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# **GUIDELINES TO MANAGING CONTRACTUAL RISK**

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**STATE OF NORTH DAKOTA  
OFFICE OF MANAGEMENT & BUDGET**

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**RISK MANAGEMENT DIVISION  
AND  
PROCUREMENT OFFICE**

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## UPDATES

- Page 27 reflecting legislative changes to N.D.C.C. § 32-12.2-15 (8/2013)
- Numerous changes (11/2013) – see 2013 Seminar resources for details

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## ESTABLISHING CONTRACTUAL RISK MANAGEMENT GUIDELINES

The State and its agencies enter into numerous contracts for goods and services. These include contracts for construction, professional services, nonprofessional services, delivered supplies, and leases. These contractual relationships ordinarily have some degree of risk associated with them - there can be potential harm to state property, employees, and members of the public.

Recognizing the risks associated with a contemplated contractual relationship and addressing them in the contract itself is the purpose behind these guidelines. This information is intended to assist State employees who procure goods, services, and leases on behalf of the state of North Dakota. These guidelines have been drafted in coordination with the State Procurement Office and Office of Attorney General to comply with the written directives of the Office of Management and Budget (OMB) related to procurement, N.D.C.C. ch. 54-44.4, and N.D.A.C. Article 4-12 as well as N.D.C.C. § 32-12.2-17.

This document should be reviewed in conjunction with a thorough risk assessment – ***prior to preparing a bid or proposal***. Keep in mind that the dollar amount of the contract is not a good index to measure the level of risk. Instead, the overall potential for damage to property or personal injury should be analyzed, not just the loss of the contract expenditure itself. One important consideration in addressing risk is the potential for third party claims to be brought against the State for activities arising under the contractual relationship.

Ordinarily a person is not responsible for the negligent acts of an independent contractor or a vendor (goods or services). This principle is reinforced in the State Tort Claims Act, which specifically excludes independent contractors from the definition of a “State employee”. However, the general rule that a person is not responsible for the negligent acts of an independent contractor has numerous exceptions and it is unclear to what extent such exceptions can be applied to the State. In addition, the State remains liable for any condition or use of property under circumstances in which a private party would be liable. As a result, work performed on the State’s behalf by a contractor could still result in a claim being brought against the State. The uncertainty for when a claim may be brought, coupled with a growing litigious society, has made it necessary to ensure that the State’s potential risk for third party claims arising from its contractual relationships is dealt with effectively. The Risk Management Fund is only funded to address exposures associated with State activities through its employees, not activities of contractors and vendors providing goods or services.

The following is a tool to assist with drafting indemnification and insurance clauses in State contracts. These guidelines represent the best practices to protect the State’s interests without unduly burdening contractors. For services contracts, indemnification requirements must be limited to the State’s potential vicarious liability, unless a more stringent level of indemnification is deemed appropriate and approved by OMB. Even more stringent indemnification should focus on derivative claims, where the contractor remains the primary or actively negligent/responsible party, and should be primarily concerned with reinforcing agency policy decisions on what duties, activities, and responsibilities are delegated to a contractor. Insurance requirements should address the contractor’s ability to meet any indemnification obligations, as well as potential direct losses to the State.

Agencies should always consult with the agency’s assigned Assistant Attorney General and/or the Risk Management Division when addressing indemnification and insurance requirements in State contracts.

### ***Evaluate Contractual Relationship Both Factually and Legally.***

Every contract has risks that must be reviewed from the perspective of protecting the State's assets and interests. Remember, the dollar amount of the contract is not necessarily a good index of the level of risk associated with the contract. The following will help you manage those risks when you contract on behalf of the State. An inherent part of contract management is to:

1. Evaluate the risks involved;
2. Decide whether to avoid, transfer, or accept the risks; and
3. Implement appropriate risk transfer and/or risk financing mechanisms deemed necessary.

Read the contract thoroughly and anticipate events or situations that could happen within the scope of work outlined. Ask yourself:

1. Who are all the parties involved?
2. What kind of work is being done?
3. What type of accidents or losses could occur?
4. What is the worst-case scenario in terms of financial loss and/or injury to persons or property?
5. Are the responsibilities for the risks appropriately placed with those in the best position to control them?
6. What is each party's ability to manage the risks and absorb the losses?
7. Is the contract legal and enforceable?

Within the contract, risk transfer is accomplished through a combination of indemnification, hold harmless, and waiver of subrogation clauses. Insurance is commonly required as a means of providing the financial support to back the indemnitor's obligation to hold the indemnitee harmless.

The State's goal is to establish contract guidelines for insurance coverage that can be consistently applied with few exceptions. To ensure the continued success of the State's contract review program, once insurance requirements have been set, they must be communicated in all solicitations for bids or proposals prior to awarding the contract. The program will not be successful if the insurance is negotiated *after* the contractor has been selected. Also, a change in bidding requirements, such as changing the insurance requirements, could result in a protest of the award by the unsuccessful bidders.

This section provides several methods of dealing with contractual risk. The Risk Management Fund recommends these procedures be followed by any person involved in procurement and drafting contracts for the State. The discussion will include 1) screening contractors; 2) safety requirements for bid specifications and contracts; 3) contractual risk transfer through indemnification/ hold harmless clauses; and 4) insurance requirements.

**PLEASE NOTE: Use of the following recommended clauses and forms does not ensure that all contracts and agreements will be adequately drafted to protect the State's interests. Each entity's legal counsel should review all contracts and agreements before they are executed.**

## **Screening Contractors**

There simply is no substitute for dealing with a safety-conscious contractor who prevents or minimizes damages and injuries through safe work practices. Keep in mind that for every dollar of loss prevented, there is perhaps an additional dollar of frictional and “soft” costs saved (legal fees, claims handling costs, lost employee productivity, and so on).

Screen your contractors carefully before entering into any contract. Screening is probably the simplest and yet most effective method of controlling contractual risk. Suggested steps include:

- Deal only with reputable firms.

There are several ways to check the reputation of contractors. For example, a clause could be inserted into the bid solicitation mandating contractors explain their safety program and safety problems or violations over the past five years. The agency could also talk with agency employees or review records from other projects performed by that contractor for the agency.

- Check references.

The bid solicitation should require the contractor to disclose the name, address and telephone number of at least three people who have hired the contractor to do a similar job in the past five years. The bid solicitation should also provide that the State may contact each reference for additional information.

- Check records of safety violations through OSHA and the Secretary of State's records.

The OSHA office in each state maintains records regarding safety violations by various contractors including construction contractors. For example, under 40 U.S.C. Section 333, the Secretary of Labor, who oversees OSHA, is required to investigate and hold hearings regarding safety violations by construction contractors. The Secretary of Labor ultimately may send a list of contractors who have engaged in safety violations to the Comptroller General and that list is circulated among federal agencies.

State agencies can obtain information on safety violations by a contractor who has done business in North Dakota by contacting OSHA in North Dakota, 1640 East Capitol Avenue, Bismarck ND 58501; telephone (701) 250-4521.

In addition, pursuant to N.D.C.C. ch. 43-07, the North Dakota Secretary of State regulates contractors and maintains public records regarding their activities. The records include information on the contractor's experience and qualifications, liability insurance, workers' compensation coverage, unemployment coverage, and other information regarding the applicant's fitness to act in the capacity of a contractor. The records may also show the level of activity the contractor is authorized to engage in, the type of work the contractor engaged in over the past year, whether the contractor abandoned a contract without legal excuse, diverted funds, engaged in fraudulent acts, or made a false statement. Information concerning construction related contractors can be obtained from the Secretary of State's office at (701) 328-3665.

