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Thank you for taking the time to review this guidance manual. The University of Arizona annually enters into hundreds of contracts with outside entities and individuals, and some of the most common issues requiring further negotiation and modification are insurance provisions, indemnification, waivers of subrogation, limitations of liability, and any other contractual provision that impacts the risk being assumed by either party. This document has been developed by RMS to assist those who negotiate university contracts, and to give others an appreciation of the importance of these topics.

In simple terms, a contract is a written agreement between two or more parties that serves to assign responsibilities and obligations. Example – ABC Glass agrees to come to our campus and repair broken windows, and for that service the UA will pay them a fee. If it were only that simple! Within that simple transaction, good business practice goes beyond the basic exchange of money for service in the contract, and has the goal of apportioning risk between the parties if something goes wrong, also known as risk transfer. This is accomplished in the contract through several strategies as outlined below:

1. Insurance Requirements and Endorsements – Companies that do work for the UA are expected to have insurance to cover losses that might arise from their work. By reviewing the scope of work, RMS works with contracting officials to specify the types and amounts of insurance that should be required from the company or vendor. Compliance with insurance requirements by the vendor is usually verified by a Certificate of Insurance, issued by the vendor’s insurance company. In some situations, vendors don’t carry insurance or they carry much lower limits than the UA’s standard requirement, and request a waiver. RMS works with contracting officials, and user units to discuss the risk associated with their work, and makes a determination of whether to approve such a waiver request. Waivers are generally only approved for work that occurs off-campus, and involves very low or negligible risk exposure.

2. Indemnification and Hold Harmless Provisions – These are special clauses in contracts that assign to one or both parties a legal obligation to pay for loss expenses incurred by the other party. For example, suppose ABC Glass is working on the UA campus, and drops a pane of glass from a ladder, and it injures a UA student walking beneath. The UA didn’t cause this loss event, but it happened on our premises, at our invitation, so it would not be unusual for the injured student to make a liability claim against the UA. If the UA is indemnified by ABC Glass in our contract, then ABC Glass’s insurance company hires legal counsel to defend the UA, and pays any damages on the UA’s behalf. The specific wording and scope of indemnification provisions is often a negotiable issue where minor wording changes can mean a substantial shift in risk transfer.
3. Waivers of Subrogation – Subrogation occurs when a party that has had to pay for a loss, seeks recovery of that payment from other potentially responsible parties, including the other party to the contract. A waiver of subrogation is an agreement in advance that the party which makes payment for a loss will not seek recovery from the other party. Sometimes these waivers can be mutual, or be limited in scope to only certain types of loss expense.

4. Limitations of Liability – Even with insurance and indemnification provisions in a contract, sometimes one or both of the parties will insert a clause that limits their liability for losses to a capped dollar amount, or perhaps to the dollar value of the contract, or sometimes to a percentage of available insurance coverage. Such limitations are usually not in the UA’s best interest, particularly if the limitation proposes a connection to the dollar value of the contract. There is generally no correlation between the dollar value of a contract, and the potential dollar value of a loss event that could arise and impact the vendor and the UA. For this reason, RMS will almost always recommend against such limitations of liability, unless the work to be performed has negligible risk exposure.

The remainder of this document provides additional detail about the risk transfer strategies described above, and provides specific examples of wording that can be accepted, versus those that must be rejected, and those that fall somewhere in the middle. Again, thank you for taking the time to review this material, please consider RMS a resource to assist with these issues whenever they arise.
RISK MANAGEMENT SERVICES ORG CHART

220 W. Sixth Street, Tucson AZ 85701-1014
P.O. Box 210300 Tucson, AZ 85721-0300

Chief Risk Officer,
Risk Management Services
Steven C. Nelson
(520) 621-1790

Assistant Director, Insurance
Programs
Miguel Delgado
621-5932

Program Coordinator, Senior Worker's Compensation
Anna Urraza
621-5926

Program Coordinator
Property Claims
VACANT
621-1790

Risk Management Services

Updated July 2019

Director, Occupational and Environmental Health & Safety
University Fire Marshal
Heidi Wagner
621-7651

