



State Of
Louisiana
OFFICE OF
RISK MANAGEMENT

Protect Yourself: Insurance and
Indemnification Language in Contracts

Protect Yourself: Insurance and Indemnification Language in Contracts

Procedures Manual Published by
The Office of Risk Management

<https://www.doa.la.gov/media/luqfise1/contract-manual-12-2019.pdf>

Purpose of the ORM Manual

- Explanation of the need for proper insurance language in bids and contracts
- Explanation of insurance terminology
- Insurance requirement recommendations
- Assessment of compliance & monitoring



GOAL

To limit your organization's liability using appropriate contract wording

ORM Recommendations

- ORM manual is a guide for recommended coverages and limits.
- The coverages, limits, and additional wording recommended may be altered when circumstances warrant.
- Special circumstances and questions should be discussed with entity's legal counsel.
- **This presentation is from an insurance/risk management perspective and is NOT legal advice.**

Examples of Bids and Contracts

- RFP - Request for Proposal
- ITB - Invitation To Bid
- Cooperative Endeavor (CEA)
- Construction Projects
- Leases
- Service (maintenance, consulting)
- License Agreements
- Emergency
- Memorandum of Understanding (MOU)

First Things First...

- Who are the parties? What are they called in the contract? (*Contractor, Indemnitor, etc.*)
- What role does your entity play? (*ex:Lessor/Lessee*)
- What is the contract for?
- Who drafted the contract? **Whose template are we using?**
- Has the contract already been executed, or are the parties still negotiating?
- What are the surrounding circumstances? (*Take it or leave it job, two equal parties, etc.*)
- **What is the worst thing that can happen???**

Parties Involved in the Contracting Process

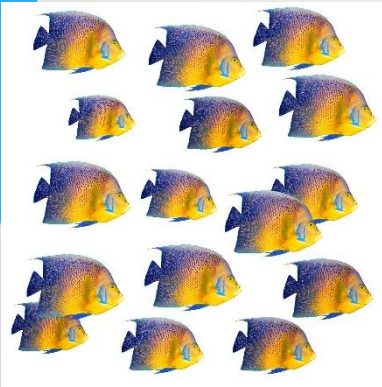


2 Levels of Agency Protection

1. Contractor's Insurance
Including Agency as Additional Insured
2. Indemnification/Hold Harmless Agreement

Liability Food Chain

✓ Sub-subcontractor



✓ Subcontractor



✓ General Contractor



✓ Owner



What's Needed in the Contract?

- Insurance Coverage Types
 - Tailored to the kind of work being done and the exposures inherent in each contract
- Insurance Limits for Each Coverage
- Additional Insured Wording
 - Ongoing and Completed Operations
 - By Endorsement
- Indemnification/Hold-Harmless Agreement
 - Contractual liability

Required Types of Insurance Coverage

- Required in all contracts
 - Workers Compensation and Employers Liability
 - Commercial General Liability
 - Automobile Liability
- Required when needed
 - Workers Compensation Maritime
 - Professional Liability (Medical Malpractice)
 - Owners Protective Liability (OPL)
 - Surety, Fidelity, Performance Bonds
 - Pollution Liability
 - Wet Marine Vessel & Liability
 - Aviation Hull & Liability
 - Cyber Liability

Workers' Compensation

- Provides medical and wage benefits for the Contractor's employees while under contract with you
- Maritime (Jones Act and LHWCA) needed when work is performed on or near navigable bodies of water
- Employers Liability provides additional coverage for the liability of the employer outside of the WC law
 - Monopolistic States: Ohio, Wyoming, Washington, and North Dakota

Special Workers' Compensation Issues

- Exemption of Owners from Coverage
 - Corporate officers, LLC members, partners in partnership, sole proprietors
 - If performing work on the site at any time, must elect to provide coverage on themselves
- Indemnity if No Coverage:
 - Contractor will not have a cause of action or assert a claim against the State
 - State shall not be considered the employer or statutory employer of Contractor or its employees
 - Contractor will indemnify and hold harmless the state from any assertion or claim arising from performance of the contract

Commercial General Liability

- Provides coverage for injuries and property damage arising out of the Contractor's operations and work for you
- Policy is broad:
 - On and Off Premises Operations
 - Products and Completed Operations
 - Liability assumed in contracts
 - Personal Injury and Advertising Liability
 - Broad Form Property Damage
- Exclusions