Safety records for contractors are also maintained by the North Dakota Workforce Safety and Insurance office. Those records are generally not available for disclosure to the public, including state agencies.

- Monitor compliance with contract terms.

Care should be exercised by the State to determine if contractor's activities are consistent with each part of the contract. The State should not monitor contracts by retaining control over the means, method and manner of producing the result because that blurs the line between whether the contractor is actually an independent contractor, for which the State ordinarily would have no liability, or an employee, for which the State may have much greater liability.

### ***Safety Requirements for Bid Specifications and Contracts***

A key step in a major construction project is preparing the bid specifications outlining the scope and requirements of the project. Safety requirements should be a vital part of the bid specifications. For example, we recommend the following language be incorporated into all construction contracts:

**Safety Requirements:** The Contractor shall keep informed of and comply with all federal, state, and local laws, regulations, and other legal requirements governing the safety, health, sanitation, and performance of the contract in general. In addition, the Contractor shall provide, inspect and maintain all safeguards, safety devices, protective equipment, safety programs and other needed actions the Contractor determines necessary to reasonably protect the life, health and property of the Contractor, subcontractors, the State, the public and each of the employees, officers, assigns and agents of the Contractor, subcontractors and the State, in connection with the performance of work resulting from or arising out of the contract.

The Contractor shall submit to the State a copy of the written safety program to be used as guidelines and direction for the Contractor's and subcontractors' activities. This program must meet all federal, state and local laws, regulations and other legal requirements and include the following minimum provisions: (1) a worksite safety policy and mission statement; (2) assigned responsibilities among management, supervisors and employees; (3) a system for periodic self-inspections, including inspections of job sites, materials, work performance and equipment; (4) a thorough accident and injury reporting and investigation process; (5) a safety orientation program including first aid, medical attention, emergency facilities, fire protection and prevention, housekeeping, illumination, sanitation, personal protective equipment, and occupational noise exposure; and (6) a safety training program including safety "tool box" meetings and other systems for ongoing training and also including training for employees on the recognition, avoidance and prevention of unsafe conditions.

It will be a condition of the contract, and shall be made a condition of each subcontract entered into pursuant to that contract, that the State is assuming no liability relating to its receipt and review of the Contractor's safety plan or activities. Safety remains the responsibility of the Contractor. Furthermore, the right of the State to receive and review the safety plan or activities shall not give rise to a duty on the part of the State to exercise this right for the benefit of the Contractor or any other person or entity.

### ***Spoliation (Notice of Potential Claims) Clause***

The Risk Management Division recommends a clause entitled Spoliation (Notice of Potential Claims) be added to State lease agreements and service contracts. Spoliation is defined as **the destruction or severe modification of evidence.**

Court decisions have held that the action of merely cleaning the scene of an accident before the accident can be adequately investigated and the loss and cause of loss documented can be a breach of a legal duty giving rise to potential liability.

While the State has a concern to preserve evidence, consideration must also be given to the need to appropriately secure or clear the site to mitigate any immediate safety threat.

To ensure the State is afforded an opportunity to adequately investigate and document losses that pertain to contracts to which the State is a party, it is recommended the following clause be included in an agreement. This clause has been incorporated in the Attorney General office's contract template.

Contractor (or Landlord) agrees to promptly notify State of all potential Claims which arise from or result from this agreement. Contractor (or Landlord) further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the State the opportunity to review and inspect such evidence, including the scene of the accident.

### ***Contractual Risk Transfer Through Indemnification/Hold Harmless Clauses***

Contractual risk is generally transferred with an indemnification/hold harmless clause. The purpose of the clause is to define who pays when a third party makes a claim for damages arising out of the work performed under the contract. The party that exercises the most control over the activities governed by the contract is in the best position to enforce safety and loss control practices and should, therefore, generally be responsible for injuries or damages arising from those activities.

Future agency contributions to the Risk Management Fund are based on actual losses incurred as well as costs incurred to defend any losses. This, of course, includes losses and costs related to claims arising from services provided by contractual agreements. By not implementing an in-depth analysis of all agency agreements and incorporating the appropriate indemnification language into the agreement, the agency may adversely impact its required contributions.

Any person contracting on behalf of the State must know that the Risk Management Fund cannot, by law, defend or pay settlements or judgments on behalf of any parties other than the State, a State entity, or a State employee. Therefore, when determining the appropriate indemnification language, **agencies must remember that if the agency were to sign a contract agreeing to indemnify a private third party, the Risk Management Fund would not be able to defend or pay any settlement or judgment on behalf of that third party.** Any such cost would be the sole expense of the contracting agency raising issues of whether or not the agency has appropriation authority to pay such costs and if by signing such an agreement the employee would be determined to not be acting within the scope of his or her employment. Also see the discussion concerning limiting the liability of vendors in these Guidelines.

Indemnification/hold harmless clauses assist agencies in addressing potential exposures and should be used in conjunction with insurance clauses. There are three basic forms of indemnification/hold harmless provisions that can be used in State contracts:

1. **No Indemnification of Liability** provision: Each party agrees to assume the liability and expenses (e.g., defense and investigation costs) for their own acts. This is essentially the same as the liability that would exist under common law, but it is specified in the agreement. Ordinarily, there is no need to have this type of clause in most contracts. A modified comparative fault indemnification clause, however, may be considered if the contract will be performed in a jurisdiction that retains joint and several liability.
2. **Limited Vicarious Liability** provision: ***Pursuant to N.D.C.C. § 32-12.2-17, this indemnification provision is to be the default form for State service contracts requiring indemnification.*** While this provision results in having each party assume its own direct liability, it provides additional protection for the State in that the Contractor agrees to be responsible for any liability alleged against the State resulting from the Contractor's sole actions, and provides defense for the State to resolve those allegations.

Remember, an agreement between the State and a Political Subdivision may not contain a provision that requires one party to assume the liability of the other or the liability of a third party or to bear the costs of defense of actions against the other or against a third party. However, contractors for political subdivisions can be required to indemnify the State. (See, N.D.C.C. § 32-12.2-13 and N.D.C.C. § 32-12.2-17)

3. **Intermediate** provision: Requires Contractor to be responsible for its own liability and the joint liability of the Contractor and the State. This provision will be allowed only after the OMB Director's designee has determined the contract presents a high risk scenario that requires an indemnification provision more stringent than the *Limited Vicarious Liability* form. (See N.D.C.C. § 32-12.2-17). Except in rare circumstances, agencies should not focus on seeking to have a contractor indemnify an agency for its own active acts of negligence. Rather, the focus should remain on potential derivative claims where the contractor is the primary/actively negligent party. The indemnification clause reinforces the executive decisions made on what activities and responsibilities are delegated to the contractor.

### ***Insurance Requirements for Contractors***

While the indemnification/hold harmless provision can be important, it should not be the only protection required in contracts. The State still faces the risk of the contractor being insolvent, underinsured, uninsured, or otherwise unable to pay claims. Therefore, all contractors, with certain limited exceptions, should be required to maintain reasonable insurance coverage and provide written proof of this protection.

