#).

6

Get Coverage

Tender claims to the insurer if a loss occurs, or make sure the other party tenders.
See [Step 6 — Claims](#)

Step 1 — Identify and Measure



Identifying

“If you do not identify a risk you cannot manage it.”

The focus of this chapter is on identifying the risks of loss that may arise out of the activity contemplated in a contract and making an estimate of the potential severity that may result from each type of identified risk. This sounds like a more complex concept than it is in application because as a practical matter, one cannot accurately predict the potential financial consequences of each type of loss that could arise from the contracted activity.

Since insurance is the principal source for financing risks arising out of contracts, some discussion of what risks (exposures) insurance addresses is a good start. Insurance policies protect against some type of insurable risk of loss. However, most are designed to address specific types of risks such as third-party injury or damage (liability insurance), economic loss due to crime (e.g., “theft” insurance) or professional errors (errors and omissions liability insurance), loss to one’s own property (property insurance), compensation for loss and expense due to work-related injury (workers compensation insurance), and more. Some of the most common risks addressed in contractual risk transfer are discussed below.

Insurable Risks

Contractual risk transfer involves not only allocating responsibility for loss arising out of the contracted activity, but financing the cost of the loss for the protection of all parties. The best and most common way of achieving that protection is insurance. Table 1 shows some of the common exposures to loss and typical types of policies for insuring them.

Table 1 — Insurable Risks of Loss (Exposures)

| Exposure | What It Is | Applicable Coverage |
|---------------------------------------|--|---|
| Bodily Injury Liability (“BI”) | Includes bodily harm, sickness, or disease, including resulting death. It can be caused by a “tort” (a civil wrong), when someone negligently injures another, or by failure to exercise the level of care expected of a person held to a higher standard of care, such as an architect or engineer. | Bodily injury (“BI”) is insured under commercial general liability policies. BI is also covered under automobile liability, pollution liability, aircraft liability, professional liability and watercraft liability policies and other types. |
| Property Damage Liability (PD) | “Property damage” includes physical injury to tangible property including resulting loss of use of tangible property that has not been physically injured.” “Property damage liability,” refers to liability for causing damage to property of another. | Like “Bodily Injury,” property damage liability also may be covered under different types of liability policies, including general liability, auto liability, pollution liability, professional liability, aircraft liability, and watercraft liability policies. |
| Personal Injury | “Personal injury” and “bodily injury” are used interchangeably, notably by attorneys and in some umbrella liability policies. In primary liability policies, however, personal injury describes injuries that do not cause direct physical harm, such as: false arrest, detention, or imprisonment; malicious prosecution; wrongful eviction; slander; libel; invasion of privacy. | Personal injury coverage is included in standard general liability insurance policies. |
| Advertising Injury | “Advertising injury” includes the offenses of libel, slander, invasion of privacy, copyright infringement, and misappropriation of advertising ideas, when occurring in connection with the advertising of goods or services. | Advertising injury coverage is included in standard general liability insurance policies. |
| Environmental Damage Liability | Damage to the environment caused by negligence can result in fines and clean-up expenses, imposed by governmental agencies. | Policies specifically designed to address these costs are available under various names. |

| Exposure | What It Is | Applicable Coverage |
|-------------------------------------|---|--|
| Pollution Liability | Pollution liability resulting from a pollution incident includes property damage, loss of use, and clean up requirements and expense. This is a common exposure for many construction contractors. | This coverage can come in different forms, but a common type is contractor's pollution liability, which covers losses caused by the contractor's activities, such as excavation, or by release of pollutants brought onsite by the contractor. |
| Economic Loss Liability | "Economic loss" means monetary loss resulting from errors or omission, or as a result of crime. Examples include loss resulting from a building, that cannot be occupied because of an error made in the design of the ventilation system; delay in opening a housing project resulting in a loss of revenues; pollution cleanup; and losses due to crime such as forgery, theft, employee dishonesty are also economic losses. | Many different types of policies could cover economic loss, including: Crime Employee Fidelity Professional Liability Pollution Cyber Liability |
| Damage to One's Own Property | Most damage to property is caused by natural perils. However, humancaused perils can also result in loss, such as accidental or intentionally caused fire, lack of safety precautions, etc. Insuring loss of one's own property. | For owned property, standard commercial property insurance policies are appropriate. For property under construction, "builder's risk" insurance is often necessary. This coverage may be arranged by the contractor or by the owner. |

Measuring

The next part of identifying risk arising out of a contract is to consider the types of [exposures](#) the contract may create and to measure (estimate) severity in order to select appropriate limits. Below is a very simplified exposure analysis register designed to help the contract administrator think about the possible financial consequences of loss associated with the activity and appropriate insurance. This process should help lead to logical conclusions about reasonable insurance limits and coverage specifications.

Selecting appropriate limits is not an easy decision. There is merit in consulting with others in your organization to achieve a consensus about how much may be enough.

However, selecting appropriate limits is a sensitive task. For most service agreements such as repair and service technicians, smaller contractors, other service providers, etc., typical limits are:

| | |
|---------------------------------------|---|
| General liability insurance | \$1 million/occurrence \$2 million aggregate |
| Auto liability insurance | \$1 million combined single limit ("CSL") |
| Workers compensation insurance | Statutory benefits, \$1million employers' liability |

Factors to consider when selecting limits are safety and loss prevention strategies; size, severity or probability of larger losses; insurance purchasing custom and practice in the geographical area of the activity, and more. Sometimes negotiation with bidders or chosen providers is also a factor. In other words, if your limit requirements are too high (or other conditions are too strict or unobtainable) bidders may walk away.

To evaluate the risk and need for insurance coverage from your organization’s contractors and service providers, you also may need to confer with your organization’s legal counsel or risk management advisor. The identification and measurement 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.

Table 2 shows some examples of typical exposures to consider and provides some thoughts about limits. As noted in the table, some limits decisions should also consider other exposures that will be insured under a single policy or several policies.

For example, a construction contractor’s general liability insurance policy covers a wide variety of potential losses from many different types of activities. Some of these exposures are found primarily in certain types of contracts such as projects involving cranes, work near a railroad, and demolition in construction. Other examples include aviation and watercraft usage, which are special risks with high loss probabilities and requirements for special insurance.

Generally, you should require limits based on the highest potential loss probability and largest potential loss exposures. For insurance requirements for exposures unique to certain activities, consider consulting advisors, including Synchrons.

Severity Measure

Table 2 — Severity Measurement Examples

| Exposure | Risks | Insurance | Limits |
|---------------------------------------|--|---|---|
| Crowds | Multiple casualties, riot/ civil commotion, property damage | General liability combined with excess liability for higher limits | Crowd exposures justify higher limits than provided in primary general liability. Consider limits of \$10 million or more |
| Physical violence/law enforcement | Possible different scenarios such as assault, demonstrations, etc. | General liability combined with excess liability for higher limits | Consider \$5 million or more depending on the estimated probability and severity of loss |
| Hazardous materials/waste remediation | Contamination, injury to third parties or employees, improper disposal | General liability and pollution or environmental impairment liability | For known exposures, \$5 million or more, depending on the estimated scope of the issue |

| Exposure | Risks | Insurance | Limits |
|--------------------------------------|---|--|--|
| Demolition | Collateral damage to property, discovery of hazardous materials, disposal errors | General liability and pollution or environmental impairment liability | Usually part of an overall construction liability coverage program, so limits should also consider related exposures |
| Excavation | Utility damage, release of pollutants, bodily injury | Contractors pollution liability, general liability, workers comp | Usually part of an overall construction liability coverage program, so limits should also consider related exposures |
| Proximity to bodies of water | Bodily Injury, flood, marine liability | Possible maritime liability (USL&H, Jones Act, etc.), flood, Protection & Indemnity coverage | Maritime exposures are at least partially excluded by general liability policies — limits usually should be \$5 million or more |
| Tunneling or boring | Collapse, sink holes, release of pollutants, bodily injury, third party property damage | Contractors pollution liability, general liability, workers comp | Usually part of an overall construction liability coverage program, so limits should also consider related exposures |
| Cranes | Possible major bodily injury and property damage from misuse, falling over | General liability and contractors' equipment coverage | High limits usually appropriate, depending on the size of the project and the crane — \$10 million or more is likely reasonable |
| Use of aircraft or watercraft | Bodily injury, property damage, damage to air or watercraft | Specific coverage for aviation or marine liability | General liability insurance excludes any significant aviation or marinerelated exposures. Generally higher limits for marine and aviation are appropriate. |
| Work near railroad | Damage to railroad tracks, equipment, rolling stock, derailment, collision | General liability modified to remove exclusions, and railroad protective liability insurance | The railroad granting access to the contract will set the limits, but your contract should make the contractor aware of the need |

| Exposure | Risks | Insurance | Limits |
|--|---|--|---|
| Professional services | Bodily injury, property damage, economic loss | General liability, appropriate professional liability, auto liability if used | Usually minimum (\$1MM) limits except for professional liability and higher limits for other liability for large projects — relatively few professional service providers carry more than \$2MM |
| Known exposure to flood, earth movement | Significant property damage and bodily injury potential | Property insurance: either permanent property or builder's risk, general liability, excess liability | For project (builders risk insurance) — completed value; for other e.g., lessees contents — replacement cost |
| Offsite property storage | Damage to property | Property insurance with specific coverage for offsite or in transit | Usually included with either permanent property coverage or builder's risk — replacement cost |
| Use of vehicles | Bodily injury and property damage | Auto liability, coverage for transport of hazardous materials if appropriate | Depends on use — minimum of \$1MM combined single limit, more for hauling, work in highway construction zones, etc. |
| Crime risk | Loss of money or valuable property forgery, extortion | Crime and/or employee fidelity insurance depending on circumstance | Value of exposure |
| Delay risk | Delay in start up during construction resulting in financial loss | Property insurance with specific coverage for delay from insurable events | Typically six months to a year's worth of lost revenue — may include extra expense |
| Alcohol service | Serving alcohol at events that could result in accidents due to alcohol consumption | Possible need for liquor liability coverage e.g., contracts with caterers | Try to get \$5 million, but there may be restrictions in available limits from coverage markets |
| Cyber risk | Intentional damage to systems, data breaches, extortion, theft, | Cyber liability | Require \$5 million or more cyber liability from information systems firms, less for other coverages, i.e., GL, Auto, etc. |

Step 2 — Allocate the Risk



Indemnity

Risks are allocated through an indemnity provision in contracts. To “indemnify” means to “compensate” or “make whole.” In the contract, indemnity means an agreement to compensate a party (the “indemnatee”) after a loss. The party agreeing to indemnify (the “indemnitor”) assumes financial responsibility to pay for the loss and may assume additional responsibility, such as settling claims and defending the indemnatee. By agreeing to such a provision, the indemnitor waives its right to be judged in court on negligence principles alone (“in Tort”) but also on contractual obligations (“in contract”).

This indemnity agreement is not the same thing as insurance. It is a contractual obligation voluntarily assumed by one party toward another. Whether or not insurance applies, the indemnitor becomes liable under contract for the obligation assumed. An indemnity agreement is the principal instrument by which the organization transfers risk to the contractor/supplier/service provider. Insurance backs up the transfer financially. Every contract should have both an indemnity provision and insurance requirements.

The fact that a contractor may indemnify your organization does not mean that the organization avoids liability. The indemnity agreement is a promise to pay, but it does not transfer the “tort” liability to the indemnifying party. For example, suppose that a person is injured because of work on your organization’s project and the contractor has promised to indemnify the organization. If the injured party sues your organization, the organization will turn to the contractor to defend and pay any damages (unless your organization is solely negligent).

If the contractor is unable to pay (or refuses), however, and the injured person gets a judgment against your organization, the organization is still liable to that person. The organization could be compelled to pay the injured party and then pursue the contractor for the cost. The reason our specifications always require insurance is that insurance may be a more reliable source of funds than a contractor’s assets.