Automobile Liability

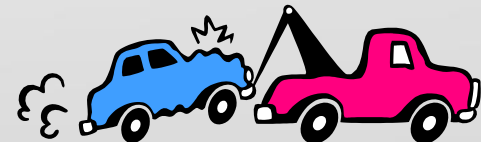
- Provides coverage for injuries and property damage arising out of the contractor's use of automobiles in their work for you
- Automobile designation symbols

#1 – Any Auto OR

#2, #8, #9 – Owned, hired & non-owned

- Waive only when contractor's work clearly does not involve the use of an automobile

Exhibit B: Lessees



Professional Liability

- Provides coverage for the errors and omissions of designated professions
 - Accountants
 - Architects
 - Engineers
 - Medical Professionals
 - Attorneys
 - Hazard Experts
 - Information Technology (Tech E & O)
 - Brokers

Bonds

- Types: Surety, Fidelity, Performance
 - Surety: Guarantees that the Other Party will meet financial obligations
 - Fidelity: Protects Agency from dishonest acts of the Contractor's employees
 - Performance: Guarantees Contractor's satisfactory completion of a project
- L.R.S. 38:2241(A)(2) – requires surety bond in all public construction contracts over 25K
- Contact Risk Manager or Legal for language and amounts

Pollution Liability

- Provides specialized coverage for hazardous activities that could damage the environment
- Hazardous materials transport
- Underground storage tanks
- Asbestos abatement
- Spill Clean-up
- Project-Specific or Blanket Coverage

Wet Marine

- Provides specialized coverage for the Other party's use of water vessels in their work for you
- Hull and Protection and Indemnity (P&I)
- Contact Risk Manager or Legal for language

Aviation

- Provides specialized coverage for the Contractor's use of aircraft in their work for you
- Hull and Liability
- Airport Operations and Hangarkeeper's
- Contact Risk Manager or Legal for language

Cyber Liability *(including TECH E & O)*

- Provides specialized coverage for security breaches of confidential data, including inadvertent release, hacking, viruses, improper destruction, etc.
- 3rd party liability claims / Mandatory compliance fees
- See Chapter 6 of Contract manual for suggested wording

Recommended Minimum Insurance Limits

- Workers Compensation = Defined by Louisiana Labor Code; Employers Liability \$1,000,000
- Commercial General Liability = \$1,000,000 per occurrence, \$2,000,000 aggregate
- Automobile Liability = \$1,000,000 per occurrence
- Professional Liability = \$1,000,000 per claim
- Surety, Fidelity, Performance Bonds = Based on contract value
- Pollution Liability = \$1,000,000
- Cyber Liability = \$1,000,000

Recommended MINIMUM Insurance Limits (continued)

- Exhibit A – Insurance Requirements for Contractors
- Exhibit B – Insurance Requirements for Lessees
(No Auto Risks)
- Exhibit C – Insurance Requirements for Joint Ventures
- Exhibit D - Insurance Requirements for New Construction, Additions and Large Renovations

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INSURANCE REQUIREMENTS

EXHIBIT A

INSURANCE REQUIREMENTS FOR CONTRACTORS

Workers Compensation

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

Commercial General Liability

Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general annual aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), **or equivalent**, is to be used in the policy. Claims-made form is unacceptable.

Automobile Liability

Automobile Liability Insurance shall have a minimum combined single limit per accident of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), **or equivalent**, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non owned automobiles.

INSURANCE REQUIREMENTS (continued)

- a. The Agency, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor. **ISO Forms CG 20 10 (for ongoing work) AND CG 20 37 (for completed work)** (current forms approved for use in Louisiana), or equivalents, are to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the Agency.
- b. Insurance shall be placed with insurers with a A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for workers compensation coverage only.
- c. Contractor shall furnish the Agency with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any contract renewal or insurance policy renewal thereafter.

<http://www.ambest.com/home/default.aspx>

INSURANCE REQUIREMENTS (continued)

Exhibit D - Insurance Requirements for New Construction, Additions and Large Renovations