The Risk Management Division strongly recommends that the State make sure the Contractor has provided all the appropriate written proof of insurance coverage and additional insured documentation. "Written proof" consists of certificates of insurance and endorsements to policies. These items will be discussed in further detail later in this Section. Obtaining and reviewing such paperwork is a very important step in ensuring that all the required coverages are in place. Contact the Risk Management Division at (701) 328-7584 if you have questions regarding the written proof of coverage.

The insurance clauses found in many contracts may use outdated language with no defined meaning in the insurance industry. The terms "public liability insurance" and "comprehensive liability insurance" are two common examples. In addition, policy limits generally are no longer split separately for the number of persons involved in an occurrence, for bodily injury versus property damage liability, and so on. Most policies now have a combined single limit per

occurrence and, in the case of general liability, an annual aggregate limit – the total that will be paid for the period of the coverage. To prevent disputes, insurance requirements in contracts should be as specific as reasonably possible or should be defined. Common definitions of many insurance terms are found at the end of this document.

The specific coverages and limits required will vary depending on the nature of the contract. *When possible, the State should require limits of coverage of its contractors that are higher than the State's own \$250,000 per person and \$1,000,000 per occurrence exposure.* A higher requirement provides additional protection for both the State and the contractor in the event of a loss. Also, it must be remembered that aggregate limits can be impaired by *other* operations of the contractor. For projects involving considerable loss exposures, requiring the general aggregate limit to apply to the contract project should be considered.

The term "insurance" as used throughout this section is a short hand reference that includes coverage provided through government self-insurance pools and government self-retention funds. Similarly, "certificates of insurance" requirements can be provided by memorandum of coverage documentation.

The insurance required in the contract varies, depending on the nature of the work being performed. For example, agreements for work involving the use of vehicles by contractors should require the contractor to carry automobile liability insurance in addition to general liability and workers' compensation. When the contractor's primary duties under the contract requires the use of a commercial vehicle, the State should be named as an additional insured under the contractor's automobile liability coverage.

Commercial General Liability provides coverage for businesses to respond to claims for bodily injury and property damage, personal and advertising injury, contractual, products and completed operations.

The question often arises whether or not **professional liability coverage** (errors and omissions) should be required when drafting a service agreement. **The general rule is if special intellectual ability is required to perform the contracted services (rather than physical activity) professional errors and omissions coverage is required.** If it is determined that professional errors and omissions is not required for the contract you are drafting, omit the paragraph referencing professional errors and omissions coverage in the sample forms.

In the case of professional liability insurance, it is usually not possible or desirable for the State to be an additional insured on the policy, nor will the policy cover liability assumed in a contract. However, commercial general liability and automobile liability coverage should be required in most contracts involving professional services and, when appropriate, the terms should include a requirement for the State to be named an additional insured under the commercial general liability coverage.

### ***Additional Insureds***

Some of the recommended insurance provisions found in this document require the state of North Dakota and its agencies, officers, and employees be included as "additional insureds" under the policies of others. Key points to keep in mind when drafting insurance clauses in contracts:

- “Additional insured” status means the State is considered an “insured” party on the insurance policy (usually the general liability, commercial auto liability and umbrella/excess liability policy) of another person or entity (i.e., contractor) who is the “named insured.”
- It generally is not possible — or desirable — to be an “additional *named* insured” because named insureds have duties to pay premiums, report claims, and so on.
- The additional insured endorsement should be at least as broad as the indemnification obligations of the contractor. For intermediate indemnification provisions, the additional insured endorsement must provide coverage for the joint direct liability of the State and contractor deriving from the contractor’s activities, but may exclude the State’s independent sole negligence.
- The purpose of the additional insured status is to obtain rights to defense and indemnification without having to look to the State’s own funding sources. When combined with a specific insurance requirement clause, it serves to strengthen the financial responsibility of the other party.
- The other party’s insurance policy must be specifically endorsed to add the State as an “additional insured.” Merely obtaining a certificate of insurance to this effect does not guarantee that the endorsement has been issued, so it is best to obtain a copy of the actual policy endorsement whenever possible. Discussion concerning managing the process of and examples of the certificate of insurance form and the endorsement forms are found later in this document.
- The additional insured endorsement together with the other insurance requirements *should* provide:
  1. The full legal name of the additional insured; i.e., the state of North Dakota, its agencies, officers and employees;
  2. The specific location or operations for which the coverage applies;
  3. The time frame of when the coverage begins and ends — in some cases, coverage should continue beyond the life of the contract;
  4. That the insurance company waives any right of recovery it may have against the State. This is necessary since an additional insured is a third party to the policy contract; the additional insured provides no consideration to the insurer and, therefore, may, under some circumstances, be subject to subrogation;
  5. That the coverage required under this agreement shall be primary for the State and shall not be affected by any other insurance or coverage obtained by the State on its own behalf;
  6. That cross liability/severability of interest coverage is provided;
  7. The legal defense provided to the State under the policy must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary; and
  8. The insolvency or bankruptcy of the insured will not release the insurer from payment under the policy, even when such insolvency or bankruptcy presents the insured contractor from meeting the retention limit under the policy.

These items should be included in the insurance requirements of State contracts. Policy limits and scope of coverage applicable to the additional insured can be modified in the policy endorsement, as long as it is consistent with the terms of the contract.

- Many contractors have policies with a “blanket additional insured” endorsement intended to include any person or organization that the named insured contractually agrees to add. An agency should consult with Risk Management to evaluate such endorsements on a case-by-case basis to ensure compliance with the contract and specific needs of the project.

### ***Determining Appropriate Indemnification and Insurance Provisions***

The first step when drafting a contract or a solicitation is to consider the potential risk associated with the contract being contemplated, and select the appropriate clauses. For example:

1. **No Indemnification of Liability provision with Certificate of Insurance** should be used:
  - a) When contracting for intellectual services when the contractor will not be providing on-site services, or only limited on-site services presenting a low risk of harm. (Examples of professionals providing intellectual services would include physicians, dentists, attorneys, architects, engineers, accountants, insurance agents and brokers, appraisers, loss claims adjusters, tax consultants, risk investment brokers, and investment and divestiture consultants.)
  - b) When the services to be provided present a minimal threat to the safety, health and well-being of participants or third parties, has little potential to cause disruption of business schedule, financial loss/increased cost, or degradation of performance.
  - c) If the terms of the Lease do not require the landlord to provide snow and ice removal and maintenance on walkways and parking lots or to maintain common areas, or if it is probable that the public will not visit the leased property.
  - d) Most standard product purchases that do not involve ongoing on-site maintenance.

Obtain a certificate of insurance documenting required coverages are in place prior to executing the contract.

2. **Limited Vicarious Indemnification with Additional Insured Endorsement – This is the default indemnification provision for State service contracts and leases.** This provision requires contractor to indemnify the State for the State’s vicarious liability arising from the contractor’s activities and operations. That means the contractor’s carrier would defend the State for a claim brought against the State merely because of the business relationship between the contractor and the State, i.e. the damage occurred on a State project or property.

Obtain a certificate of insurance documenting required coverages are in place prior to executing the contract. When an additional insured endorsement is required it may take up to 90 days until the insurance carrier provides it. Make sure to verify receipt of the endorsement within 90 days.