Auto and general liability insurance policies usually provide “contractual liability coverage,” although indirectly through an exception to an exclusion. This coverage provides protection to the insured for liability assumed in a contract through an indemnity agreement.

However, as this manual discusses elsewhere, it is important to be more than just an indemnified party in a contract. Aside from the status as a party to the insurance contract as an additional insured, which provides “[privity of contract](#)” with the insurer, an additional insured gets defense costs covered in addition to policy limits.

Defense for an indemnitee is within limits, meaning that money spent to defend an indemnitee erodes the policy limits and reduces the financial protection for both the named insured and the additional insured. It is essential to require the indemnifying party (contractor) to make sure the organization is also an additional insured under the contractor’s liability policy. This requirement does not apply to professional liability insurance or workers’ compensation insurance, however.

Sample indemnity clauses are available online at the [Synchronous website](#), under Resources/Templates. If you should decide to use any of the examples in this manual, you should still have the language reviewed by legal counsel for applicability to your particular contracting situation. Your organization’s legal counsel should have a copy of this manual.

Someone knowledgeable about insurance also should review indemnity agreements. The indemnity agreement is almost always broader than the insurance provided to back it up. While the indemnity agreement may contain a few qualifiers that narrow the scope of application, the insurance policy is full of exclusions, limitations, and restricting definitions. It is likely that the indemnity agreement will obligate the indemnifying party to pay for losses that cannot be covered by insurance, whether or not the indemnifying party would even be willing to pay for the coverage. The party drafting the indemnity agreement should carefully consider whether or not it is really the intent to bankrupt the indemnitor under such circumstances.

It is important that the indemnity agreement contains wording that will actually “trigger” coverage under the indemnitor’s policies and provide for certain contingencies. One example: in contemporary standard general liability insurance policies, defense coverage during litigation for an indemnitee (not an additional insured) is provided by the insurer only if the contract specifically requires it.

Furthermore, if defense is not required in the contract, and the indemnified party sustains a judgment and tenders the loss to the indemnitor, any defense expenses included in the tender will be considered damages, which erode the policy limits. If treated as defense obligation as required by contract, such costs are in addition to policy limits, increasing coverage for all.

Hold Harmless

Many texts on the subject of Contractual Risk Transfer make no distinction between “indemnity” and “hold harmless.” Some distinguish the two by classifying indemnity agreements as those in which an indemnitor agrees to reimburse an indemnitee for a loss sustained. Hold harmless agreements, on the other hand, are supposed to keep the party held from any “harm.” Some believe that the distinction between the two is that a hold harmless agreement will pay for defense in advance of a judgment or settlement, whereas an indemnity agreement will only reimburse expenses incurred.

In practice, however, most clauses transferring risk include elements of both types of protection and more. For example, many generic clauses require the other party to “defend, indemnify and hold harmless” the indemnitees.

Waivers

If two parties to a contract agree that one party will indemnify the other under certain circumstances, the parties do not want this agreement to be undone by an insurer seeking to recover its loss payments from one of the parties. The indemnitor’s insurer is in a position to do exactly that if the indemnitee (your organization) is all or partly responsible for a loss. The insurer could come after your organization to recoup the insurer’s payments. This type of action is called “subrogation.”

Subrogation is “the assumption by a third party (as a second creditor or an insurance company) of another’s legal right to collect a debt or damages.” [Source: Merriam-Webster online dictionary]

In a subrogation action, an insurer “stands in the shoes” of the insured who has a right of recovery. This is a right based in law.

“Subrogation is a doctrine of equity intended to compel the ultimate payment of a debt by the one who in justice, equity, and good conscience should pay it. For example, a property insurer that has indemnified its insured is usually subrogated to any rights the insured may have against the third party that is actually responsible for the loss. The theory behind this principle is that, absent repayment of the insurer, the insured would be unjustly enriched by virtue of recovery from both the insurer and the wrongdoer. More frequently, in the absence of such double recovery by the insured, the third party would emerge free from liability despite its legal obligation in connection with the loss”.¹

A waiver is the voluntary relinquishment or surrender of some known right or privilege. In the world of Contractual Risk Transfer, waivers can be used to effect the intent of the risk transfer. In other words, waivers can be used to make sure that the party intended to be responsible for loss actually covers the loss (through insurance, hopefully), and that the party intended to be protected from loss is protected. In CRT, waivers can prevent insurers from subrogating.

In the context of Contractual Risk Transfer and insurance, subrogation usually occurs when an insurance company, having paid a loss on behalf of its insured, attempts to recover its payments from another party responsible for causing the loss. A waiver can preclude such recovery in several ways.

¹ Wielinski, Patrick; Woodward, Jeffrey; and Gibson, Jack; Contractual Risk Transfer, International Risk Management Institute, 2011

First, the insurer can voluntarily waive its right to recover. As noted above, this is a legal right not a contractual right, so it must be voluntarily surrendered if subrogation is to be prevented. An insurer may waive its recovery rights by endorsement to a policy. This usually occurs when an indemnitee in an agreement, such as your organization, requires such an endorsement waiving subrogation rights as a condition of the contract.

A second way recovery rights can be waived by an insurer is to grant to the named insured the power to waive its own right of recovery. If the insured has no right of recovery, the insurer cannot “stand in the shoes” of the insured to exercise a right that does not exist. Most contemporary property and liability insurance policies contain a clause that says the insured “must do nothing after loss” to impair the insurer’s right to subrogate. This wording implies that if the insured does something before loss, such as waive its right of recovery, then the insurer will not subrogate.

Courts have consistently supported this interpretation. Thus, it is generally accepted that if an insured waives its recovery rights in a contract, the insurer cannot subrogate against the party that obtained the waiver. If your organization’s contractor waives its recovery rights against your organization, the contractor’s insurer won’t be able to go against your organization under a subrogation right.

The exception to this type of protection for an indemnitee is workers’ compensation, as the right in a workers’ compensation claim does not belong to the named insured employer, and neither the employer nor the worker can waive that right. Therefore, many experts advise obtaining a waiver of subrogation endorsement from the contractor’s workers’ compensation insurer in favor of your organization.

Generally, an insurer may not subrogate (recover from a third party for a loss caused by the third party and paid for by the insurer) against its own insured. If your organization is added as an additional insured on general liability policies, as recommended, it should be safe from subrogation by the general liability insurer.

However, a few [court cases](#) have resulted in successful subrogation by the insurer against its own insured, most often in construction disputes (many cases have gone the opposite way as well). As a result, some experts advise that the specifications in a contract require the contractor’s general liability insurer to specifically waive subrogation (by endorsement) against the additional insured. Other experts call this “belt and suspenders.”

Such a request may meet with resistance from the general liability insurer who will argue that the additional insured status protects the organization. We recommend that your organization consider obtaining the waiver of subrogation when doing so will not add additional cost to the contract and/or the contracted activity is particularly hazardous or critical.

If the contractor has employees, the organization will also require an endorsement to the contractor’s workers’ compensation insurance waiving any right of subrogation that the insurer may have against the organization for injury to a contractor employee. You should be aware that many or most insurers will charge additional premium for a waiver of subrogation on a workers’ compensation policy.

Sample general liability and workers’ compensation waiver forms can be found in the next chapter under “[Waiver](#).”

Step 3 — Specify insurance Requirements



To assure adequate protection for your organization, you need to specify in the contract the types of insurance, limits, and enhancements needed to provide the protection desired. You also need to specify what you don't want such as harmful exclusions and limitations on the coverage applied to the additional insured.

Types of Insurance Requirements Found in Contracts

In Table 3 (on following page), types of insurance that may be found in contract requirements are listed in order of how commonly they are required, with the first four coverage categories organized in the same order as found on the ACORD 25 Certificate of Insurance Form. The table provides reference information to help the reader understand the type, purpose, and appropriate use of common forms of property and liability insurance in contractual risk transfer. The Appendix provides specifications, terms and conditions for insurance requirements appropriate for different types of contracts.

Table 3 — Insurance Requirements Found in Contracts

| Coverage | What it Covers | When to Require | Contract Wording |
|---|--|--|---|
| Commercial General Liability (CGL) | <p>Bodily injury, property damage liability, personal injury, advertising injury. Includes liability:</p> <ul style="list-style-type: none"> Arising out of the ownership, maintenance or use of real property; Arising out of operations away from the business premises by employees or agents of the insured; Assumed by contract; Arising out of the products manufactured, distributed or sold; and Arising out of operations that have been completed away from the premises. <p>Liability for damage to property in the “care, custody, or control” of a lessee.</p> | <p>Always. This is the most basic of coverages and should be required in every contract. All organizations (and individuals) have these exposures. Note that fire legal liability is sub limited in the commercial general liability insurance policy. The indemnitee can require a higher limit, but property insurance is usually a better solution.</p> | <p>Contractor shall provide Commercial General Liability Insurance using Insurance Services Office Commercial General Liability policy form CG 00 01 04 13, or the exact equivalent with limits of no less than \$1,000,000 per occurrence for all covered losses and \$2,000,000 general aggregate.</p> |
| Automobile Liability | <p>Provides liability coverage for use, ownership, or maintenance of an auto. Automatically includes as an insured any party who is liable for the conduct of an insured. “Insured” includes the owner and permitted operators, and other liable parties. Auto policies often include coverage for physical damage to the vehicle. Generally, however, that risk is not the organization’s concern.</p> | <p>When the contractor will use autos in the work.</p> <p>If no autos are used, the requirement may be omitted. When in doubt, require it.</p> <p>You may have to accept personal auto coverage, often with lower limits.</p> | <p>Contractor shall provide auto liability coverage for owned, nonowned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a combined single limit of no less than \$1,000,000 per accident. If contractor owns no vehicles, this requirement may be met through a nonowned auto endorsement to the CGL policy.</p> |

| Coverage | What it Covers | When to Require | Contract Wording |
|--|--|--|--|
| Umbrella or Excess Liability | <p>Either type (umbrella or excess) lies above primary liability insurance and increases the limit available.</p> <p>Umbrella liability insurance is more common and usually applies over several coverages, (CGL, Auto and Employer's Liability).</p> <p>Excess is often "monoline" (applying over one specific type of coverage).</p> | <p>When the specifications require more than \$1 million, the contractor will need excess or umbrella liability insurance to satisfy the limits.</p> <p>Specifications should not be too restrictive but should assure that the upperlevel policy is as broad as the primary policies.</p> | <p>Umbrella or excess liability policies shall provide coverage at least as broad as specified for underlying coverages, and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. There shall be no cross liability exclusion of claims or suits by one insured against another.</p> |
| Workers' Compensation and Employer's Liability | <p>Provides statutory benefits for employmentrelated injury or illness not otherwise compensable by other statute (such as those for Harbor workers and Longshore workers). Includes medical expenses and indemnity (for lost wages). Employer's liability applies in rare cases where workers' compensation does not, such as under certain statutory conditions.</p> | <p>When contractor has employees. Most states require that an employer must secure payment of medical expenses and compensation to employees for jobrelated injuries..</p> | <p>Contractor shall provide Workers Compensation and Employer's Liability Insurance on a stateapproved policy form providing benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.</p> |
| Professional Liability/Errors and Omissions Liability | <p>Provides coverage for acts, errors, or omissions, often referred to as "economic" damages, i.e., coverage is not intended to cover bodily injury or property damage caused by ordinary negligence, but to cover damages in the form of other costs, such as to fix a job done wrong.</p> | <p>When the contractor provides a professional service requiring special skills and knowledge. Note: this coverage is usually "claimsmade."</p> | <p>Consultant shall provide evidence of professional liability insurance on a policy form appropriate to consultant's profession. Limits shall be no less than \$1,000,000/claim and aggregate.</p> |