A.5. Builder's Risk

- a. Builder's Risk Insurance shall be in an amount equal to the amount of the construction contract including any amendments and shall be upon the entire work included in the contract. The policy shall provide coverage equivalent to the ISO form number CP 10 20, Broad Form Causes of Loss (extended, if necessary, to include the perils of wind, earthquake, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The policy must include architects' and engineers' fees necessary to provide plans, specifications and supervision of work for the repair and/or replacement of property damage caused by a covered peril, not to exceed 10% of the cost of the repair and/or replacement.
- b. Flood coverage shall be provided by the Contractor on the first floor and below for all projects, **except as otherwise noted** The builder's risk insurance policy, sub-limit **for flood coverage** shall not be less than ten percent (10%) of the total contract cost per occurrence. If flood is purchased as a separate policy, the limit shall be ten percent (10%) of the total contract cost per occurrence (with a max of \$500,000 if NFIP). Coverage for roofing projects shall not require flood coverage.
- d. A Specialty Contractor may provide an installation floater in lieu of a Builders Risk policy, with the similar coverage as the Builder's Risk policy, upon the system to be installed in an amount equal to the amount of the contract including any amendments. Flood coverage is not required.
- e. The policy must include coverage for the Owner, Contractor and any subcontractors as their interests may appear.

Additional Insured

- Agency, its officers, agents, employees and volunteers
- ISO Forms CG 20 10 (ongoing operations) and CG 20 37 (completed operations) or equivalent
- Check boxes on certificate
- Wording on certificate

"The State of Louisiana is added as an additional insured as required by written contract."

Additional Insured (ISO Form Language)

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.

Waiver of Subrogation

- SUBROGATION:

The right of one who has taken over another's loss to take over the right to pursue reimbursement from a third-party

- Bi-lateral waiver on Workers Compensation

- Do not waive rights in a contract – mutual waiver

- L.R.S. 38:2195

What is a Certificate of Insurance?

- **Snapshot in Time**

- If insurance coverage expires during the contract period, request an updated certificate to make sure insurance coverage has been renewed
- Does not actually convey any rights not granted in the policy or its endorsements
 - ORM also requires policy declarations page and cancellation provisions
- ORM requires that you maintain certificates for at least five years or the applicable prescriptive period
- *Payment, acceptance of completed work, failure of Agency to require proof of compliance, or acceptance of non-compliant certificate does not release Contractor from the insurance or indemnification requirements*

Let's Review a Certificate of Insurance!

- Verify that the Insured name is correct
- Verify that all coverages and limits are as requested
- Check A.M. Best ratings on insurance companies
- Confirm Agency's additional insured status
- Verify that your Agency is listed as Certificate Holder



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Subcontractor's Insurance Broker

PRODUCER
Arthur J. Gallagher
2500 Best Deal Street
Call Us, La 225-292-3515

CONTACT NAME: Favorite Broker
PHONE (A/C, No, Ext): 225-292-3515
E-MAIL ADDRESS: Favorite_Broker@AJG.com
FAX (A/C, No):

Name of contractor (it should match the name as written in the contract).

INSURED
Rich Contractor
123 Main Street
San Francisco, LA 45678

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	CNA	1234
INSURER B:	AIG	4123
INSURER C:	LWCC	3412
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

Claims Made is not acceptable.

INSR LTR	TYPE OF INSURANCE	ADD'L SDBR (INSR, LWD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC OTHER: <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input checked="" type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		123456789	01/01/15	01/01/16	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ 1,000,000 BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 PER STATUTE \$ OTH-ER \$ E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input checked="" type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		234567891	01/01/15	01/01/16	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 PER STATUTE \$ OTH-ER \$ E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input checked="" type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		345678912	01/01/15	01/01/16	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 PER STATUTE \$ OTH-ER \$ E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input checked="" type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		456789123	01/01/15	01/01/16	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 PER STATUTE \$ OTH-ER \$ E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

Current dates are required.

The two "each occurrence" boxes should total at least as much as required in your contract.

The totals in each box should be at least \$1 million.

This section should reference the job number, project name, and/or location.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
General Liability - Certificate Holder is an Additional Insured Per Attached Form CG 20 38 04 13 Per Written Agreement
Waiver of Subrogation included. RE: Project #103

CERTIFICATE HOLDER

Public Entity #1
#1 Heartbreak Road
TooManyLawyers, LA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

This should name you.

Signed by the broker only.



CERTIFICATE OF LIABILITY INSURANCE

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

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

DATE (MM/DD/YYYY)

INSURED

CONTACT NAME:
PHONE:
(A/C, No, Ext):
E-MAIL:
ADDRESS:

FAX (A/C, No):

INSURER A: INSURER(S) AFFORDING COVERAGE
INSURER B:
INSURER C:
INSURER D:
INSURER E:
INSURER F:

NAIC #

COVERAGES

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.