3. **Intermediate Indemnification with Additional Insured Endorsement** – Requires the contractor to be responsible for its own liability and the joint liability of the contractor and the State. Use the intermediate indemnification clause if there is the potential that the contractor’s activities present a high degree of risk over which the State has no supervision or control that could create liability for the State. Prior to requiring this level of indemnification in a contract, the State agency must obtain the approval of the OMB Director’s designee.

The process a State agency or facility should use to obtain that approval is to complete [SFN 58571](#) form, the ***Application to Require a More Stringent Indemnification Provision***. The form, along with a copy of the proposed contract should be filed with the Risk Management Division of OMB for processing unless the OMB director has determined an alternate designee to review the proposed contract. OMB, through Risk Management, will work with the agency to analyze the exposure presented by a proposed agreement and determine what level of indemnification would be appropriate.

The OMB Director has determined that it is appropriate that State software contracts contain indemnification requirements indemnifying and holding the State harmless from and against all third party claims alleging the software infringes a United States patent or copyright, or any similar intellectual property right in the United States. This provision is normally a default in software vendor's license agreements. State agencies do not have to go through the SFN 58571 Application for approval to use this indemnification provision in an agreement.

Remember, when an additional insured endorsement is required it may take up to 90 days until the insurance carrier provides it. Make sure to verify receipt of the endorsement within 90 days.

- 4. **Combination of No Indemnification and Limited Vicarious Indemnification with Certificate of Insurance and Endorsement** – should be used in those instances when contracting with a political subdivision and the political subdivision subcontracts with a private entity.

Certificate of insurance should be obtained from the private entity subcontractor and an endorsement evidencing additional insured coverage from the private entity subcontractor.

- 5. **No Indemnification or Insurance Requirements** – should be used in contracts between state agencies and with political subdivisions if no subcontractor will be used. In addition, purchases of routine “off the shelf” products that do not pose any realistic risk of harm and that are delivered through common carrier generally do not require any indemnification or insurance provisions.

The **RISK MANAGEMENT ANALYSIS MATRIX** on the following page provides an overview of the analysis process:

Press ‘Control + Click’ to Follow [Links](#)

Press ‘Control + Click’ on  to return to Matrix

## RISK MANAGEMENT ANALYSIS MATRIX

		Indemnification and Insurance Provisions	Indemnification and Insurance Provisions
Rating	Definition	Commodities	Services
<p style="text-align: center;"><b>LOW</b></p> <p>Service Agreements:</p> <ul style="list-style-type: none"> <li>▪ <a href="#">Inter-Agency &amp; Political Subdivision</a>;</li> <li>▪ <a href="#">Professional/Non-Professional Services Not Requiring On-Site Services</a>; and</li> <li>▪ Some <a href="#">Leases</a></li> </ul>	<p>Presents a minimal threat to safety, health and well-being of participants and third parties, has little potential to cause disruption of business schedule, financial loss/increased cost, or degradation of performance.</p>	<p>None</p> <p>or</p> <p>No Indemnification of Liability with Certificate of Insurance</p>	<p>None</p> <p>or</p> <p>No Indemnification of Liability with Certificate of Insurance</p>
<p style="text-align: center;"><b>MODERATE</b></p> <ul style="list-style-type: none"> <li>▪ <a href="#">Professional Services Agreements Requiring On-Site Services</a></li> </ul>	<p>Special intellectual ability required to perform the contracted services some of which will be performed on-site. <b>On-site</b> generally involves a significant presence or activity, rather than a single visit or classroom training.</p>	<p>N/A</p>	<p>Limited Vicarious Liability with Certificate of Insurance and Additional Insured Endorsement and Errors and Omissions Coverage</p>
<p style="text-align: center;"><b>MODERATE</b></p> <ul style="list-style-type: none"> <li>▪ <a href="#">DEFAULT for Routine Non-Professional Services</a>; and</li> <li>▪ Routine <a href="#">Leases</a></li> </ul>	<p>Potential to cause injury/illness, property damage, some disruption of business schedule, financial loss/ increased cost, or degradation of performance.</p>	<p>Limited Vicarious Liability with Certificate of Insurance and Additional Insured Endorsement</p>	<p>Limited Vicarious Liability with Certificate of Insurance and Additional Insured Endorsement</p>
<p style="text-align: center;"><b>HIGH RISK</b></p> <ul style="list-style-type: none"> <li>▪ <a href="#">Requires More Stringent Provisions</a> – Requires Authorization From OMB Director’s Designee <a href="#">SFN 58571</a></li> </ul>	<p>State has little or no supervision or control over contractor’s actions which may cause severe injury/ death, major property damage, significant disruption of business schedule, financial loss/increased cost, or degradation of performance.</p>	<p>Intermediate with Certificate of Insurance and Additional Insured Endorsement</p>	<p>Intermediate with Certificate of Insurance and Additional Insured Endorsement</p>
<ul style="list-style-type: none"> <li>▪ <a href="#">Political Subdivisions Hiring Subcontractors</a></li> </ul>	<p>Could be either Moderate or High Risk as defined above.</p>	<p>None</p> <p>or</p> <ul style="list-style-type: none"> <li>• <i>Political Subdivisions:</i> No indemnification</li> <li>• <i>Subcontractors:</i> Limited Vicarious Liability with Certificate of Insurance and Additional Insured Endorsement</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Political Subdivisions:</i> No indemnification</li> <li>• <i>Subcontractors:</i> Limited Vicarious Liability with Certificate of Insurance and Additional Insured Endorsement</li> </ul>

The following are examples of indemnification and insurance clauses with instructions for use that comply with N.D.C.C. § 32-12.2-13 and N.D.C.C. § 32-12.2-17, the recommendations of the office of the Attorney General and the Risk Management Division, and the rules and directives of the Procurement Office. The clauses are intended to either be incorporated into the body of a contract, as appropriate, or be used as an appendix to a solicitation (i.e. Informal Request for Bids, Informal Request for Proposal, Invitation for Bid, or Request for Proposal), and then be incorporated into the purchase order or contract. *Note: Not every recommended insurance requirement will apply to every contemplated contract.*

Remember to consult with legal counsel and/or Risk Management when addressing these recommended clauses.

## SAMPLE SERVICE AGREEMENTS

### LOW RATED RISK ANALYSIS

#### Agreements Between State Agencies (Inter-Agency) and With Political Subdivisions *(if no subcontractor will be used)*



##### Indemnification

None

##### Insurance

None

#### Professional/Non-Professional Services Agreements *Not Requiring On-site Services*



##### Indemnification

None **OR:** The State and Contractor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

##### Insurance

Contractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Professional errors and omissions with minimum limits of \$1,000,000 per occurrence and in the aggregate, Contractor shall continuously maintain such coverage during the contact period and for three years thereafter. In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.
- 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- 4) Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.

**NOTE: THE CERTIFICATE WILL ONLY REFLECT COVERAGE IN PLACE AT THE TIME THE CERTIFICATE IS ISSUED.**

- 4) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
- 5) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

**NOTE: FOR HIGH RISK CONTRACTS, AGENCIES SHOULD CONSULT WITH THE RISK MANAGEMENT DIVISION TO EVALUATE WHETHER TO REQUIRE NOTICE FROM THE CARRIER THROUGH AN ENDORSEMENT.**

## **MODERATE RATED RISK ANALYSIS**

### **Professional Services Agreements Requiring On-site Services**



#### Indemnification

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

#### Insurance

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.

- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions with minimum limits of \$1,000,000 per occurrence and in the aggregate, Contractor shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.

The insurance coverages listed above must meet the following additional requirements:

**NOTE: OPTIONAL SENTENCE IN (1)**

**"THE AMOUNT OF ANY DEDUCTIBLE OR SELF-RETENTION IS SUBJECT TO APPROVAL BY THE STATE."**

**THIS SENTENCE IS NEEDED WHEN THERE IS A QUESTION ABOUT THE FINANCIAL MEANS OF THE VENDOR TO SELF-RETAIN THE EXPOSURE. THIS REQUIREMENT DOES NOT PERTAIN TO LARGE, FINANCIALLY VIABLE POTENTIAL VENDORS.**

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.

***OPTIONAL SENTENCE: DELETE IF NOT USED***

The amount of any deductible or self-retention is subject to approval by the State.

- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
  - b) a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
  - c) cross liability/severability of interest for all policies and endorsements;
  - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
  - e) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.

**NOTE: SENTENCE (6)**

**WHEN AN ADDITIONAL INSURED ENDORSEMENT IS REQUIRED IT MAY TAKE UP TO 90 DAYS UNTIL THE INSURANCE CARRIER PROVIDES IT. MAKE SURE THAT YOU VERIFY RECEIPT OF THE ENDORSEMENT WITHIN 90 DAYS.**

- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.

**NOTE: THE CERTIFICATE WILL ONLY REFLECT COVERAGE IN PLACE AT THE TIME THE CERTIFICATE IS ISSUED.**

- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
- 8) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

**NOTE: FOR HIGH RISK CONTRACTS, AGENCIES SHOULD CONSULT WITH THE RISK MANAGEMENT DIVISION TO EVALUATE WHETHER TO REQUIRE NOTICE FROM THE CARRIER THROUGH AN ENDORSEMENT.**

**Default: For Routine Non-Professional Service Contracts Requiring On-site Services Or Involving Moderate Risk**



Indemnification

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Insurance

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

**NOTE: OPTIONAL SENTENCE IN (1)**

**“THE AMOUNT OF ANY DEDUCTIBLE OR SELF-RETENTION IS SUBJECT TO APPROVAL BY THE STATE.”**

**THIS SENTENCE IS NEEDED WHEN THERE IS A QUESTION ABOUT THE FINANCIAL MEANS OF THE VENDOR TO SELF RETAIN THE EXPOSURE. THIS REQUIREMENT DOES NOT PERTAIN TO LARGE, FINANCIALLY VIABLE POTENTIAL VENDORS.**

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.

**OPTIONAL SENTENCE: DELETE IF NOT USED**

The amount of any deductible or self-retention is subject to approval by the State.

- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated “A-” or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an “A-” rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) a “Waiver of Subrogation” waiving any right to recovery the insurance company may have against the State;
  - b) a provision that Contractor’s insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor’s insurance and shall not contribute with it;
  - c) cross liability/severability of interest for all policies and endorsements;
  - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
  - e) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.

**NOTE: SENTENCE (6)**

**WHEN AN ADDITIONAL INSURED ENDORSEMENT IS REQUIRED IT MAY TAKE UP TO 90 DAYS UNTIL THE INSURANCE CARRIER PROVIDES IT. MAKE SURE THAT YOU VERIFY RECEIPT OF THE ENDORSEMENT WITHIN 90 DAYS.**

- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.

**NOTE: THE CERTIFICATE WILL ONLY REFLECT COVERAGE IN PLACE AT THE TIME THE CERTIFICATE IS ISSUED.**

- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

8) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

**NOTE: FOR HIGH RISK CONTRACTS, AGENCIES SHOULD CONSULT WITH THE RISK MANAGEMENT DIVISION TO EVALUATE WHETHER TO REQUIRE NOTICE FROM THE CARRIER THROUGH AN ENDORSEMENT.**

**Agreements With Political Subdivisions When Subcontractor Will Be Hired By Political Subdivision**



The following language should be added to the appropriate indemnification and insurance requirements for the subcontractor after a completed analysis if the risks of the subcontract as explained earlier in this section.

Indemnification

Political Subdivision shall require all subcontractors, other than state employed subcontractors, prior to commencement of an agreement between Political Subdivision and the subcontractor, to:

**Insert:** [Default Vicarious Liability Indemnification Language](#)

Insurance

The State and Political Subdivision each shall secure and keep in force during the term of this agreement, from an insurance company, government self-insurance pool or government self-retention fund authorized to do business in North Dakota, commercial general liability with minimum limits of liability of \$250,000 per person and \$500,000 per occurrence.

In addition, Political Subdivision shall require all subcontractors, other than state employed subcontractors, prior to commencement of an agreement between Political Subdivision and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

**Insert:** [Default Vicarious Liability Insurance Language](#)

**HIGH RATED RISK ANALYSIS**



**Agreements Requiring More Stringent Indemnification**

For example, contracts for construction, alteration, renovation, or maintenance of a building, structure, highway, road, bridge, water line, railroad right of entry, sewer line, oil line, gas line, appurtenance, appliance or other improvement to real property, including any moving, demolition or excavation, carnival rides.

**NOTE: Use of the following provisions requires authorization from OMB Director's Designee. Use [SFN 58571](#) to obtain authorization.**

Indemnification

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the contractor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this

agreement, except claims based upon the State's sole negligence or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

### Insurance

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

#### **NOTE: OPTIONAL SENTENCE IN (1)**

**"THE AMOUNT OF ANY DEDUCTIBLE OR SELF-RETENTION IS SUBJECT TO APPROVAL BY THE STATE."**

**THIS SENTENCE IS NEEDED WHEN THERE IS A QUESTION ABOUT THE FINANCIAL MEANS OF THE VENDOR TO SELF-RETAIN THE EXPOSURE. THIS REQUIREMENT DOES NOT PERTAIN TO LARGE, FINANCIALLY VIABLE POTENTIAL VENDORS.**

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.

#### ***OPTIONAL SENTENCE: DELETE IF NOT USED***

The amount of any deductible or self-retention is subject to approval by the State.

- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.

- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
- a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
  - b) a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
  - c) cross liability/severability of interest for all policies and endorsements;
  - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
  - e) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.

**NOTE: SENTENCE (6)**

**WHEN AN ADDITIONAL INSURED ENDORSEMENT IS REQUIRED IT MAY TAKE UP TO 90 DAYS UNTIL THE INSURANCE CARRIER PROVIDES IT. MAKE SURE THAT YOU VERIFY RECEIPT OF THE ENDORSEMENT WITHIN 90 DAYS.**

- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.

**NOTE: THE CERTIFICATE WILL ONLY REFLECT COVERAGE IN PLACE AT THE TIME THE CERTIFICATE IS ISSUED.**

- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
- 8) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

**NOTE: FOR HIGH RISK CONTRACTS, AGENCIES SHOULD CONSULT WITH THE RISK MANAGEMENT DIVISION TO EVALUATE WHETHER TO REQUIRE NOTICE FROM THE CARRIER THROUGH AN ENDORSEMENT.**

If Contractor's insurance carrier cannot provide the insurance requirements listed above, Contractor will be required to purchase a project-specific insurance policy on behalf of State including but not limited to an Owner's Protective Liability insurance policy or a Project Management Protective Liability insurance policy with an occurrence limit of not less than \$1,000,000 and an aggregate of \$2,000,000. Said insurance shall be kept in force until the project is accepted by State.