| Coverage | What it Covers | When to Require | Contract Wording |
|---|---|---|--|
| Pollution (Environmental Impairment Liability) | Considerable variety among more than thirty different policy forms. Can cover environmental damage, clean up, gradual pollution or just spills (sudden and accidental). | When there is a pollution risk arising out of the contractor's activities. A parttime risk administrator should seek professional assistance in evaluating and specifying coverage for this risk. | Pollution Liability Insurance shall be written on a Contractor's Pollution Liability form, or other form acceptable to Organization, providing coverage for liability arising out of sudden, accidental pollution, and remediation. The policy limit shall be no less than \$1,000,000 per occurrence and aggregate. |
| Permanent property/ contents Insurance | Covers physical damage to one's own property or property in one's care, custody or control, arising out of certain perils. | "Fire" insurance (by whatever name including "all risk" property) may be required of lessees in certain circumstances (lessees' improvements and betterments). | Lessee shall provide a policy of "all risk" coverage for improvements and betterments for the full replacement value of the property. The policy shall contain the following provisions: (1) Organization shall be loss payee; and (2) the insurer shall waive all rights of recovery against Organization. |
| Builder's Risk | Covers physical damage to property in the course of construction. | In construction contracts when the owner does not have coverage for property under construction. | Course of Construction insurance shall provide "all risk" coverage for the completed value of the project. Policies shall contain the following provisions: (1) Organization shall be named as loss payee; and (2) the insurer shall waive all rights of recovery against Organization. |
| Business Interruption | Covers income loss and extra expense due to business interruption caused by an insured property peril. Available on permanent property and builder's risk policies. | Usually only when the indemnitee is concerned about continued payment of rent or continued operations of a lessee. | Lessee shall purchase business income extra expense or similar coverage as part of a commercial property insurance policy or under a separate form sufficient to cover rental payments in the event of business interruption. |

| Coverage | What it Covers | When to Require | Contract Wording |
|--------------------------------------|---|---|--|
| Boiler and Machinery | Covers property damage resulting from steam boiler explosion. Also covers equipment breakdown. Includes liability protection for bodily injury or property damage. | Seldom. When a lessee or contractor will have control of boilers or machinery coverage makes sense. Usually, organization arranges. | Consult an advisor. |
| Crime (fidelity) | Covers loss due to theft, embezzlement, fraud, and other crimes. Public officials often are covered for their faithful performance, which goes beyond fidelity, and covers oversight failures and other causes leading to financial loss. | When the contractor will handle organization money or have access to it. | Contractor shall provide evidence of fidelity coverage on a blanket fidelity bond or other acceptable form. Limits shall be no less than \$1,000,000 per occurrence. |
| Railroad Protective Liability | A “protective” policy that covers both liability and property damage on behalf of a railroad. Usually paid for by a contractor or property owner, who gets no coverage. | You don’t require this policy. The railroad requires a policy as a condition for entry on railroad property to do work. | The railroad on whose property your contractor needs to work will set specifications and the contractor will arrange coverage as a requirement for entry. |
| Liquor Liability | Covers liability arising out of the sale of alcoholic beverages. Different from host liquor liability, which is provided automatically in the CGL. | When an event provides for a cash bar or other sale of liquor. | Contractor shall provide liquor liability insurance with a limit of no less than \$1,000,000 per occurrence. |

Waiving Insurance Requirements

You should be cautious about waiving or reducing requirements for the other party to the contract. If you waive requirements for a successful bidder in a competitive procurement, you may invite a protest from other bidders who met or could have met the insurance requirements, but were not selected.

Also, word gets around. If you waive requirements for one contractor, other contractors will learn of it and will expect the same treatment for their contract in the future. Further, if you waive a requirement and a subsequent loss occurs that could have been covered by the insurance requirement you waived, it may be hard to explain why you waived the coverage.

Nevertheless, it is sometimes reasonable and practical to waive certain requirements or reduce limits required. If there will be no vehicles used in the activities contemplated in the agreement, it may be appropriate to waive the auto liability insurance requirement. This is especially true if the other party to the contract does not directly own any autos. In that case, a “non-owned” auto endorsement to the general liability policy may be appropriate.

Similarly, if the other party does not have any employees (other than the owners), it may be appropriate to waive a requirement for workers' compensation insurance. Many entities require an affidavit or other proof that the contractor has no employees before approving a workers' compensation waiver.

Contract Insurance Terms and Conditions

Terms and conditions addressing how the insurance will work are important to assure that the indemnitee (your organization and its related parties) get the protection expected by the risk allocation. A discussion of appropriate terms and conditions follows. A sample set of terms and conditions for the contract are in exhibits in the Appendix.

Additional Insured Status

Commercial general liability. In addition to being indemnified, your agency, its officers, officials, employees, and agents should be added as insureds on the general and excess liability policies of the contracting party so if a claim is made against one of them, they will have coverage and defense. As additional insureds, these parties have contractual rights under the insurance policy. Since your organization, if a governmental entity, may be obligated by law to indemnify some of these parties in the event of a claim, you want the contractor insurance to respond. There are several ways to do this. One is by endorsement to the general liability policy.

There are more than 30 "standard" additional insured endorsements published by the Insurance Services Office (ISO) for use with the ISO Commercial General Liability (CGL) policy form, CG 00 01 MM YY, where the MM and YY symbols indicate month and year of the policy edition. Each form has a slightly different purpose or applies to a different type of contract or business. ISO updates these forms periodically; both the policy form itself and the corresponding endorsements. Thus, you may see different edition dates and different versions of the same form. This is true for both the policy (CG 00 01) edition dates and the edition dates of the additional insured endorsements.

The most commonly used form for conveying additional insured status (when not specifically provided by a policy provision) is the ISO form ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION CG 20 10 MM YY. The CG 20 10 has been revised many times since the first edition, CG 20 10 11 85, was produced. An article on the International Risk Management Institute ([IRMI website](#)) about putting form changes into context, discusses the history of the changes in the editions over the years. In general, subsequent editions of the form (1993, 1997, 2001, 2004, 2007, 2013, 2019) narrowed the scope of coverage to the additional insureds.

When ISO publishes a revision to a form, that revision replaces the older version of the form and ISO discontinues support for the older version. Insurance companies that use ISO forms are supposed to discontinue use of the older versions and begin issuing only the newer forms. That doesn't always happen. Since ISO does not "withdraw" older forms through state insurance departments, insurers may be free to use the obsolete forms, although many will not do so, even if asked.

Some organizations insist on older versions of forms out of the belief that only the older form provides the desired coverage. There are many ways to get the desired coverage, however, provided that the insurers are willing to meet the specifications. Some CRT manuals even advise this. Practically speaking, it is easier said than done. Many insurers have established company-wide policies that they

will not allow use of older forms. While it may be possible to negotiate the older form if the named insured has “clout” as an insurance buyer, in many cases the insurer will not accommodate a request for an older form.

Auto liability. Contrary to common belief, usually you usually do not need evidence of additional insured status for automobile liability insurance. Most commercial auto liability policies automatically include as insureds any parties who may be liable for authorized use of the vehicle. To be safe, your specifications should state that the other party’s insurance should either contain or be endorsed to contain a provision that covers your organization as an additional insured.

Evidence of Insurance

Specifications should require evidence of coverage in the form of a certificate of insurance. General liability insurance evidence requirements should state that your organization should receive evidence of its additional insured status, either by an endorsement to the other party’s general liability policy, or by evidence of a policy provision granting additional insured status to your organization.

Insurer Qualifications

Your insurance specifications should spell out the minimum requirements for insurers providing the coverage. The most practical way to do this is to specify a minimum rating from AM Best. Most entities establish a minimum rating of A-: VI or A-: VII. For an explanation of the rating system see the [AM Best](#) website.

Some agencies specify that an insurer must be “admitted.” The term “admitted” means that an insurer must follow guidelines established by the state Department of Insurance (DOI), must participate in a guaranty fund that covers some portion of claims left by insolvent admitted insurers, and must file rates for approval with the DOI. Since the admitted insurer is regulated within the state of admission by the DOI, complaints made against them can be investigated by the DOI, and disciplinary action is a possibility if the insurer acted inappropriately.

In practice, some of these benefits offer less than one might expect. Guaranty fund loss recoveries are limited to \$500,000 or some other amount per policyholder, and DOI investigations do not always go the way a policyholder might desire. Because all policy forms must be filed, non-admitted carriers who do not have to file forms may offer more flexibility to the insured. For some lines of coverage, such as professional liability, earthquake, and flood, the non-admitted market may be the only source for coverage.

Most important in evaluating an insurer is financial stability. For this reason, many agencies have discontinued the practice of requiring admitted status in contract insurance specifications, and require only that the insurer be “authorized to do business” in the state where the services will be performed.

Limitation on Self-Insurance

Generally, your organization should not accept the other party’s self-insurance as compliance with the contractual requirement for coverage, unless the other party is a public entity. Large public

entities usually are self-insured. Many smaller agencies jointly self-insure with other agencies in pools.

Another exception may need to be made for large public utilities and railroads, which generally self-insure to high levels.

For most entities, other than those exceptions identified above, your specifications should control large self-insured retentions. Unlike deductibles, which are collected by an insurer from the named insured after the insurer has paid a loss, self-insured retentions do not require insurer involvement in the claim except under certain specified circumstances. Thus if your organization accepts a large self-insured retention from a contractor, many of the benefits of insurance could be lost. Some of these benefits include regulation, bad faith claim legislation, and case law and statutes favoring insureds.

Beware large self-insured retentions that may exceed the financial capacity of the insured. Cases such as [Forecast Homes v. Steadfast](#) have supported insurers whose policies allowed only the first named insured to satisfy the self-insured retention.

Maintenance of Coverage

The contract should compel maintenance of the coverage for a period sufficient to cover risks arising out of the contract. At a minimum, this period should include coverage from the point any work is done under the agreement through the point where all work is completed and the contract is fulfilled. The ability to submit claims discovered after completion should be required if those claims are not known before completion.

If the contract involves construction, a specific exposure called “completed operations” results. Completed operations means work that is finished and turned over to the project owner. Completed operations losses involve the liability incurred by a construction contractor for property damage or injuries that may happen to a third party once contracted operations have ceased or been abandoned. For example, a completed building could collapse because of faulty construction, injuring occupants.

Completed operations coverage is provided under a commercial general liability policy (CGL). However, since the CGL only covers losses occurring during the policy period, there must be a CGL in place at the time of the loss. Therefore, your specifications for construction contracts should state that the contractor must agree to maintain coverage and continue to include your organization as additional insured as long as there is statutory exposure to completed operations losses. In states where Synchronous members operate, the statute of repose is from 6 to 10 years.

Non-Estoppel

The contract should contain a provision stating that if your organization fails to enforce a specific provision of the contract, such as obtaining evidence of literal compliance with requirements for notification of cancellation of the contractor’s policy, that such action or inaction does not constitute a waiver of your organization’s right to demand compliance.

Notice of Cancellation or Reduction in Coverage

Your organization needs to know if the coverage it is relying on the contractor to provide is cancelled or not renewed on expiration of the policy. This is a tricky requirement to enforce because some insurers will refuse to provide cancellation notice to additional insureds, although providing notice to additional insureds is becoming more common. Many policies state that the only party the insurer is required to notify of cancellation or non-renewal is the first named insured (the contractor), but an endorsement may be available and you should require it.

Notice of Claims

Your Organization needs to know of claims pending against it. You may have rights under various immunity or “tort claim” statutes. If your organization’s legal representative is not aware of a claim, it may be difficult to use the protection provided for in the statute and some rights may be lost. The contract should contain a provision requiring notice to your organization when a claim, known to the contractor, is made or about to be made.

Primary and Noncontributing

Most commercial liability policies, including general liability and auto, are primary, but not noncontributing. Primary means that the policy provides first-source coverage and does not require that other available insurance apply first. Noncontributing means the policy does not require sharing the loss with other available insurance. Your contracts should require such a provision to avoid a potential demand by the other party’s insurer to contribute to the settlement of a loss. However, this topic is more complex than it might seem, as evidenced by [this article](#) on the meaning of “primary and noncontributory.”