CERTIFICATE NUMBER:

REVISION NUMBER:

INSR LTR	TYPE OF INSURANCE	COMMERCIAL GENERAL LIABILITY	CLAIMS-MADE	OCUR	ADDL SUBR INSD	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GEN'L AGGREGATE LIMIT APPLIES PER:	<input type="checkbox"/> POLICY	<input type="checkbox"/> PRO-JECT	<input type="checkbox"/> LOC						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	OTHER									MED EXP (Any one person) \$
	AUTOMOBILE LIABILITY									PERSONAL & ADV INJURY \$
	ANY AUTO ALL OWNED AUTOS									GENERAL AGGREGATE \$
	HIRED AUTOS									PRODUCTS - COMPROP AGG \$
	UMBRELLA LIAB									COMBINED SINGLE LIMIT (Ea accident) \$
	EXCESS LIAB									BODILY INJURY (Per person) \$
	DED									BODILY INJURY (Per accident) \$
	RETENTION \$									PROPERTY DAMAGE (Per accident) \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY									EACH OCCURRENCE \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)									AGGREGATE \$
	If yes, describe under DESCRIPTION OF OPERATIONS below									PER \$

This section should reference the job number, project name, and/or location.

General Liability - Certificate Holder is an Additional Insured Per Attached Form CG 20 38 04 13 Per Written Agreement Waiver of Subrogation included. RE: Project #103

CERTIFICATE HOLDER

Public Entity #1
#1 Heartbreak Road
TooManyLawyers, LA

This should name you.

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Signed by the broker only.

CERTIFI

ACORD 25 (

CG 20 37

Additional insured endorsements will sublimit the amount of coverage available based on the contractual requirements.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations

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

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

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

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©Insurance Services Office, Inc.

Certificate of Insurance Checklist

- Current date of issue.
- Insured name must be the same as in the written contract.
- “Occurrence”, rather than claims-made, box is marked
- The “Per Project Aggregate” box must be checked.
- All policy periods must be active and the contract date should fall within them. (Insurance Monitor should diary for policy expiration.)
- All coverages required by the RFP or bid specifications are listed.
- Limits for each policy must total amount of coverage required in contract.
- Description of operations must detail project, location and/or project number.
- Additional Insured and Waiver of Subrogation boxes are marked and language is included under “Description of Operations.”

Checklist Continued...

- Certificate Holder must list your Agency name and address.
- Policy numbers are listed for each coverage.
- “Any proprietor/partner/executive officer/member excluded?” is marked No or excluded persons are listed under “Special Provisions” and not allowed on site.
- The Certificate should have an original signature from the Broker, not the Insured, as Authorized Representative.
- The Certificate must be accompanied by a separate “Additional Insured” Endorsement on Forms CG 20 10 and CG 20 37.
- The policy number referenced on the Additional Insured Endorsement should be the same as on the General Liability line on the Certificate.
- The Named Insured on the Additional Insured Endorsement should be the same as on the Certificate and as in the contract.
- A Primary Insurance Clause should be typed on the bottom of the Additional Insured Endorsement or CG 20 01.

Certificate of Insurance Reminder



✓ = Nothing



✓ = Piece of Paper with Your Name On It



✓ = Additional Insured Status Under Policy's Insured Contract Provision

A.M. Best Ratings

- Insurer rating company
- Financial Strength Rating: A++ to F

Secure

A++, **A+** (Superior)

A, **A-** (Excellent)

B++, **B+** (Good)

Vulnerable

B, **B-** (Fair)

C++, **C+** (Marginal)

C, **C-** (Weak)

D (Poor)

E (Under Regulatory Supervision)

F (In Liquidation)

S (Rating Suspended)

NR=Not Rated

A.M. Best Ratings (continued)

- Financial Size Category: I to XV

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

www.ambest.com

Questionable Insurance

- Limits do not meet insurance requirements
- No additional insured endorsement
- Company's A.M. Best rating below insurance requirements
- Risk retention groups (*unless A.M. Best rated*)
- Self-insurance funds (*except WC*)
- Claims-made coverage (*some exceptions*)

Indemnity vs. Duty to Defend

Know the Differences

- Defense and indemnity clauses are routine devices used in contracts to shift responsibility for potential risks from one project participant to another.
- The terms defend and indemnify often appear in the same clause, but they are each typically understood to impose different obligations.
- It is critical to understand: (1) the difference between the duty to indemnify and the duty to defend and (2) that in some jurisdictions, an indemnity obligation automatically carries with it the duty to defend regardless of whether the duty to defend is expressly stated.