For some large construction projects it may be determined that the most effective insurance would be the purchase of All Risk Builder's Risk coverage. Requirements for such coverage should include:

All Risk Builder's Risk insuring the interest of the State, contractor(s) and subcontractors of all tiers including coverage on an All Risk basis, including but not limited to, coverage against fire, lightning, wind damage, hail, explosion, riot or civil commotions, aircraft and other vehicles, collapse, flood, earth movement, and coverage available under the so-called Installation Floater. The policy(ies) for such coverage shall be secured and maintained by contractor in an amount equal to the Full Completed Value of the project. Any deductible amount under the policy(ies) shall be the sole responsibility of the Contractor.

For operations involving a risk of environmental pollution such as a ruptured pipeline, contractors should be required to provide proof of pollution liability coverage. Requirements should include:

Pollution Liability. Contractor shall provide Contractor's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of the Contractor for limits of \$5,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage (if applicable).

## LEASES

### **Default (Moderate Risk) Lease Indemnification And Insurance Provisions**

If the terms of the Lease **DO** require the landlord to provide snow and ice removal and maintenance on walkways and parking lots or to maintain common areas, or if it is likely members of the public will visit the facility.



### Indemnification

Lessor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Lessor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Lessor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Lessor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

### Insurance

Lessor shall secure and keep in force during the term of this agreement and Lessor shall require all subcontractors, prior to commencement of an agreement between Lessor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Property insurance insuring the full and true value of all Landlord's (or Tenant's) real and personal property located on or in the building in which the leased premises are located for all losses.
- 4) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 5) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

**NOTE: OPTIONAL SENTENCE IN (1)**

**“THE AMOUNT OF ANY DEDUCTIBLE OR SELF-RETENTION IS SUBJECT TO APPROVAL BY THE STATE.”**

**THIS SENTENCE IS NEEDED WHEN THERE IS A QUESTION ABOUT THE FINANCIAL MEANS OF THE VENDOR TO SELF-RETAIN THE EXPOSURE. THIS REQUIREMENT DOES NOT PERTAIN TO LARGE, FINANCIALLY VIABLE POTENTIAL VENDORS.**

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.

**OPTIONAL SENTENCE: DELETE IF NOT USED**

The amount of any deductible or self-retention is subject to approval by the State.

- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated “A-” or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an “A-” rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) a “Waiver of Subrogation” waiving any right to recovery the insurance company may have against the State;
  - b) a provision that Contractor’s insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor’s insurance and shall not contribute with it;
  - c) cross liability/severability of interest for all policies and endorsements;
  - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
  - e) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.

**NOTE: SENTENCE (6)**

**WHEN AN ADDITIONAL INSURED ENDORSEMENT IS REQUIRED IT MAY TAKE UP TO 90 DAYS UNTIL THE INSURANCE CARRIER PROVIDES IT. MAKE SURE THAT YOU VERIFY RECEIPT OF THE ENDORSEMENT WITHIN 90 DAYS.**

- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.

**NOTE: THE CERTIFICATE WILL ONLY REFLECT COVERAGE IN PLACE AT THE TIME THE CERTIFICATE IS ISSUED.**

- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

- 8) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

**NOTE: FOR HIGH RISK CONTRACTS, AGENCIES SHOULD CONSULT WITH THE RISK MANAGEMENT DIVISION TO EVALUATE WHETHER TO REQUIRE NOTICE FROM THE CARRIER THROUGH AN ENDORSEMENT.**

#### **Low Risk Lease**

If the terms of the Lease do not require the landlord to provide snow and ice removal and maintenance on walkways and parking lots or to maintain common areas, or if it is unlikely members of the public will visit the facility, the following indemnification and insurance language is acceptable. *Omit indemnification language for leases with political subdivisions.*



Indemnification (*Delete indemnification language for leases with political subdivisions.*)

None or: Lessor and Lessee each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

#### Insurance

Landlord (or Tenant) shall secure and keep in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, the following insurance coverages:

- 1) Commercial general liability, including contractual coverage, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Workers' compensation coverage meeting all statutory requirements.
- 3) Property insurance insuring the full and true value of all Landlord's (or Tenant's) real and personal property located on or in the building in which the leased premises are located for all losses.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self retention amount of other similar obligations under the policies shall be the sole responsibility of the Landlord (or Tenant). The amount of any deductible or self retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.
- 3) Landlord (or Tenant) shall furnish a certificate of insurance evidencing the required coverages are in effect and providing that the coverages may not be canceled or modified without thirty (30) days prior written notice to State.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
- 5) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

**NOTE: FOR HIGH RISK CONTRACTS, AGENCIES SHOULD CONSULT WITH THE RISK MANAGEMENT DIVISION TO EVALUATE WHETHER TO REQUIRE NOTICE FROM THE CARRIER THROUGH AN ENDORSEMENT.**

## ***Limiting the Liability of Certain Vendors***

The need for State agencies and facilities to purchase software, communication, and electronic equipment has presented a new challenge for state procurement - that of a vendor's request to limit its liability.

This issue is not unique to North Dakota. In fact, state and corporate members of the National Association of Chief Information Officers of the States (NASCIO) formed a subcommittee to address the issue because it is of nationwide concern. That subcommittee published the *NASCIO Procurement Subcommittee's Recommendations on Liability Limitations for State IT Contracting*. That document contains specific recommendations for contractually addressing liability for direct and indirect damages in IT contracts. It recommends that states *should hold* vendors responsible for direct damages arising out of a contract; and that states *should not hold* vendors responsible for indirect damages liability unless responsibility is specifically allocated to the vendor in the contract.

N.D.C.C. § 32-12.2-15 is consistent with this recommendation and allows agencies to limit the liability of a vendor for certain products and related services when the agency determines, in consultation with the Attorney General's Office and the Office of Management and Budget, that agreeing to the limitation is in the best interests of the State. Direct losses may not be limited and agencies must be careful of language that attempts to limit direct damages including any right of indemnification or contribution.

Agencies must also maintain documentation of the justification for agreeing to any limitation. The State Procurement Office has developed a template to assist agencies in this process. The template is available on the SPO website: [www.nd.gov/spo/agency/templates/](http://www.nd.gov/spo/agency/templates/). A state employee that agrees to a limitation of liability without consulting with the Attorney General's Office and the Office of Management and Budget may be acting outside the scope of their employment.

## CERTIFICATES OF INSURANCE AND ENDORSEMENTS

Contractors are required to provide the State with a Certificate of Insurance and/or Endorsement documenting the required coverages are in place, prior to commencement of the contract. A Certificate of Insurance will ordinarily only reflect the coverages that are in place at the time the Certificate is issued and may often not reflect the contract terms that require an endorsement. A person may not request that a certificate of insurance include items that are not part of the underlying policy but may request that it identify policy provisions that meet the contractual requirements.

When an additional insured endorsement is required it may take up to 90 days until the insurance carrier will provide it. Make sure that you verify receipt of the endorsement within 90 days.

Visit the OMB State Procurement Office website at [www.nd.gov/spo/](http://www.nd.gov/spo/) under Solicitation Templates for a sample letter of instruction for the successful vendor.

