

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.	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
<p>Verification of Coverage</p>	<p>A contract requirement to provide commonly used forms for evidence of compliance with the contract's terms or conditions.</p>	<p>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>	<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
<p>Required Endorsements or Policy Provisions</p>	<p>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.</p>	<p>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>	<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
<p>Notice of Prosecution of Claims</p>	<p>A clear understanding of by whom and how insurance claims will be submitted and pursued.</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>	<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
<p>Contractor's Failure to Comply</p>	<p>Clarification of an appropriate response and Contractor's obligations if it fails to comply with the requirements and conditions of the Agreement.</p>	<p>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.</p>	<p>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.</p>

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.