Business Manager
Linda Steckemper
621-3591

Administrative Assistant
Maghan Qualey
621-1790

Assistant Director, Insurance
Programs
Miguel Delgado
621-5932

Program Coordinator, Senior Worker's Compensation
Anna Urraza
621-5926

Program Coordinator
Property Claims
VACANT
621-1790

Fire/Building Safety & Plan Review

University Assistant Fire Marshal
Ann Safery
621-1572

University Fire Inspector
Jeff Warren
621-3923

Occupational Safety

Health Safety Officer
Frank Peres
621-8739

Student Assistant
Pest Safety - Levy Caball
621-2707

Student Assistant
Blue Light & AED
621-5384

Occupational Health & Industrial Hygiene

Manager, Industrial Hygiene Program
John Murphy
621-4551

Health Safety Officer
Bob Ross
621-1579

Industrial Hygienist
Lorraine Serrano
621-1505

Health Safety Specialist
Jared Garcia
621-1040

Health Safety Specialist
Charity Madrid-Torres
621-1136

Environmental Compliance

Manager, Environmental Programs
Jeff Christiansen
621-1590

Hazardous Waste Supervisor
Joe Dinh
621-5961

Hazardous Waste Specialist
Mike Holcomb
621-8782

Hazardous Waste Specialist
Mike Garcia
621-5250

Hazardous Waste Specialist
Armindo Jimenez
621-7796
STANDARD INSURANCE REQUIREMENTS

As a risk management best practice, the UA requires vendors, contractors, consultants, service providers, and short-term tenant users to carry insurance for the express purpose of covering losses that might arise from their negligence. An individual or organization that performs a particular activity is generally held responsible for losses caused by that activity. Furthermore, loss exposures should be assumed by those most qualified to control them and the UA should not be financially responsible for claims or lawsuits arising from the negligence of an outside party.

The possibility of a liability loss exceeding $1 million dollars exists for virtually every organization, regardless of the size, type of product, or services offered. No million-dollar verdicts occurred in the U.S. before 1962, but according to the 2007 edition of Current Award Trends in Personal Injury, in 2004-2005 in the U.S., 64% of products liability awards, 55% of medical professional awards, 13% of premises liability awards, and 5% of vehicular liability awards were for $1 million dollars or more. ¹

In light of this information, RMS is tasked with the critical responsibility of analyzing various scopes of work and activity descriptions to identify both risks and the types and amounts of insurance that should be required from the company or vendor.

Standard Requirements

The following requirements are intended to serve as a baseline for most contractual agreements with third-party vendors. When deemed appropriate and acceptable, minor changes may be allowable to both the types of coverage and coverage limits required in a specific agreement. The UA’s standard insurance requirements are not intended to be a universal solution for all agreements, but rather a starting point to adequately safeguard the UA from the specific loss exposures generated by the scope of work or activities associated with the agreement.

Standard Insurance Requirements

Contractor shall provide coverage with limits of liability not less than those stated below. With respect to (A) and (B) below, the policy shall be endorsed to include the State of Arizona, the Arizona Board of Regents, and the University of Arizona as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor. The policy shall contain a waiver of subrogation endorsement, in favor of the State of Arizona, the Arizona Board of Regents, and the University of Arizona for losses arising from the work performed by or on behalf of the Contractor.

A. Commercial General Liability. Minimum of $1,000,000 Each Occurrence, $2,000,000 General Aggregate

B. Commercial Automobile Liability. Minimum of $1,000,000 Combined Single Limit (CSL) each occurrence.


D. The Additional Insured Box ("ADDL INSR) must be checked on the COI.

E. The certificate provided shall clearly establish vendor/contractor’s insurance as PRIMARY with respect to any other insurance or self-insurance programs available to the University of Arizona.