*Certificate of Insurance*: A completed Certificate of Insurance should contain the following:

- Name and address of agent, phone number and fax number;
- Name of insurance company(ies) and policy number(s);
- Policy period;
- Name and street address of insured;
- Description of coverage(s);
- Name/Number of Project;
- Policy limits as provided in the contract;
- Special instructions or terms of coverage (for example: identification of project or operations with respect to certificate being issued);
- State and/or agency listed as the certificate holder; and
- Signature of the insurer's agent or representative and date.

*Endorsement*. When the contract terms provide that the State must be named as an "additional insured," an endorsement is required. The only way that an entity other than the named insured (contractor) is protected under the terms of the contractor's insurance policy is by adding, by endorsement, an additional insured.

Under some circumstances, a contractor's policy may provide for a blanket additional insured, meaning that additional insured status is automatic under the terms of the policy where the contractor has by contract agreed to add the State as an additional insured. Agencies should consult with the Risk Management Division in evaluating the adequacy of the State being an additional insured through a blanket endorsement.

### **Isn't The Certificate Of Insurance Enough If It Names The State As An Additional Insured?**

An agent issues a certificate of insurance and, unless the agent is authorized to bind an insurance company, is not documentation by the contractor's insurer that the coverage is in place. A certificate of insurance does not confer rights upon a certificate holder or alter, extend, or amend policy coverage. Agencies should only request certificates that accurately reflect coverage in place at the time the certificate is issued. The only proof that an insurance company has knowledge of and agrees to accept the contractual indemnification obligation of the contractor is an endorsement. Without an endorsement documenting the required coverage is in place, a contractor may not have the financial resources to comply with the contract terms. The endorsement should conform to the insurance requirement portion of the contract detailing the endorsement's terms.



## UNDERSTANDING THE CERTIFICATE OF INSURANCE

FIELD		DESCRIPTION	NOTATION
1	DATE	Actual date the Certificate was issued.	Date ensures that the Certificate is current.
2	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.	This statement makes it clear that the Certificate of Insurance cannot amend, extend, or alter the underlying policies of insurance and the certificate holder has no contractual rights as a result of receipt of the certificate.	A certificate of insurance may be relied upon to verify types, dates, and limits of coverage. Additional terms/requirements such as being made an additional insured should be verified through receipt and review of the endorsement and/or policies of insurance.
3	IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).	This statement clarifies that if the certificate holder has asked to be named as an additional insured, this cannot be accomplished simply by the issuance of a certificate – the policy must be endorsed. The same can be true of waivers of subrogation.	Generally, one should obtain any required endorsement(s) to ensure all requirements are met.
4	PRODUCER	Broker or agent that prepared and provides the certificate.	
5	PRODUCER CONTACT	Contact information for the producer/broker/agent.	
6	INSURED	The name of the insured (the entity that purchased the insurance).	This entity should be the contractor – the party requested to provide coverage.
7	INSURER(S) AFFORDING COVERAGE	This section is used to identify the insurance companies issuing the policies described in the certificate. Each insurer is identified by letter (letter will be referenced in 9). May indicate the rating of the insurance company.	The State requires that insurers are rated “A-” or better by A.M. Best Company, Inc. Less than an “A-” rating must be approved by the State.
8	THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.	The insurance policies listed were issued to the insured and all insurance provided is subject to the normal policy terms, exclusions, and conditions.	The certificate affords no contractual rights even if such rights are referenced or made part of the contract between the insured and certificate holder.

FIELD		DESCRIPTION	NOTATION
9	INSR LTR	The Company letter of the insurer as identified in "Insurer(s) Affording Coverage" (from 7).	
10	ADDL INSR	Indicates if the certificate holder has been named as an additional insured on the policy.	Must obtain the endorsement to ensure requirement is met.
11	SUBR WVD	Indicates if subrogation has been waived on the policy.	Must obtain the endorsement to ensure requirement is met.
12	POLICY NUMBER	Identification number assigned to specific policy.	Should not be left blank- insist that all policy numbers be provided.
13	POLICY EFF / POLICY EXP	Date that the terms and conditions of the policy will commence and expire.	Ensure that the policy period covers the time frame of the project.
14	TYPE OF INSURANCE	<p><b>a) Commercial General Liability:</b> Protection from liability arising out of a business operation.</p> <ul style="list-style-type: none"> <li>• <i>Claims Made</i>- coverage for occurrences taking place during the policy period and the claim must be made or reported during the policy period.</li> <li>• <i>Occur</i> – coverage is provided for occurrences taking place during the policy period regardless of when an actual claim is made or reported.</li> <li>• <i>General Aggregate</i> – the most a policy will pay in a given policy period, regardless of the number of insured or claims.</li> </ul> <p><b>b) Automobile Liability:</b> Protection from liability arising out of negligent operation, maintenance or use of a covered auto, which result in bodily injury or property damage to a 3<sup>rd</sup> party.</p> <p><b>c) Umbrella Liab/Excess Liability:</b> Liability coverage in addition to or on top of the primary general liability policy.</p> <p><b>d) Workers Compensation &amp; Employers' Liability:</b> Coverage for employee injuries occurring within the course of their employment.</p>	<p><b>a)</b> Generally, "occurrence" affords better coverage.</p> <p>If the general aggregate limit applies to the policy, coverage may be limited if there are other additional insured.</p> <p><b>b)</b> Combined single limit is the most a policy will pay for 3<sup>rd</sup> party bodily injury and property damage combined for each accident.</p> <p><b>c)</b> State generally doesn't request umbrella or excess liability coverage, but it may provide proof of more coverage.</p> <p><b>d)</b> <i>Workers Comp.</i> should meet statutory requirements.</p> <p><i>Employers Liability or Stop Gap Coverage</i> is used to cover liability actions against an employer arising out of a work-related accident/illness. While workers' compensation is intended to be the exclusive</p>

FIELD		DESCRIPTION	NOTATION
		<p><b>e) Professional Errors and Omissions or other specialty coverage:</b> Coverage for professionals against liability as a result of errors and omissions in performing those services.</p>	<p>remedy for injured workers, there are occasional situations in which an employer may be separately liable to an injured worker or his family. The employers' liability component of a workers' compensation policy covers this exposure with defined limits of liability.</p> <p><b>e)</b> Generally not possible to be named an additional insured on a professional errors and omissions policy.</p>
15	LIMITS	Coverage limit amounts.	The Risk Management recommended limits are based upon the State's limits set by statute. The "per person and per occurrence" language is in the statute, but generally, insurance policies are not written on a person person/per occurrence basis, but rather per occurrence and a general aggregate.
16	DESCRIPTION OF OPERATIONS/ LOCATIONS/VEHICLES	Records information necessary to identify the operations, locations, vehicles, specific job site/location or contract number, exclusions added by endorsement, and/or special provisions for which the certificate was issued.	If the certificate of insurance states you are an additional insured, it is not a guarantee that you are an additional insured on the actual policy – request a copy of the endorsement.
17	CERTIFICATE HOLDER	Entity to which the certificate is issued.	Specify the State agency/entity involved and its address (i.e. State of North Dakota, Agency...).
18	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.	A certificate holder and additional insured cannot plan on receiving any notice from the insurance company if coverage is being cancelled or non-renewed.
19	AUTHORIZED REPRESENTATIVE	Producer/broker/agent who has been authorized to sign the Certificate.	