Remedies for Non-Compliance

If the other party fails to meet the terms of the agreement with regard to insurance, your organization should have “remedies” to enforce compliance. The most common remedies are:

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

Requirements Not Limiting

The contract should contain a provision clarifying that any insurance limits or coverage conditions required in the contract are not intended to limit coverage, and are to be considered minimums.



Right to Revise Specifications

Your organization needs the right to revise the insurance specifications during the course of the contract if the risks change. However, if such changes are at a substantial cost to the other party to the agreement, your organization should agree to compensate.



Waiver of Right of Recovery

Your specifications should include a waiver of the other party’s right of recovery against your organization. Such a waiver prevents the other party’s insurer from a subrogation against your organization. Waivers are discussed in the section entitled “Waiver of Subrogation” on [this page](#).

Drafting the Contract Insurance Requirements

Sample terms and conditions for a construction contract follow on the next page in Table 4, but much of the language is appropriated for other types of contracted services. Underlined blank spaces are placeholders for reference to other parts of the contract. The term “Indemnified Parties” is commonly included in some contracts to refer to the party contracting for the service (“owner”) and that organization’s directors, officers, employees, lenders and possibly other parties requiring indemnification and defense.

In this example we use the word “Contractor” which could include construction contractors and service contractors such as property managers. Different terms may be required for other types of parties to the contract.

Sample language for inclusion in various types of contracts is provided in the [Appendix](#).



Using Risk Allocation Terms and Conditions in the Contract

Table 4 — Risk Allocation Terms and Conditions

| Term/ Condition | What Is Needed | Solution | Sample Wording |
|---|---|--|--|
| Requirement to provide insurance | A clear statement of responsibility for the party providing insurance to obtain and maintain for a specific period of time. | This condition is basic to every contract in which risk is allocated and should be stated up front.t | Contractor shall purchase and continuously maintain in full force and effect the insurance coverages specified in this Section _____ (Insurance Policy Requirements). Coverage shall be maintained from and after the execution of this Contract through the expiration of the Warranty Period, or such longer or shorter time as may be specifically provided in _____. |

| Term/ Condition | What Is Needed | Solution | Sample Wording |
|---|--|---|--|
| No Representation | Disclaimer of organization responsibility for determining what is adequate insurance for contractor. | State clearly in contract that Contractor is responsible to determine its own insurance needs and not rely solely on these contract requirements for protection. | Organization makes no representation or warranty that the coverage, limits of liability, or other terms specified for the insurance policies required under agreement are adequate to protect Contractor against its activities under this Agreement or its liability to any third party, nor shall the existence of any such terms preclude Organization from taking any actions as are available to it under this Agreement or otherwise at law. |
| Premiums, Deductibles and SelfInsured Retentions | Specific requirements allocating the responsibility for costs to be paid by a specific party, usually the Contractor. | Clarifies responsibility for costs related to insurance. | Contractor shall pay all insurance premiums required under this (insurance requirement section of contract). Contractor acknowledges and agrees that Contractor shall be solely responsible for all deductibles, selfinsured retentions, and loss amounts in excess of the coverage limits provided. Any selfinsured retentions maintained by Contractor over \$X00,000 must be declared to and approved by Organization. |
| Commencement of work | Statement concerning when work, lease or other activity under the contract can begin until certain conditions are met. | Establishes that work cannot commence until all requirement for insurance have been met as evidenced by required standard forms (certificates and endorsements, usually). | Contractor and its Subcontractors shall not commence Work under this Contract or any applicable Subcontract until Contractor or the applicable Subcontractor: (a) obtains the insurance coverage required under (Section) for the applicable Work; (b) provides Organization with evidence that the required insurance, as specified in (Section), is in effect for the applicable Work; and (c) Organization approves such insurance. Organization has no duty to pay or perform under this Contract until such evidence of insurance, in compliance with all requirements of (Section), has been provided. |

| Term/ Condition | What Is Needed | Solution | Sample Wording |
|---|---|---|--|
| Review of Coverage | The Organization needs the right to require changes to insurance requirements in response to changes in risks or insurance market conditions. | State the Organization's right to modify coverage but provide reasonable time to comply and confirm that pricing changes will be the responsibility of the Organization or accrue to its benefit. | Organization may at any time review the coverage, form, and amount of insurance required under this Agreement, and may require Contractor to make changes in such insurance to provide adequate protection against the risk that exists at that time. Organization may change the insurance coverages, terms and limits required under this Section (number) by Notice to Contractor. Contractor shall, within sixty (60) days of such Notice, procure the additional and/or modified insurance. Any additional cost from such change shall be paid by Organization and any reduction in cost shall reduce the Contract Price by Change Order. |
| Non-Limitation of Insurance Requirements | A clear directive that the requirements of the contract are specific and not to be voided, reduced or limited by the Contractor or its insurer nor shall any minimum requirement in the contract be construed to limit the insurer's or the Contractor's obligations to the additional insured. | Applies to avoid unintended interpretations, to prevent limitations put in policy documents by the insurer, or to failure of the Contractor to observe the requirements in the contract. | <p>The Parties acknowledge and agree that:</p> <p>The insurance coverage and limits required under this Contract are minimum requirements and are not intended to limit Contractor's indemnification obligations hereunder, nor do the indemnity obligations limit the rights of the Indemnified Parties to coverage afforded by their insured status.</p> <p>All insurance coverage and limits provided by Contractor, or by third parties pursuant to Contractor's obligations under this Contract, applicable to this Contract are intended to apply to the full extent of the insurance policies, and nothing contained in this Contract limits, or shall be deemed to limit, the application of such insurance.</p> |

| Term/ Condition | What Is Needed | Solution | Sample Wording |
|---------------------------------|---|---|--|
| Verification of Coverage | A contract requirement to provide commonly used forms for evidence of compliance with the contract's terms or conditions. | This section sets the requirements for certificates of insurance, specific insurance endorsement forms and other types of written confirmation. Use of forms by number or industry name helps streamline compliance checking as the contents of the forms are known unless modified by the insurer. | <p>Contractor shall provide evidence of required insurance consisting of a certificate or certificates of insurance and all endorsements required in this Section (X). Upon request by the Organization, Contractor shall promptly provide complete copies of any required policies. Organization shall have no duty to pay or perform under the Contract until such evidence of insurance, in compliance with all requirements of this Section (X), has been provided.</p> <p>Contractor shall promptly deliver to the Organization evidence of insurance at each renewal, to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such evidence shall be delivered to the Organization not less than five (5) days prior to the expiration date of any policy, or such shorter period as approved in advance by the Organization.</p> |

| Term/ Condition | What Is Needed | Solution | Sample Wording |
|---|---|--|--|
| Required Endorsements or Policy Provisions | Actual copies of endorsements needed to achieve the required level of protection desired by the contract drafter, usually the “owner.” Evidence must be provided as a contract condition. | Presents requirements to meet protection goals and requires written evidence or confirmation that the specific requirement is contained in the policy form. This is one reason specifications suggested in this manual will identify insurance forms (policies, endorsements, etc.) by form number — so that the contract drafter knows what they contain without having to spell out every condition in the contract. | <p>All insurance policies that Contractor is required to provide under this Contract shall contain provisions or be endorsed to comply with the following requirements:</p> <p>Each of the Indemnified Parties shall be an additional insured under Contractor’s and Subcontractors’ commercial general liability, automobile liability, umbrella or excess liability, and pollution liability insurance policies. (Add form numbers or be aware of policy terms and conditions providing the requested specification, e.g., the CGL policy CG 00 01 is “occurrence” based. Requesting this form gets an “occurrence” policy, as opposed to a “claims made” policy.)</p> <p>Required insurance coverage shall be primary and noncontributory insurance with respect to the additional insured Indemnified Parties (a “defined term”). Any insurance or selfinsurance beyond that required in this Contract that is maintained by an Indemnified Party shall be excess of such insurance required by this Contract.</p> <p>The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.</p> <p>Each insurance policy required under this Contract shall be endorsed to state that coverage shall not be canceled or nonrenewed except after providing to Organization thirty (30) days’ prior Notice (or ten (10) days’ prior Notice in the case of cancellation for nonpayment of premium), and such endorsement shall not include any limitation of liability of the insurer for failure to provide such Notice.</p> <p>Each policy shall provide coverage on an “occurrence” basis and not a “claims made” basis (with the exception of professional liability).</p> |

| Term/ Condition | What Is Needed | Solution | Sample Wording |
|--|--|---|--|
| Notice of Prosecution of Claims | A clear understanding of by whom and how insurance claims will be submitted and pursued. | Organization shall cooperate with Contractor as necessary for Contractor to fulfill its duties under this Agreement including providing Contractor a copy of all written materials Organization receives asserting a claim against Organization that is subject to defense by an insurer under an insurance policy or by Contractor under Section (X) | <p>To the extent permitted by Applicable Law, Organization may submit Organization's Claims and tenders of defense and indemnity under applicable insurance policies. However, unless otherwise directed by Organization, Contractor shall report and process all potential claims against the insurance policies, except for any builders risk policy. Contractor agrees to report in a timely manner to the insurer(s) under such policies any and all matters that may give rise to an insurance Claim, and to promptly and diligently pursue such insurance Claims in accordance with the policies' Claims procedures, whether for defense or indemnity or both. Contractor shall enforce all legal rights against the insurer under the applicable insurance policies and Applicable Law in order to collect thereon, including pursuing necessary litigation and enforcement of judgments.</p> <p>Contractor shall immediately provide Notice to Organization, and thereafter keep Organization fully informed, of any incident, occurrence, claim, or other matter of which Contractor becomes aware that involves or could conceivably involve an Indemnified Party as a defendant. Contractor shall cooperate with Organization and shall require its liability insurers to agree in writing to work with Organization to assure compliance with all legal requirements.</p> <p>Organization shall promptly provide Notice to Contractor of (incidents, potential Claims, and matters of which Organization is actually aware and that may give rise to an insurance claim, or to a right of defense and indemnification. Delivery of any such Notice will constitute a tender of Organization's defense of the Claim to Contractor and the insurer under any applicable insurance policies, subject to Organization's rights to control its own defense to the extent provided in Section __ or by Applicable Law.</p> <p>Organization shall cooperate with Contractor as necessary for Contractor to fulfill its duties under this Agreement including providing Contractor a copy of all written materials Organization receives asserting a claim against Organization that is subject to defense by an insurer under an insurance policy or by Contractor under Section (X).</p> |

| Term/ Condition | What Is Needed | Solution | Sample Wording |
|---------------------------------------|--|--|---|
| Contractor's Failure to Comply | Clarification of an appropriate response and Contractor's obligations if it fails to comply with the requirements and conditions of the Agreement. | Contractor is notified that failure to maintain insurance requirements is subject consequences including suspension of the work contract termination, charges for premium cost to restore coverage and uninsured losses. | If Contractor or any Subcontractor fails to provide and maintain insurance as required in this Agreement, then Organization may terminate the Contract, purchase such insurance as Organization deems appropriate, or suspend Contractor's right to proceed with the Work until proper evidence of insurance is provided. Nothing in this Contract shall preclude Organization from exercising its rights and remedies under Section (X) as a result of the failure of Contractor or any Subcontractor to satisfy the obligations of this (appropriate contract section). If on account of Contractor's failure to comply with the provisions of this Section (X), Organization is adjudged to be responsible for all or any portion of a judgment, loss, or settlement (through admission or stipulation by Contractor or court decision) that would have been covered by insurance but for noncompliance with this Section, then any loss or damage Organization sustains by reason thereof shall be borne by Contractor, and Contractor shall immediately pay the same to Organization, upon receipt of Notice. Contractor acknowledges and agrees that any actual or alleged failure on the part of Organization to inform Contractor of noncompliance with any requirement imposes no additional obligations on Organization nor does it waive any rights under this Contract. |