Indemnity vs. Duty to Defend: Know the Differences and Potential Critical Variations in State Law by Sean McChristian

https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/summer/indemnity-vs-duty/

Defense and Indemnity vs. Additional Insured

How do they interact?

- The term indemnify is generally interpreted as imposing an obligation on one party (the indemnitor) to pay or compensate the other party (the indemnitee) for certain legal liabilities or losses, but that obligation does not typically arise until the end of a case when the indemnitee has had a judgment entered against it for damages or has made payments or suffered actual loss.
- An insurer's duty to defend is broader than its duty to indemnify, and is typically triggered anytime a potentially covered claim or suit is brought.

INDEMNIFICATION-HOLD HARMLESS

- The Trinity:
 - Indemnify = Indemnitor will **directly reimburse** Indemnitee for any payments made
 - Defend = Indemnitor/Insurer will **provide legal defense or pay defense costs** for Indemnitee
 - Hold Harmless = Indemnitor will **pay losses on behalf of** Indemnitee and will hold Indemnitee harmless from any financial loss (waiver of liability)

INDEMNIFICATION-HOLD HARMLESS (Cont)

- *"The Contractor agrees to save and hold harmless, protect, defend, and indemnify the State of Louisiana, Agency Name, its officers, agents, employees and volunteers..."*
- Both parties can agree to share responsibility when both contribute to a loss
- L.R.S. 38:2195 – State cannot assume another party's negligence

Indemnification-Hold Harmless Agreement

Contractor agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers.

Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent.

Indemnification-Hold Harmless Agreement

Indemnifying the contractor – What are we looking for?

Type of Contract: Computer Software Services provided by an Agency to a Company

Agency agrees to indemnify, defend and hold harmless Company and its officers, directors, employees, **contractors, subcontractors**, and agents (the “Company Indemnified Parties”) from and against any and all third party claims, demands, costs, damages, settlements and liabilities (including all reasonable attorneys' fees and court costs) of any kind whatsoever, arising directly or indirectly out of (a) the alleged infringement or misappropriation of intellectual property by Agency in the performance of the Services **or arising from Company’s use of the Deliverables**; (b) the gross negligence or willful misconduct of Agency; and (c) **a breach of this Agreement by Agency**.

Company Indemnified Parties shall provide Agency with prompt written notice of any such claim. **Company** shall have the authority to provide **the defense counsel of their choice at Agency’s sole cost and expense** for the defense of any such claim. Agency and Company Indemnified Parties **must** participate in the defense of any claim through their own counsel, and at their own expense.

Indemnification

- In general, you want to make sure that **someone** is responsible for the damages
 - If everyone just indemnifies each other, leave it up to the court to interpret
- Absent exceptional circumstances, the person who is **legally** responsible for the damages should also be the person who is **factually** responsible for the damages
 - Don't take on liability that you don't create if you don't have to (ex: take it or leave it with limited bargaining power)
 - Beware of relying on a contract that puts too much of your fault on someone else

Force Majeure and COVID

- To assess whether COVID-19 may be considered as a force majeure event, the courts will have to determine if the disease constitutes a foreseeable contingency for which *reasonable measures* could have been taken by the affected party.
- The event hindering the performance of the contract should be:
 - External (i.e., outside the contracting parties' control).
 - Unforeseeable at the time the contract was agreed upon.
 - Unpreventable or unavoidable (through the exercise of reasonable diligence by the contracting party).

Limitation of Liability Clauses

- For all other claims, including but not limited to claims arising from a breach of security obligations and arising from a data breach incident of the State's confidential data ("Data Breach"), against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, the Contractor's liability for direct damages, shall be limited to the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract. In the case of a claim related to a Data Breach, the Contractor's liability will be limited to the coverage requirements set forth in Attachment VIII: Insurance Requirements for Contractors, A. 4. Cyber liability insurance. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect, punitive or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

COMMON ERRORS

- Neglecting to review certificates
- Incomplete insurance requirements
- Using outdated insurance requirements
- NO insurance requirements in bid
- NO indemnification/hold-harmless agreement
- Insurance Company A.M. Best Ratings - taking company's word on it
- Not enforcing insurance requirements

Other Insurance Terminology

- See Manual Chapter 3, Page 6
- Occurrence vs. Claims-Made Policies
- Insurance Coverage Definitions & Examples
- Indemnification Agreement Explanation

Questions?

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Contract Manual Link:

<https://www.doa.la.gov/media/lugfise1/contract-manual-12-2019.pdf>