## SAMPLE ADDITIONAL INSURED ENDORSEMENT

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 -	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

**SAMPLE LETTER WHEN CERTIFICATE IS INADEQUATE**

Date:

To:

To Whom It May Concern:

Thank you for forwarding the Certificate of Insurance. After review, the certificate does not reflect required limits and/or coverages as outlined in the contract dated \_\_\_\_\_. Please amend the certificate form to reflect the following:

*[INSERT THE INSURANCE PROVISIONS FROM CONTRACT]*

Please forward the amended Certificate by     (10 days)    . If you have any questions, please call me at \_\_\_\_\_.

Sincerely,

## SAMPLE LETTER FOR EXPIRATION OF CERTIFICATE OF INSURANCE

Date:

To:

To Whom It May Concern:

Our records indicate that your Certificate of Insurance currently on file with us has either expired or will be expiring. Please have your insurance agent send us a new Certificate of Insurance evidencing the following:

***[INSERT THE INSURANCE PROVISIONS FROM CONTRACT]***

*[Delete if not using Intermediate and Additional Insured Endorsement]*

Further, ensure that the state of North Dakota, **Agency Name** is named as an additional insured and provide an Endorsement to the policy within 30-60 days documenting that the required coverage is in place.

If you have any questions, please call me at \_\_\_\_\_.

Sincerely,

## DEFINITIONS OF COMMON INSURANCE TERMS

### A

**Additional Insured**—A person or entity other than the named insured who is protected by the policy, often in regard to a specific interest. This coverage is typically extended through a policy endorsement. Contrast with “Named Insured.”

**Adjuster**—A person who settles claims for insurers.

**Aggregate**— Cumulative. An annual aggregate limit of \$1 million means that when the total of all claims in a year reaches \$1 million, coverage ceases.

**All States Endorsement**—Automatically extends statutory workers compensation coverage to states where the contractor’s new operations are added during the policy term.

### B

**Bodily Injury**—Injury, sickness, or disease sustained by a person, including death resulting therefrom. See also Personal Injury.

**Bond**—An obligation of the insurance company to protect one against financial loss caused by the acts of another.

**Breach**—Failure to live up to the warranties or condition of an insurance contract.

### C

**Cancellation**—The termination of an insurance policy or bond before it’s expiration by the insured or insurer.

**Carrier**—An insurance company.

**Certificate of Insurance**—A form used to convey information (valid only as of the date it is issued) regarding the client’s insurance coverages. It does not confer rights upon a certificate holder or alter, extend, or amend policy coverage.

**CGL—Commercial General Liability Coverage**—Principal form of liability insurance for businesses that provides coverage for bodily injury and property damage, personal and advertising injury, contractual, products and completed operations on an occurrence basis.

**Claim**--The amount of damage for which a third party seeks reimbursement from the insured and/or insured seeks reimbursement from his or her insurance company. Once the amount has been determined, it becomes a loss. Claim and loss are often used interchangeably. Self-insured losses are often called claims.

**Contractual Liability**—Coverage for liability assumed under contract.

**Coverage**—A term used to designate the type of protection provided by an insurance policy.

**D**

**Deductible**—An amount of loss to be absorbed by the insured .

**E**

**Effective Date**—The date on which an insurance policy goes into effect starting date.

**Employer's Liability**—Liability insurance for employers to protect against bodily injury claims resulting from accident or disease of employees not covered by workers compensation.

**Endorsement**—An amendment to an insurance policy that in some way modifies the original contract provisions.

**Errors and Omissions**-- Commonly referenced as E&O, or professional liability. Should be required when requested services require special intellectual ability rather than strict physical activity. Examples: Engineers, accountants, consultants, technology designers/installers, public officials, directors and officers. Medical personnel E&O is often called medical malpractice coverage.

**Exclusions**--Specific items identified as not being covered under a particular policy.

**F**

**Follows Form**—A requirement that an excess policy to be written with the same terms and conditions as the policy to which it is excess.

**H**

**Hold Harmless Agreement**—A clause found in contracts and leases that shifts (or attempts to shift) liability for loss from one party to another.

**I**

**Indemnify/Indemnity**—Making “whole” or restoring financially, after a loss.

**Indemnity Agreement**—Same as a hold harmless agreement.

**Insured**—The person who has purchased an insurance policy and is protected by it; sometimes also referred to as the “assured.”

**Insurer**—The insurance company.

**L**

**Lessee**—A tenant who has signed a lease.

**Liability Insurance**—Any form of coverage whereby the insured is protected against claims of other parties arising from specified causes.

**Limit**—The maximum amount the insured can collect under the terms of a policy.

**Loss**—Any destruction or disappearance of value.

## N

**Named Insured**—Any person, firm or corporation, or any member thereof, specifically designated by name as insured(s) in a policy as distinguished from the others who, though unnamed, are protected under some circumstances. A common application of this latter principle is in auto liability policies wherein by a definition of “insured,” coverage is extended to other drivers using the car with the named insured’s permission. Other parties can also be afforded protection of an insurance policy through being named an Additional Insured (see definition) through a policy endorsement. Other rights and responsibilities of the Named Insured include: rights to request policy endorsements or additional coverage, terminate policy, receive premium refund; obligations to notify insurer of a claim, pay premiums, and to comply with all other policyholder obligations.

**Negligence**—Failure to exercise that degree of care that a reasonable person would exercise under the same circumstance.

## P

**Property Insurance**—Insurance that indemnifies an individual or entity with an ownership interest in real or personal property for loss of or damage to property or the loss of business income-producing ability.

## R

**Reinsurance**—A contract to transfer all or a portion of the insurer’s (ceding insurance company’s) risk, assumed on behalf of its insureds, to another insurer/reinsurer. The reinsurer agrees to reimburse the insurer/ceding insurance company for the claim’s reinsured portion. A reinsurer may, in turn, seek reinsurance on some portion of the risk it has reinsured, a process known as “retrocession.”

**Risk**—The chance or probability of financial loss.

## S

**Self-insurance**—Retention of risk. Generally refers to a planned program for financing or otherwise recognizing losses. It is not the same as insurance.

**Stop Gap**--Specific form developed to provide employer’s liability coverage for the employer’s activities in monopolistic workers compensation states .

**Subrogation**--The right of an insurer to recover from a third party an amount paid on a loss when the third party is at fault.

**T**

**Tail Coverage—Extended Reporting Period.** Provides for a specific time period after the policy expiration during which the insured can file a claim that occurred but was not reported during the claims-made policy term.

**Term--**The length of time for which a policy or bond is written.

**Third Party--**Someone other than the parties directly involved in an action or transaction; someone other than the insured and the insurer.

**U**

**Umbrella or Excess Policy—**A broad, high-limit liability policy usually requiring the insured to carry primary or underlying insurance.

**V**

**Vicarious Liability—**A form of secondary liability that assigns responsibility for an injury to a person that did not cause the injury but who has a particular relationship with the person that was negligent. It is sometimes referred to as imputed negligence.

**W**

**Waiver—**The relinquishment of a known right; for example waiver or subrogation under a fire insurance policy.

**Waiver of Subrogation—**A waiver by the named insured giving up any right of recovery against a third party. Normally an insurance policy requires that subrogation (recovery) rights be preserved.