| Term/ Condition | What Is Needed | Solution | Sample Wording |
|---|--|---|---|
| Waivers | Waiver of any recovery rights contractor may have against Organization for losses resulting from activities under this agreement. A major reason for this requirement is to preclude is to prevent insurers from paying a loss and then subrogating against another party to the contract. | Each party to the contract waive its right of recovery against another party to the extent covered by insurance required under this Agreement. Workers compensation policies subrogation rights must be waived by endorsement. Professional liability insurers generally will not agree to subrogation waivers. | The Indemnified Parties and Contractor waive all rights against each other, against each other's agents and employees, and their respective members, directors, officers, employees, agents, and consultants for any Claims to the extent covered by insurance obtained pursuant to this agreement except such rights as they may have to the proceeds of such insurance. Contractor and subcontractors' workers' compensation policies must be endorsed to waive the insurer's right of subrogation against the Indemnified Parties. All other policies, except professional liability, shall waive any right of subrogation by endorsement, or by policy provision that would allow the insured to waive its right of recovery against the Indemnified Parties and their respective members, directors, officers, employees, agents and consultants "before loss." These waivers of subrogation requirements must be included in all Subcontracts. |
| Subcontractor Insurance Requirements | Contractor needs clarification of responsibilities regarding subcontractor maintenance of insurance coverage and additional insured status and indemnification for Organization and its Indemnified Parties. | Provisions in contract for Contractor to require appropriate coverage from subcontractor using Contractor's best judgement and compliance with customary and prudent practices. | Contractor shall cause each Subcontractor to provide insurance that complies with the requirements for Contractorprovided insurance in this (appropriate contract section) in circumstances where Subcontractor acts or omissions are not covered by Contractorprovided insurance. Except as otherwise specified in this Agreement, Contractor has sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Contractor shall cause each such Subcontractor to include the Indemnified Parties as additional insureds under such Subcontractor's general liability and excess liability insurance policies. If requested by Organization, Contractor shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. Organization may contact the Subcontractors directly in order to verify the above coverage. Contractor's determination of such insurance shall not be interpreted as relieving Contractor or its insurer of any liability otherwise imposed on Contractor or its insurers under this Agreement. |

Step 4 — Obtain Compliance



Nueva Vista, Kennewick, WA

Several standard forms usually can provide all of the evidence needed to verify coverage for the risks arising from the contracted service or other agreement. These documents include certificates of insurance, additional insured endorsements, and waivers of subrogation.

Evidence of Coverage

Certificates of Insurance

The evidence of compliance with insurance specifications in contracts is provided through forms known as a “certificates of insurance” The most common forms are published by the Association for Cooperative Operations Research and Development (ACORD) and include:

- ACORD -25 Certificate of Liability Insurance for casualty (liability and workers’ compensation) insurance. This form is the most frequently used and displays evidence of general, auto, umbrella or excess liability coverage and workers compensation insurance coverage. An empty line at the bottom of the “Coverages” section of the form allows for information about other types of insurance in place, such as pollution, professional, aircraft or watercraft liability insurance.

- ACORD -27 Evidence of Property insurance. This certificate provides limited information about non-commercial, private property and lessees insurance.
- ACORD -28 Evidence of Commercial Property Insurance. This form provides more detailed information about the coverage and is often used in situations where the party requesting the evidence, which could be a party with an interest in the property, requires more detailed data about limits, sub limits and other important information.

You should carefully examine any certificate form you receive as evidence of insurance to assure the form is completed properly and provides the information you need to enforce compliance and get claims paid.

A certificate is a “snapshot” of insurance policies that have been issued as of the date on the certificate. It is prepared by the broker or agent, not by the insurance company. Only in very rare cases does the agent or broker have authority to contractually bind the insurer.

Reviewing Certificates

Here are few red flags to look for when examining certificates:

- A date on the form that is not within the last few days;
- Evidence of erasures, “white-out,” photocopying, or any other tampering with the document that might indicate lack of authenticity;
- Missing contact information for the “producer;”
- Named insured (contractor, project manager, etc.) incorrect;
- Certificate holder (your organization) not properly identified; and
- Missing signature (electronic or signature images are OK).

An annotated ACORD 25 is on the next page, followed by a compliance checklist for using the form.

ACORD 25 Compliance Checklist

- ☐ Is the issue date (upper right corner) recent (i.e., 7 days or less)?
- ☐ Has the “producer” (contractor’s insurance broker) provided contact information?
- ☐ Is the “insured” the same party as the vendor/contractor/supplier etc.?
- ☐ Do listed insurers meet required standards? (e.g., AM Best A-:VI or better)
- ☐ Are all required coverages indicated (e.g., GL, auto, WC, pollution, professional)?
- ☐ Is additional insured status provided as required (see checkbox “ADDL INSR”)?
- ☐ Is waiver of subrogation provided as required (see checkbox “SUBR WVD”)?
- ☐ Is general liability insurance on an “occurrence” basis?
- ☐ Is the “GEN’L AGGREGATE LIMIT” “per project,” if required in the contract?
- ☐ Does auto coverage, if required, meet specifications? (e.g., “any auto”)
- ☐ Are workers’ compensation benefits statutory and EPLI limit \$1MM?
- ☐ Do policy per occurrence and aggregate limits meet requirements?
- ☐ Are all policies current?
- ☐ Do policies extend to contract completion? If not, suspense for renewals.
- ☐ Do primary and excess (or umbrella) policies have concurrent dates?
- ☐ Are any liability self-insured retentions indicated?
- ☐ Is the description of operations, locations, vehicles, etc., correct?
- ☐ Is the form an original or does it look like a copy? (any evidence of changes)
- ☐ Is the certificate signed by an appropriate party (generally the broker)?
- ☐ Is the certificate holder (your organization) identified properly with correct address?



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

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

| | | | | |
|-------------------------------------|--|-------------------------|-----------------|--|
| AGENCY | | PHONE (A/C, No, Ext) | COMPANY | |
| FAX (A/C, No) | | E-MAIL ADDRESS | | |
| CODE | | SUB CODE | | |
| AGENCY CUSTOMER ID # | | LOAN NUMBER | | POLICY NUMBER |
| INSURED | | EFFECTIVE DATE | EXPIRATION DATE | CONTINUED UNTIL TERMINATED IF CHECKED |
| THIS REPLACES PRIOR EVIDENCE DATED: | | | | |

PROPERTY INFORMATION

LOCATION/DESCRIPTION

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 EVIDENCE OF PROPERTY 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

PERILS INSURED

BASIC

BROAD

SPECIAL

| COVERAGE / PERILS / FORMS | AMOUNT OF INSURANCE | DEDUCTIBLE |
|---------------------------|---------------------|------------|
| | | |

REMARKS (Including Special Conditions)

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.

ADDITIONAL INTEREST

| | | | |
|------------------|---------------------------|-----------------------|------------|
| NAME AND ADDRESS | ADDITIONAL INSURED | LENDER'S LOSS PAYABLE | LOSS PAYEE |
| | MORTGAGEE | | |
| | LOAN # | | |
| | AUTHORIZED REPRESENTATIVE | | |

ACORD 27 (2016/03)

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EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)

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

| | | | | | |
|---|--|--------------------------|--|-----------------|--|
| PRODUCER NAME CONTACT PERSON AND ADDRESS | | PHONE (A/C, No, Ext): | COMPANY NAME AND ADDRESS | | NAIC NO: |
| FAX (A/C, No): | | E-MAIL ADDRESS: | IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH | | |
| CODE: | | SUB CODE: | POLICY TYPE | | |
| AGENCY CUSTOMER ID #: | | | LOAN NUMBER | | POLICY NUMBER |
| NAMED INSURED AND ADDRESS | | | EFFECTIVE DATE | EXPIRATION DATE | CONTINUED UNTIL TERMINATED IF CHECKED |
| ADDITIONAL NAMED INSURED(S) | | | THIS REPLACES PRIOR EVIDENCE DATED: | | |

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required) ☐ BUILDING OR ☐ BUSINESS PERSONAL PROPERTY

LOCATION / DESCRIPTION

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 EVIDENCE OF PROPERTY 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| | | | | | | |
|---|--|----------------|-------|-------|---|--|
| COVERAGE INFORMATION | | PERILS INSURED | BASIC | BROAD | SPECIAL | |
| COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ | | DED: | | | | |
| | | YES | NO | N/A | | |
| <input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> RENTAL VALUE | | | | | If YES, LIMIT: Actual Loss Sustained, # of months: | |
| BLANKET COVERAGE | | | | | If YES, indicate value(s) reported on property identified above: \$ | |
| TERRORISM COVERAGE | | | | | Attach Disclosure Notice / DEC | |
| IS THERE A TERRORISM-SPECIFIC EXCLUSION? | | | | | | |
| IS DOMESTIC TERRORISM EXCLUDED? | | | | | | |
| LIMITED FUNGUS COVERAGE | | | | | If YES, LIMIT: DED: | |
| FUNGUS EXCLUSION (If "YES", specify organization's form used) | | | | | | |
| REPLACEMENT COST | | | | | | |
| AGREED VALUE | | | | | | |
| COINSURANCE | | | | | If YES, % | |
| EQUIPMENT BREAKDOWN (If Applicable) | | | | | If YES, LIMIT: DED: | |
| ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg | | | | | If YES, LIMIT: DED: | |
| - Demolition Costs | | | | | If YES, LIMIT: DED: | |
| - Incr. Cost of Construction | | | | | If YES, LIMIT: DED: | |
| EARTH MOVEMENT (If Applicable) | | | | | If YES, LIMIT: DED: | |
| FLOOD (If Applicable) | | | | | If YES, LIMIT: DED: | |
| WIND / HAIL INCL. <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions: | | | | | If YES, LIMIT: DED: | |
| NAMED STORM INCL. <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions: | | | | | If YES, LIMIT: DED: | |
| PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS | | | | | | |

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.

ADDITIONAL INTEREST

| | | | | | |
|---|--|--|--|---|--|
| <input type="checkbox"/> CONTRACT OF SALE | | <input type="checkbox"/> LENDER'S LOSS PAYABLE <input type="checkbox"/> LOSS PAYEE | | LENDER SERVICING AGENT NAME AND ADDRESS | |
| <input type="checkbox"/> MORTGAGEE | | | | | |
| NAME AND ADDRESS | | | | | |
| | | AUTHORIZED REPRESENTATIVE | | | |

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ACORD 28 (2016/03)

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Additional Insured Endorsements

As is stated clearly on the ACORD forms, the documents are “for information only” and convey no status or rights on the “certificate holder.” To confirm that your organization and its key personnel are additional insureds on the general liability policy, you must verify the existence of an endorsement showing that these individuals have been added to the policy as insureds (an “additional insured” endorsement), or you must verify that the policy automatically specifically includes these individuals without undue restrictions.

The only way you can do this effectively is to see a copy of the documentation that grants additional insured status. This means you must get either an endorsement adding additional insureds as required, or you should see the policy language for automatic additional insured status if it is part of the policy, or get a copy of a so-called “blanket” or “automatic” additional insured endorsement (discussed later) granting additional insured status where required by contract. Specimen copies of the most common additional insured endorsements for general liability insurance are on the following pages.

Perhaps the most commonly use additional insured endorsement is the Insurance Services Office form CG 20 10 MM YY, where “MM” represents first the month and “YY” the year of the form issuance. For example, a CG 20 10 04 13, is a 20 10 additional insured endorsement form first issued in April 2013. Edition dates are important as, at least for additional insured endorsements, later editions are generally less favorable to the additional insured.

This form is used in construction to protect the owner of a project through the contractor’s insurance policy. The CG 20 10 form provides coverage to the additional insured for “ongoing operations” i.e., work in progress. This form is also used in leases and other situations.

Another form, CG 20 37 04 13 grants additional insured status for liability arising out of “completed operations” this endorsement is also required for construction contracts, so that the additional insured has coverage for third-party liability claims from occurrences after the work is done.

A third commonly provided additional insured endorsement on the following pages is the CG 20 26 04 13 — Designated Person or Organization, which is a sort of “catch all” endorsement that provides additional insured status to the party designated in the “Schedule” on the form. It can be used in a variety of situations, including requirements from government or regulatory agencies or other situations where a more specialized endorsement form is not necessary.