Notably, the opening paragraph of our standard requirements address addresses the following substantive matters:

1- Additional Insured Endorsement- By requiring this endorsement, the UA/ABOR/SOA are added as an additional insured to the contractor’s insurance policy and therefore granted the rights of the insured, particularly the right to tender liability claims directly to the insurance carrier providing the coverage.

2- Waiver of Subrogation- By requiring this endorsement, the vendor and/or their insurance carrier is prohibited from filing a claim or lawsuit against the UA/ABOR/SOA to recover monetary damages paid to a third party as the result of a claim or lawsuit.

Additional Insurance Requirements

Professional Liability

Depending upon the scope of services, the vendor may be required to carry Professional Liability insurance, also known as “Errors and Omissions” coverage. Professional Liability insurance protects against losses when “professional” errors in judgment, planning, or design could result in economic loss to the UA. When determining if Professional Liability insurance should be contractually required, the following two questions should be considered:

1- Is the individual or corporate entity required to be licensed or certified in order to provide services? (see below table for examples of common professions requiring licensure/certification)

2- Will the information developed by the professional be used in a decision making process with the institution that could create liability? (i.e. building construction, architectural plans, clinical trials, professional reports, etc.)

If the answer to either of these questions is yes, then Professional Liability insurance should be required.
Examples of Professional Services

<table>
<thead>
<tr>
<th>Accountants</th>
<th>Computer/Software Design</th>
<th>Insurance/Risk Management Consultants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraisers</td>
<td>Consultants</td>
<td>Medical Professionals</td>
</tr>
<tr>
<td>Architects</td>
<td>Childcare workers</td>
<td>Professional Managers</td>
</tr>
<tr>
<td>Auditors</td>
<td>Engineers</td>
<td>Project Management (construction, design)</td>
</tr>
<tr>
<td>Financial Advisors</td>
<td>Investment Consultants</td>
<td>Property Managers</td>
</tr>
<tr>
<td>Social Workers</td>
<td>Behavioral Health Counselors</td>
<td>Therapists (all types)</td>
</tr>
<tr>
<td>Instructors</td>
<td>Teachers</td>
<td>Real Estate Agents</td>
</tr>
</tbody>
</table>

The UA should not ask for “additional insured” status related to Professional Liability insurance policies.

Standard minimum limits for Professional Liability are $1M each claim/$1M annual aggregate. Higher limits may be required based on the specific scope of work.

Consulting Agreements

As outlined above, consulting agreements involving professional services that require licensure or certification will necessitate the requirement of Professional Liability insurance. For consulting agreements providing non-professional services in conjunction with low risk exposure services, RMS will consider waiving CGL requirements on a case-by-case basis. The consultant is still required to provide evidence of Workers’ Compensation insurance or complete a Sole Proprietor Waiver (explained below).

Cyber Liability/Data Breach Insurance and Tech Errors & Omissions Insurance

For contracts involving software designers, cloud storage providers, web design/hosting, IT services, application engineers/developers, or technology consultants, the UA may require either Cyber Liability/Data Breach insurance or Technology Errors & Omissions insurance or a combination of both coverages. Cyber Liability/Data Breach insurance provides coverage for both first-party breach expenses (breach notification to customers, credit monitoring services, public relations services) and third-party claims (defense and settlement costs). Tech E&O coverage is a form of Professional Liability coverage and is designed to cover financial losses to the company’s customer (the UA) as a result of an error or omission in the service or product supplied to the customer.

Liquor Liability

As a rule, basic commercial general liability policies exclude liquor liability for businesses who generate a profit from alcohol. Liquor liability insurance is designed to fill this gap and provides coverage for liquor-related claims. The coverage can be added as an endorsement to the CGL policy or purchased separately.
Vendors serving alcohol at any UA event are required to have liquor liability coverage. Additionally, any third parties holding events on UA property or in a UA facility in which alcohol is served are required to provide evidence of liquor liability coverage.

**Umbrella/Excess Liability**

Umbrella liability insurance and Excess liability insurance are insurance policies that sit or stack “over and above” underlying liability coverage limits. These policies provide higher coverage limits and greater levels of protection when the underlying coverage limits are exhausted. Umbrella policies and excess policies can be used to meet required coverage limits when underlying policies provide limits below the required amounts.

For example, if the UA requires a vendor to have CGL limits of $2M per occurrence and $4M annual aggregate and the vendor only carries CGL limits of $1M per occurrence and $2M annual aggregate but also has an umbrella policy with coverage limits of $3M per occurrence and $3M annual aggregate, the combined limits meet the limits requirement. As explained above, the umbrella policy's limits stack over the underlying limits, so the vendor effectively has limits of $4M per occurrence ($1M + $3M) and $5M annual aggregate ($2M + $3M).

**Commercial Auto MCS-90 Endorsement**

When contractors or vendors are responsible for transporting and/or disposing hazardous materials or pollutants (such as chemicals, petroleum products, asbestos, etc.), the commercial automobile liability policy shall include the MCS-90 (Motor Carrier Act) Endorsement. This endorsement ensures that federally mandated coverage (e.g. required liability limits, environmental restitution coverage) is in place and provides a guarantee that there will be a source of funds available to pay for bodily injury, property damage, or environmental restoration claims related to the spill or accidental discharge of hazardous materials.

**Pollution Liability (including Contractors’ Pollution Liability Coverage)**

Pollution liability coverage should be considered whenever the work at issue involves the handling of hazardous material or the operation of the contractor could create or exasperate an environmental hazard. Most if not all CGL policies purchased by contractors contain exclusions for environmental exposures such as pollution, bacteria, asbestos, lead, and contamination. Pollution liability covers losses related to bodily injury and property damage, including natural resource damage, cleanup costs, removal, storage, disposal, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
**Insurance Requirements Matrix**

The following matrix was developed to provide a quick overview of the UA’s insurance requirements. Additionally, the matrix helps categorize particular activities as having either low, moderate, or high risk exposure and assigns insurance requirements directly correlated to the level of risk.

**Low Risk Exposure** - The likelihood of an accident is negligible. If an accident occurs, the likelihood of injury or damage is minimal. The likelihood that an accident will result in a lawsuit is negligible. No work performed more than six feet off the ground. No construction work or other trade-related services. In general, does not occur in the public realm or occurs off-site.

**Moderate Risk Exposure** - Low to moderate chance of loss. Moderate injuries or property damage could occur. Contact with non-UA persons. Activities take place in the public realm.

**High Risk Exposure** - Moderate chance of loss. Severe injuries and property damage could occur. Contact with non-UA persons. Activities take place in the public realm. Services to minors.

**Professional Services** - Professional services generally require professional liability, which is explained above under “Additional Insurance Requirements.”

For specific coverage requirements, please consult with Risk Management Services.