There are more than 30 different additional insured endorsement forms published by the Insurance Services Office. Many are intended to apply to highly specialized situations. However, the most common are the three forms mentioned above and shown below.

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.

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.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

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

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

However:

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

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

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

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

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

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

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

However:

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

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

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

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

whichever is less.

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

The editions of the forms shown above are provided as examples as of the date of publication of this manual, because they are the oldest and broadest standard additional insured endorsement forms still in common use by many insurers when requested. As stated earlier, the older forms generally are more favorable to additional insureds than are the later forms.

Blanket or Automatic Additional Insured Endorsements.

Automatic additional insured provisions can cause problems in general liability policies. See [this article](#) for a [discussion of this topic](#).

There are at least three types of “automatic” additional insured endorsements:

- Insurance Services Office (ISO) published forms such as
 - CG 20 33 — ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU and,
 - CG 20 38 — ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT.
- ISO forms that are turned into additional insured endorsements by adding “blanket,” “by contract” wording into the schedule. A common example is an ISO CG 20 10 in which the “Schedule” is extended to multiple additional insureds by the words “as required by contract” or similar wording. Sometimes, these forms specify that the contract must be written.
- “Manuscript” (custom) forms that take pieces from both types of forms listed above and sometimes add extra wording. Manuscript forms should be read carefully as many such forms impose additional restrictions not found in standard ISO forms.

The following pages show examples of automatic additional insured forms as described above.

ISO Blanket Additional Insured Forms

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.

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.

SAMPLE

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

- 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.

Example: ISO Form Modified to be “Blanket”(“Automatic”)

POLICY NUMBER: 


COMMERCIAL GENERAL LIABILITY
CG 20 10 10 01

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 Person or Organization:

Any person or organization whom you are required in a written contract or written agreement to add as an additional insured on this policy and for whom no other endorsement on this policy provides additional insured status.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II – Who Is An Insured 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.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

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 site 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.

CG 20 10 10 01

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Example: Manuscript Additional Insured Endorsement - Automatic

- The additional insured must see to it that:
 1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
 2. We receive written notice of a claim or "suit" as soon as practicable; and
 3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured, if the written contract or written agreement requires that this coverage be primary and non-contributory.
 - For the coverage provided by this endorsement:
 1. The following paragraph is added to Paragraph 4.a. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions**:

This insurance is primary insurance as respects our coverage to the additional insured person or organization, where the written contract or written agreement requires that this insurance be primary and non-contributory with respect to any other policy upon which the additional insured is a Named Insured. In that event, we will not seek contribution from any other such insurance policy available to the additional insured on which the additional insured person or organization is a Named Insured.
 2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.
 - This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.
- If other terms and conditions of this policy remain unchanged.

Additional Insured – Automatic – Owners, Lessees Or Contractors



| Policy No. | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Producer No. | Add'l. Prem. | Return Prem. |
|------------|-------------------|-------------------|-------------------|--------------|--------------|--------------|
| | | | | | | |

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured:

Address (including ZIP Code):

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

- A.** Section II – **Who Is An Insured** is amended to include as an insured any person or organization who you are required to add as an additional insured on this policy under a written contract or written agreement.
- B.** The insurance provided to the additional insured person or organization applies only to "bodily injury", "property damage" or "personal and advertising injury" covered under Section I – **Coverage A – Bodily Injury And Property Damage Liability** and Section I – **Coverage B – Personal And Advertising Injury Liability**, 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,
 and resulting directly from your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.
- C.** However, regardless of the provisions of Paragraphs **A.** and **B.** above:
 - 1. We will not extend any insurance coverage to any additional insured person or organization:
 - a. That is not provided to you in this policy; or
 - b. That is any broader coverage than you are required to provide to the additional insured person or organization in the written contract or written agreement; and
 - 2. We will not provide Limits of Insurance to any additional insured person or organization that exceed the lower of:
 - a. The Limits of Insurance provided to you in this policy; or
 - b. The Limits of Insurance you are required to provide in the written contract or written agreement.
- D.** The insurance provided to the additional insured person or organization does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or 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; and
 - 2. Supervisory, inspection, architectural or engineering activities.

U-GL-1175-D CW (10/11)
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Waiver of Subrogation Endorsements

What is a waiver?

A waiver is the voluntary relinquishment or surrender of some known right or privilege. In the world of Contractual Risk Transfer, waivers can be used to effect the intent of the risk transfer. In other words, waivers can be used to make sure that the party intended to be responsible for loss actually covers the loss, through insurance or otherwise, and that the party intended to be protected from loss is protected. In CRT, waivers can prevent insurers from subrogating.

Types of Waivers in Contractual Risk Transfer

In the context of Contractual Risk Transfer and insurance, subrogation usually occurs when an insurance company, having paid a loss on behalf of its insured, attempts to recover its payments from another party responsible for causing the loss. A waiver can preclude such recovery in several ways.

First, the insurer can voluntarily waive its right to recover. As noted above, this is a legal right not a contractual right, so it must be voluntarily surrendered if subrogation is to be prevented. An insurer may waive its recovery rights by endorsement to a policy. This usually occurs when an indemnitee in an agreement, such as your organization, requires such an endorsement waiving subrogation rights as a condition of the contract.

A second way recovery rights can be waived by an insurer is to grant the named insured the power to waive its own right of recovery. If the insured has no right of recovery, the insurer cannot “stand in the shoes” of the insured to exercise a right that does not exist.

Most contemporary property and liability insurance policies contain a clause that says the insured “must do nothing after loss” to impair the insurer’s right to subrogate. This wording implies that if the insured does something before loss, such as waive its right of recovery, then the insurer will not subrogate.

Courts have consistently supported this interpretation. Thus, it is generally accepted that if an insured waives its recovery rights in a contract, the insurer cannot subrogate against the party that obtained the waiver. If your organization’s contractor waives its recovery rights against your organization, the contractor’s insurer won’t be able to go against your organization under a subrogation right.

The exception to this type of protection for an indemnitee is workers’ compensation, as the right of recovery in a workers’ compensation claim belongs to the insurer, not to the named insured employer, and neither the employer nor the worker can waive that right. Therefore, many experts advise obtaining a waiver of subrogation endorsement from the contractor’s workers’ compensation insurer in favor of your organization.

Generally, an insurer may not subrogate (recover from a third party for a loss caused by the third party and paid for by the insurer) against its own insured. If your organization is added as an additional insured on general liability policies, as recommended, it should be safe from subrogation by the general liability insurer.

However, a few court cases have resulted in successful subrogation by the insurer against its own insured, most often in construction disputes (many cases have gone the opposite way as well). As a result, some experts advise that the specifications in a contract require the contractor's general liability insurer to specifically waive subrogation (by endorsement) against the additional insured. Others call this "belt and suspenders."

Such a request may meet with resistance from the general liability insurer who will argue that the additional insured status protects the organization. We recommend that your organization obtain the waiver of subrogation when doing so will not add additional cost to the contract and/or the contracted activity is particularly hazardous or critical.

If the contractor has employees, the organization will also require an endorsement to the contractor's workers' compensation insurance waiving any right of subrogation that the insurer may have against the organization for injury to a contractor employee. You should be aware that many or most insurers will charge additional premium for a waiver of subrogation on a workers' compensation policy. If you are confident in the risk transfer in the general liability policy (compelling the contractor's general liability insurer to defend and indemnify the organization) you could consider omitting a requirement for this waiver if there is a significant cost for it. However, the endorsed waiver is preferable to assure protection from subrogation, which would defeat the intent of the risk transfer.

Sample general liability and workers' compensation waiver forms can be found on the following pages. Note that only one of these forms is a standard ISO form — the one for general liability insurance. The other is a form promulgated by the National Council on Compensation Insurance, but some states have their own forms, and some insurers have their own forms.

Note also that some insurers issue "blanket waivers" in favor of any party that requires such a waiver in a contract with the insured.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule _____

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement
Insured

Effective Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

WC 00 03 13
(Ed. 4-84)

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

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.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

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.

Step 5 — Keep Good Records



What to Keep

Certificates

Some argue that certificates of insurance are of little value as generally they do not amend or alter the policies or coverage. However, certificates are evidence of insurance that existed at the time the certificates are prepared, and provide historical information. A certificate is a “snapshot” of insurance policies that have been issued as of the date on the certificate. It is prepared by the broker or agent, not by the insurance company. Only in very rare cases does the agent or broker have authority to contractually bind the insurance company.

Information on certificates have been used as evidence of coverage may result in obtaining coverage for events that occur long after the contract has ended. The field of “insurance archaeology” offers potential for coverage for claims asserted that would have been covered under policies that are no longer available. Certificates should be maintained indefinitely.

Endorsements

Required endorsements, especially for additional insured status, identify the policy number and the status of the additional insured as a covered party. This is important information, especially if your organization does not collect policies from the other contracting party. Endorsements should be kept indefinitely for general and auto liability insurance policies and for waivers of subrogation.

Copies of Policies

Most organizations do not collect policies for contracts unless the amount of the contract is very large or the risk of loss is significant. Maintaining the right to collect policies in such situations, however, should be part of the contract. As an insured, your organization has a right to a copy of a general liability or excess liability policy, but copies may be difficult to get and a contractual responsibility to provide may ease the effort.

Other Documents

Depending on factors such as severity and size, your organization may want to keep other records, such as correspondence, email, meeting notes, etc., pertaining to contracts with significant risk issues.

Compliance and Suspense Systems

Depending on the needs of your organization, you might want to use a simple spreadsheet or database for tracking the compliance process, including sending of notices, receipt and review of documentation, notice of completion of the contract requirements, storage of the records, and suspense notification of policy expirations for services whose duration exceeds the policy period of the initial evidence of insurance.

There are a number of automated systems available for tracking and monitoring compliance with contractual insurance requirements. Some systems provide software that your organization could use to maintain records and produce reminders for renewals, deficiency notices, etc. Others maintain the data online.

Here are some websites for more information. Be aware that some of the sites may be maintained by insurance brokers who may have a conflict of interest or using the site as a sales tool. Here are two web pages with additional information: [Insurance Journal Forums](#), and [Insurance Certificate Tracking Vendors](#).

Step 6 — Claims



Submitting Claims

Some contracts require the contractor to report liability claims to the insurer on behalf of the organization and to prosecute those claims diligently. That approach can work, particularly when both the contractor and the organization have an interest in the outcome. However, it requires careful monitoring to protect your organization's interests. Don't rely entirely on the other party to tender claims to the insurer on your behalf. As an insured under the other party's liability policy, your organization has the same rights regarding tendering claims and getting coverage as any other insured.

Diligence Required

Especially if the claim has the potential to be significant, look out for your organization's interest and don't let the claim rest. If it is clearly a significant claim, consult with legal counsel and be prepared to pursue your own claim separately. If there is any potential conflict between your organization's interests and the contractor's interests, your organization will need separate counsel to pursue its own interests. For liability claims, you will also want to put your insurer or self-insurance pool on notice

and work with the adjuster there. They may wish to help you pursue recovery or defense and indemnity as an additional insured.

If a significant claim occurs, you need to confirm that you have a copy of the relevant policy under which your organization is an additional insured, or to request one. If you are going to be filing your own claim, you must comply with all the policy terms and conditions, especially regarding claim reporting.

Claim Management

Follow these steps to stay on top of claims:

1. Don't admit fault.
2. Get a copy of the policy and read it or get an advisor to read it. You need to understand what is covered to sustain the claim or demand for defense and indemnity.
3. Make sure the insurer is notified immediately. Confirm this with the contractor if the contractor is responsible for reporting claims. Delay may jeopardize the insurer's defense and your coverage.
4. Here's where the record keeping (see last chapter) comes in. Not only may you be required to provide proof of your organization's status as an additional insured, but you may need to provide information about the loss and possibly values and costs depending on the type of policy on which the claim is being reported.
5. Cooperate with the insurer. This is a requirement for coverage in the policy.
6. If there is damaged property (as in a property insurance claim), retain the damaged property and records concerning the property.
7. Call the police if a law has been broken. Get the police report. The report can help for defense in a liability insurance matter or proof of loss for property insurance.
8. Don't pay liability claims out of pocket. Let the insurer handle.
9. If you are offered a settlement, review the insurer's calculations for property claims.
10. Follow up with the adjuster. Request progress reports. Don't let the weeks go by without communication.

Here is an [additional source](#) for information on additional insured tenders for coverage.

Appendix — Sample Contract Language

The following sections provide examples for various types of contracts, including:

- Construction
- Leases
- Professional Services/Consultants
- Vendors and General Services Providers

Sample Indemnity Language

Synchronous has provided sample indemnity language for different types of construction contracts at [this location](#). There are four sets of templates, one set for each state in which Synchronous members operate:

- [California](#) - This set of templates include indemnity language for three types of contracts: 1) general construction, 2) construction contracts involving public agencies, and 3) residential construction contracts.
- [Nevada](#) - Nevada sample indemnity language examples include: 1) indemnity language for residential construction contracts, and 2) indemnity language for all other construction contracts.
- [Oregon](#) - This page includes indemnification language for two types of contracts: 1) indemnity for all types of construction contracts, and 2) indemnity for every contract other than a construction contract.
- [Washington](#) - For Washington there are two sample indemnity provisions: 1) indemnity for all construction contracts, and 2) indemnity for every contract other than a construction contract.

These provisions are offered as samples for use in contracts, but your contracts should still be reviewed and approved by legal counsel, especially if you are changing or adding language to a contract form.

Basic Insurance Requirements for Construction

Characteristics

Construction contracts have these common characteristics:

- High risk activity
- Contractor control of the risk
- Multiple levels of contracts (subcontractors, sub-subcontractors)
- Restrictions on the type of indemnification, imposed by statute
- High levels of litigiousness

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

The following contains a set of sample specifications for insurance for construction activity and a set of terms and conditions applying to the contractual risk allocation and compliance with requirements. The specifications include requirements for basic insurance coverage applicable to all construction contracts and optional requirements for insurance that addresses exposures not necessarily common to all construction contracts. These basic requirements can be modified for other types of construction contracts including building trades and maintenance contractors.

Insurance

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

General Liability Insurance. CONTRACTOR shall maintain commercial general liability insurance using Insurance Services Office form CG 00 01 or other coverage at least as broad, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, and \$2,000,000 completed operations aggregate. The policy shall include Insurance Services Office (ISO) additional insured endorsements CG 20 10 04 13 and CG 20 37 04 13 adding the Organization, its officers, officials, employees, and volunteers as additional insureds. On annual commercial general liability insurance policy renewals, Contractor shall continue to have its commercial general liability insurance policy endorsed with form CG 20 37 04 13 adding the Organization, its officers, officials, employees, and volunteers as additional insureds for no less than six (6) years or through the statute of repose, whichever is longer.

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

Umbrella or Excess Liability Insurance.² Contractor shall obtain and maintain an umbrella or excess liability insurance policy with limits of not less than ____ million dollars (\$X,000,000) that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above. Each of the Organization, its officers, officials, employees, and volunteers shall be an additional insured under the policy.

Workers' Compensation Insurance. CONTRACTOR shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)) for CONTRACTOR's employees in accordance with the laws of the State. In addition, CONTRACTOR shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State for all of the subcontractor's employees. CONTRACTOR shall submit to Organization, along with the certificate of

² Smaller contracts with lower risk can eliminate the requirement for excess or umbrella coverage. However, in general, excess or umbrella policies are the appropriate (or only) way to achieve higher coverage limits.

insurance, a Workers Compensation Waiver of Subrogation endorsement in favor of Organization, its officers, agents, employees and volunteers.

Optional Insurance Requirements (Depending on Exposure)

Contractor's Pollution Liability Insurance. During the period beginning with the Effective Date, CONTRACTOR shall procure and maintain contractor's pollution liability insurance as specified below. Pollution liability insurance limits shall be no less than \$2,000,000 per occurrence/incident and aggregate.

The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracting operations. Coverage as required in this paragraph shall apply on an occurrence basis and shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-site disposal of materials and environmental or "natural resource" damage.

Each of the Organization, its officers, officials, employees, and volunteers shall be an additional insured under the policy. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any additional insured under the policy from making a claim which would otherwise be covered by such policy.

Contractor shall require Subcontractors performing environmental remediation or related work, including transportation, disposal, or engineering consulting, to provide pollution and environmental impairment liability or pollution legal liability insurance with limits and scope of coverage appropriate to the exposure, and to include the Indemnified Parties as additional insureds on the policy. The policy shall not contain a "cross suits" exclusion or other provisions eliminating Indemnified Party claims against the Subcontractor.

Builder's Risk Insurance. Upon commencement of construction and with approval of Organization, CONTRACTOR shall obtain and maintain builder's risk insurance as specified below.

The named insureds shall be CONTRACTOR, all Subcontractors (excluding those solely responsible for design Work) of any tier, suppliers, and Organization and its officers, officials, employees, and agents. CONTRACTOR shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to Organization.

Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of

any property or equipment stored either on or off the site. Such insurance shall be on a form acceptable to Organization to ensure adequacy of terms and sub-limits.

Other Provisions or Requirements Related to Insurance

Proof of Insurance. CONTRACTOR shall provide certificates of insurance to Organization as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and copies of additional insured endorsements for commercial general liability insurance, excess or umbrella liability insurance and pollution liability insurance. Evidence of insurance must be approved by Organization prior to commencement of performance. Current evidence shall be kept on file with Organization at all times during the term of this contract. Organization reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of Coverage. CONTRACTOR shall procure and maintain for the 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 CONTRACTOR, and CONTRACTOR'S agents, representatives, employees or subcontractors. CONTRACTOR must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. Organization and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

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

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State, with an assigned policyholders' Rating of A-(or higher) and Financial Size Category Class VI (or larger) by AM Best, unless otherwise approved by Organization.

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

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

Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for

purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

Notice of Cancellation. Policies shall be endorsed to provide to Organization with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

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

Self-insured Retentions. Any self-insured retentions must be declared to and approved by Organization. Organization reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by Organization.

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

Basic Insurance Requirements for Leases

Characteristics

Many "standard" lease forms are used throughout the United States. While it may appear that the forms are the same, subtle differences creep into the forms through negotiation. When leasing premises, the reviewer should check the following points:

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

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

Insurance. Usually, the owner will ask the lessee for evidence of liability insurance. If employees work at the premises, the owner may also require evidence of workers' compensation insurance. Fire insurance is negotiable, but the contract should specify who provides it. More often, the owner carries fire insurance except in triple net leases. If the lessee provides fire insurance, exact coverage

specifications should be detailed in the agreement. The lessee should avoid vague or difficult-to-insure requirements.

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

Subrogation. A mutual waiver of subrogation prevents the insurer of either the lessee or landlord from subrogating against the other party after a loss. Nearly all fire policies allow this waiver. Without a waiver the party not responsible for buying fire insurance will need fire legal liability insurance. The reviewer should make sure this matter is covered one way or the other.

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

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

Along with an insurance policy, a lease is among the most frequently entered form of contract. In a lease agreement, a lessee takes possession of all or part of a premises owned by a landlord. Usually, the landlord makes the lessee contractually responsible for losses that occur on the premises. Leases often contain very broad indemnity agreements.

The sample language below assumes that your organization is the landlord/owner and leases property to a lessee.

Insurance

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

General Liability. Lessee shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall be endorsed with Insurance Services Office (ISO) additional insured endorsement CG 20 10 04 13 adding the Organization, its officers, officials, employees, and volunteers as additional insureds.

Automobile Liability. [OPTIONAL depending on exposure] Lessee shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Lessee arising out of or in connection with Work to be performed

under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

Workers' Compensation. Lessee shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)). Lessee shall submit to Organization, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Organization, its officers, agents, employees and volunteers.

Crime. [OPTIONAL depending on type of lease] Lessee shall maintain commercial crime insurance including forgery or alteration coverage, computer fraud coverage, funds transfer fraud coverage, money and securities coverage, money orders and counterfeit money coverage, burglary, robbery, theft and employee dishonesty coverage with limits at least equal to the maximum exposure to loss of the funds or property involved.

Professional Liability (Errors & Omissions) Insurance. [OPTIONAL depending on type of lease] Lessee shall maintain professional liability (errors and omissions) insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Lessee agrees to maintain continuous coverage through a period no less than three years after completion of services required by this agreement.

Property Insurance. Lessee shall obtain and maintain insurance on lessee's improvements and betterments. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy.

Note: In most leases, the landlord provides property insurance and the lessee provides liability insurance. When the property includes substantial lessee improvements, the lease may require the lessee to insure those improvements. In a few cases (such as "triple net" leases) the lessee also provides the other property insurance. Legal and insurance advice may be appropriate in such cases.

Commercial Property. [OPTIONAL depending on type of lease] Lessee shall obtain insurance covering the leased premises, fixtures, equipment, building, all property situated in, on, or constituting a part of the premises and any improvements. Coverage shall be at least as broad as the Insurance Services Offices form CP 10 30 Cause of Loss Special Form, and approved of in writing by Organization. Coverage shall be sufficient to insure 100% of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, 100% rents coverage, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. Organization shall be included as an insured and as loss payee on any such insurance. Organization shall not be liable for any business income or other consequential loss sustained by lessee. Organization shall not be liable for any loss of lessee's personal property even if such loss is caused by negligence of Organization, Organization's employees or agents.

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

Other Provisions or Requirements

Proof of Insurance. Lessee shall provide certificates of insurance to Organization as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by Organization's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Organization at all times during the term of this contract. Organization reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of Coverage. 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 performance of the Work hereunder by Lessee, Lessee's agents, representatives, employees or subcontractors.

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

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A-(or higher) and Financial Size Category Class VI (or larger) as rated by AM Best, unless otherwise approved by the Organization.

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

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

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

Notice of Cancellation. Lessee agrees to oblige its insurance agent or broker and insurers to provide to Organization with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

Additional Insured Status. General liability policies shall provide or be endorsed to provide that Organization and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

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

Self-insured Retentions. Any self-insured retentions must be declared to and approved by Organization. Organization reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by Organization.

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

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

Basic Insurance Requirements for Professional Services

Characteristics

From the perspective of the user of professional services, agreements to provide such services all have one major exposure in common: a potential for economic loss resulting from errors or omissions of the professional service provider. Some examples could include:

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

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

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

Claims made coverage applies to claims that are made during the policy period arising from events that take place within the policy period. Application of coverage can be extended to periods prior to the policy inception by use of a "retroactive date" or similar concept. Since claims could be made shortly after inception of a new policy arising out of events that occurred near the end of the prior

policy, insurers must accommodate their insureds somehow. For most claims made policies that are renewed annually, the retroactive date reaches back to the inception of the first policy in the series. Thus, if an architect has been with the same insurer for 10 years, coverage under the current policy likely will extend back to the inception date of the first policy. Nearly all professional liability insurance policies are written as “claims made.”

Another significant characteristic of professional liability insurance policies is that they do not cover liability assumed under contract unless the named insured would have been liable even without the contractual agreement. Thus, if your indemnity agreements require the professional service provider to indemnify your organization even in the absence of liability on the part of the professional, the other party’s insurance policy will not respond. There must be some negligence on the part of the professional for coverage to apply. In addition to the restriction of coverage for assumed liability in professional liability policies, your agency must also deal with the limitations imposed by statute.

Sample Insurance Specifications

On the next page is some sample specification wording that may be appropriate for your organization’s professional service agreements.

Insurance

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

General Liability Insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall be endorsed with Insurance Services Office (ISO) additional insured endorsement CG 20 10 04 13 adding the Organization, its officers, officials, employees, and volunteers as additional insureds.

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

Workers' Compensation Insurance. Consultant shall maintain Workers Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)). Consultant shall submit to Organization, along with the certificate of insurance, a Waiver of Subrogation endorsement from the workers compensation insurer in favor of Organization, its officers, agents, employees and volunteers.

Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Other Provisions or Requirements

Proof of Insurance. Consultant shall provide certificates of insurance to Organization as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by Organization prior to commencement of performance. Current certification of insurance shall be kept on file with Organization at all times during the term of this contract. Organization reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of Coverage. Consultant shall procure and maintain for the 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 Consultant, his agents, representatives, employees or subconsultants.

Organization's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Organization

has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Organization will be promptly reimbursed by Consultant or Organization will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Organization may cancel this Agreement.

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' AM Best Rating of A-(or higher) and Financial Size Category Class VI (or larger), unless otherwise approved by the Organization's Risk Manager.

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

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

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

Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to Organization with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

Additional Insured Status. General liability policies shall provide or be endorsed to provide that Organization and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

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

Self-insured Retentions. Any self-insured retentions must be declared to and approved by Organization.

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

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

Basic Insurance Requirement for Vendor Agreements

Characteristics

Vendor agreements encompass a wide variety of contracts and may be the most common type of contract used by your organization. Examples of the types of business that might be included in this category are: suppliers, delivery services, office equipment repair technicians, some types of inspectors and many other businesses. This category does not include construction contracts, although vendors who do construction may do repair work under this vendor agreement form. Those who provide “professional” services also need their own contract form separate from this one.

On the next page is a set of sample insurance specifications for vendors not involved in construction. As noted earlier, we recommend attaching these specifications as an exhibit to your organization’s standard contract form.

Insurance

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

General Liability Insurance. Vendor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall be endorsed with Insurance Services Office (ISO) additional insured endorsement CG 20 10 04 13 adding the Organization, its officers, officials, employees, and volunteers as additional insureds.

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

Umbrella or Excess Liability Insurance. [Optional depending on limits required] Vendor shall obtain and maintain an umbrella or excess liability insurance policy with limits of not less than xx million dollars (\$X,000,000) that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability

Workers' Compensation Insurance. Vendor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)). Vendor shall submit to Organization, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Organization, its officers, agents, employees and volunteers.

Other Provisions or Requirements

Proof of Insurance. Vendor shall provide certificates of insurance to Organization as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by Organization's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Organization at all times during the term of this contract. Organization reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of Coverage. Vendor shall procure and maintain for the 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 Vendor, his agents, representatives, employees or subconsultants.

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

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State, with an AM Best Rating of A- (or higher) and Financial Size Category Class VII (or larger) unless otherwise approved by the Organization's Risk Manager.

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

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

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

Notice of Cancellation. Vendor agrees to oblige its insurance agent or broker and insurers to provide to Organization with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

Additional Insured Status. General liability policies shall provide or be endorsed to provide that Organization and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

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

Self-insured Retentions. Any self-insured retentions must be declared to and approved by Organization. Organization reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by Organization.

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

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

Glossary

ACORD Form

A form developed by an insurance industry trade association (“ACORD”). ACORD publishes many different forms. However, the most commonly used form and the one addressed in this manual is the ACORD form 25, certificate of insurance, which provides a “snapshot” of information about liability and workers compensation insurance in force at the time the form is issued by an insurance broker.

Additional Insured

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

Additional Named Insured

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

Admitted Insurer

An admitted insurer is an insurance company licensed to do business in a given state.

Unlicensed insurers may still provide insurance if accessed through the so-called “excess and surplus” market. Usually, state law requires that to use a non-admitted insurer, the insured must have first been unable to find the coverage from an admitted insurer. In practice, this restriction is often circumvented.

Agent

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

Aggregate Limit

The maximum dollar amount that applies to any or all claims within a given period, such as one year, or within a policy period.

Automobile Liability Insurance

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

Bodily Injury

Defined in most liability insurance policies as “Bodily injury, sickness or disease, including death.” Although some legal contexts use the term “personal injury” to include bodily injury and other types of injury to a person, the insurance industry makes a distinction between bodily injury and personal injury. In contract specifications dealing with liability insurance, it is best to use terminology consistent with that used by the insurance industry. Much archaic legal “boilerplate” is still in use and confuses this issue. See “Personal Injury.”

Boilerplate

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

Broker

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

Business Risks

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

Certificate of Insurance

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

CGL or "General Liability"

Commercial general liability insurance, a form of insurance against claims for bodily injury, property damage, personal injury, and advertising injury that arise out of the normal activities or products of the insured.

Claims-Made

A form of liability insurance that imposes restrictions regarding the timing of occurrences of claims and reporting of accidents and claims.

This type of coverage is not widely used in general liability, but is the norm for professional liability and errors and omissions liability insurance. Some contractors will buy this variety of general liability insurance (as opposed to so-called "occurrence-based" coverage) to save money. For general liability insurance specifications, you should avoid claims-made.

Contractual Liability Insurance

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

Contractors Limitation Endorsement

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

Cross-Liability

A claim wherein one insured sues another insured. Coverage hinges on the applicability of a cross-liability exclusion. Otherwise, the concept of severability-of-interests governs the extent to which protection may apply. Also, a clause in an insurance policy (also called "severability of interest" clause) that provides for the terms of the policy to apply separately for each insured, except for limits.

Cumis Counsel

The term assigned to legal counsels who are provided to insureds by the insurance company separate and apart from the legal counsel hired by the insurance company to defend the insured. Cumis Counsel is appointed when the insurance company defends a claim under a reservation of rights, thus placing the insured in a position where the outcome of the case might defeat coverage. Because the outcome of the case and

the way it is handled might defeat coverage, the insurance company is required to appoint or to allow the insured to appoint legal counsel who will monitor the performance of the defense counsel to make sure that defense counsel is not “beholden” to the insurer, and therefore likely to litigate the case in a manner that will ensure the defeat of all available coverage. Cumis Counsel should be knowledgeable in the issues of coverage and should be able to monitor the situation to ensure compliance by the defense counsel with the interests of the insured as they relate to coverage issues.

Deductible

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

“Drop Down”

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

Economic or Use Value

The value of the future income stream attributable to an item of property.

Endorsement

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

Excess Coverage

Insurance that provides additional limits above the limits of a “primary” policy. It is similar to “umbrella” coverage in liability insurance. However, excess liability coverage does not always provide defense coverage, and it does not “drop

down” in the event the underlying policy does not apply to a given loss. Excess policies do, however, drop down over reduced or exhausted underlying aggregate limits.

Exculpatory Clause

An exculpatory clause causes the entire risk associated with an activity to be borne by a single party. These clauses are found in documents that often are not considered to be “contracts” as such. An example is a parking claim check. Another example is a notice in a hotel room limiting the innkeeper's liability to a guest. A common use of exculpatory clauses among cities is the language found in an activity permit, such as participation in a recreation activity.

Extended Reporting Period

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

First Party Coverage

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

Following Form Coverage

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

Hold Harmless

A “hold-harmless” clause is one whereby one party agrees to hold the other party blameless or harmless from liability.

Indemnification Clause

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

Insurance Services Office (ISO)

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

Limit

A “limit” in an insurance policy is the maximum an insurer will pay for a loss less any deductibles or self-insured retention.

Manuscript

When applied to insurance policies, a custom or specially developed policy usually geared toward the need of a specific insured.

Named Insured

The person or organization named as such in the declarations of the policy. The named insured has the duty to pay premium. The named insured (or first named insured if there is more than one) receives notices from the insurer, including cancellation or non-renewal notices. A named insured is also subject to certain policy restrictions that do not apply to other insureds. See additional insured.

Non-contributing

Contribution in liability insurance is a situation in which two insurance policies apply to the same

loss. Each policy is likely to contain an “other insurance” clause that defines how the policy will share costs with the other applicable policy. By requiring that the contractor’s insurer agree that the organization’s coverage is non-contributing, the organization avoids attempts by the contractor’s insurer to obtain contribution from the organization’s coverage by invoking the “other insurance” clause.

Nonowned Auto Endorsement

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

Occurrence

For general liability policies, that which may result in a claim for bodily injury or property damage. Defined in various ways in various policies as an “accident,” “event,” “happening,” or other term, sometimes limited as to time and in other ways. The definition of “occurrence” is a critical part of most liability policies. Also, a form of liability coverage (i.e. “occurrence-based”) as opposed to claims-made, that covers claims arising out of events happening during the policy term, even if the claim is made at a date after the policy period.

Peril

Exposure to the risk of being injured, destroyed, or lost

Personal Injury

In insurance jargon, usually injury of a non-physical nature such as defamation, false imprisonment, or wrongful eviction. In legalese: bodily injury or non-physical injury.

PII (Personally Identifiable Information)

“Any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden

name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.”³

Primary Layer

This refers to the first layer of coverage, whether provided by a self-insured layer, a “primary” policy or an excess policy (or sometimes more than one policy). If it is the first layer of coverage applicable to a loss, it is referred to as the primary layer.

Primary Policy

The primary policy, in contrast to a “primary layer,” refers to the first policy providing coverage applicable to a loss and may be above a self-insured retention.

Products and Completed Operations

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

Professional Liability Insurance

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

Property Insurance

Insurance designed to cover damage to property caused by perils as defined in the policy. There are two common types of property insurance. One is “specified perils,” in which perils such as fire and windstorm are identified in the policy and insured against. The other is “all risk” or “risks of loss” in which all perils not specifically excluded are insured against.

Retroactive Date

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

Retrospective Rating

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

Risk

Uncertainty. There are two general categories of risk: (1) Pure and (2) Speculative. In a pure risk situation, there is no chance for gain. For example, if an organization experiences a fire on its property, it stands to lose financially in the event its real or personal property is damaged or destroyed as a result of the fire. Theoretically, at least, no financial gain is possible in this situation. Speculative risk offers the opportunity for gain or loss, depending on the circumstances. An investment pool, for example, can provide the opportunity for financial gain or financial disaster.

Severability of Interest

Liability policies are designed to apply separately to each insured as though a separate policy had been issued, except as to limits. This means, for example, if one insured commits an assault and battery, which is excluded from coverage, coverage will still be available for the employer, other employees, and other individuals insured under the policy. Because the policy is several in nature and applies separately to each insured,

³ GAO Report 08-536, Privacy: Alternatives Exist for Enhancing Protection of Personally Identifiable Information, May 2008, <http://www.gao.gov/new.items/d08536.pdf>.

the acts of one insured will not act to exclude coverage for all other insureds.

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

Self-insured Retention (SIR)

The amount of loss for which an insured agrees to be responsible before the insurer begins to participate in the loss. The insured usually is responsible for handling claims within the SIR limit.

Subrogation

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

Third Party Liability Coverage

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

Trigger

In insurance, an event, action, activity or other cause that effectuates coverage under a policy. Common triggers are occurrences, offenses, and claims.

Umbrella/Excess Policy

Umbrella policies are often lumped together and categorized with excess policies. While both umbrella and plain excess policies are in the true sense of the word “excess” over the primary layer of coverage, there are critical distinctions. An umbrella policy has four distinct functions listed below.

It provides coverage in excess of reduced or exhausted underlying limits. In the event the underlying primary policy does not apply for any reason, assuming it was scheduled and maintained, the umbrella policy will drop down and apply as though it were a primary policy subject to a self-insured retention.

It provides limits excess of the underlying layer and underlying limits.

It provides drop-down coverage.

It provides coverage broader than that available in the underlying policy. However, in the current marketplace, umbrella coverage does not always provide broader coverage.

Vicarious Liability

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

Waiver of Subrogation

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

Workers’ Compensation Insurance

Insurance coverage that provides the statutory benefits required for injured workers by the Labor Code. Includes employer’s liability insurance, which is intended to cover potential liability of an employer for some employee injuries that may be outside the workers’ compensation statute.



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