### Risk Exposure Levels and Corresponding Coverage Requirements

<table>
<thead>
<tr>
<th><strong>LOW RISK</strong></th>
<th><strong>INSURANCE REQUIREMENTS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Examples of Low Risk Activities</strong></td>
<td><strong>Commercial General Liability</strong></td>
</tr>
<tr>
<td>§ Clothing repair</td>
<td>- $1,000,000 each occurrence</td>
</tr>
<tr>
<td>§ Data entry (non-PII, HIPAA, FERPA data)</td>
<td>- $1,000,000 personal/advertising injury</td>
</tr>
<tr>
<td>§ Note taking</td>
<td>- $1,000,000 products/completed operations aggregate</td>
</tr>
<tr>
<td>§ Transcription</td>
<td>- $1,000,000 general aggregate</td>
</tr>
<tr>
<td>§ Translation</td>
<td><strong>Workers’ Compensation</strong></td>
</tr>
<tr>
<td>§ Speaking engagements - (Taking place in a classroom or lecture hall setting) The following criteria must be met:</td>
<td>- Statutory requirement. Employers Liability</td>
</tr>
<tr>
<td>§ Primary activity is speaking or listening</td>
<td>$500,000 minimum</td>
</tr>
<tr>
<td>§ No professional training in the use of life safety or technical equipment</td>
<td><strong>When appropriate and on a case-by-case basis, Risk Management Services will consider waiving CGL requirements for activities that fully meet the definition of “low risk” activities as described in this section. Departments must complete the Request for Waiver of Insurance Requirements Form.</strong></td>
</tr>
<tr>
<td>§ No physical activities or lab activities</td>
<td><strong>The requirement for Workers’ Compensation cannot be waived, however vendors that identify as sole proprietors can utilize the Sole Proprietor Waiver form (see section below).</strong></td>
</tr>
<tr>
<td>§ No field trips or driving</td>
<td><strong>Workers’ Compensation</strong></td>
</tr>
<tr>
<td>§ Takes place on UA owned, leased, or rented property</td>
<td>- Statutory requirement. Employers Liability</td>
</tr>
<tr>
<td>§ No controversial social or political issues</td>
<td>$500,000 minimum</td>
</tr>
</tbody>
</table>
### MODERATE RISK

**Examples of Moderate Risk Activities**
- Automotive repair
- HVAC
- Appliance repair
- Art
- Athletic/exercise equipment
- Catering
- Computer repair/printer repair
- Delivery services
- Equipment rental
- Exhibitions
- Food services
- Furniture delivery/repair
- Landscaping/gardening/tree trimming
- Non-hazardous materials
- Pavement stripping
- Plumbing services
- Program/project management
- Waste recycling
- Towing
- Telecom services
- Vending machines

**INSURANCE REQUIREMENTS**
- **Commercial General Liability**
  - $1,000,000 each occurrence
  - $1,000,000 personal/advertising injury
  - $2,000,000 products/completed operations aggregate
  - $2,000,000 general aggregate
- **Commercial Automobile Liability**
  - $1,000,000 combined single limit (CSL) each occurrence
- **Workers’ Compensation**
  - Statutory requirement. Employers Liability $500,000 minimum
- **Professional Liability** (When applicable)
  - $1,000,000 each claim
  - $1,000,000 annual aggregate

When appropriate and on a case-by-case basis, Risk Management will consider waiving Commercial Auto Liability.

### HIGH RISK

**Examples of High Risk Activities**
- Air charters/aviation/airport
- Events with alcohol
- Boat charters
- Bus charters
- Child care
- Construction
- Crane rental/services
- Elevator maintenance/repair
- Hazardous materials
- Health care services
- Lab equipment/supplies
- Medical equipment/supplies
- Services to minors

**INSURANCE REQUIREMENTS**
- **Commercial General Liability**
  - Limits will vary at or above the following based on risk severity and loss exposure:
  - $2,000,000 each occurrence
  - $2,000,000 personal/advertising injury
  - $2,000,000 products/completed operations aggregate
  - $2,000,000 general aggregate
- **Commercial Automobile Liability**
  - $1,000,000 combined single limit (CSL) each occurrence
- **Workers’ Compensation**
  - Statutory requirement. Employers Liability $500,000 minimum
- **Professional Liability** (When applicable)
  - Limits will vary at or above the following based on risk severity and loss exposure:
  - $1,000,000 each claim
  - $1,000,000 annual aggregate

When appropriate and on a case-by-case basis, Risk Management will consider waiving Commercial Auto Liability.
### PROFESSIONAL SERVICES

**INSURANCE REQUIREMENTS**

- **See Above Examples of Professional Services**

- **Professional Liability**
  - Limits will vary at or above the following based on risk severity and loss exposure:
  - $1,000,000 each claim
  - $1,000,000 annual aggregate

- **Workers' Compensation**
  - Statutory requirement. Employers Liability $500,000 minimum

- The requirement for Workers' Compensation cannot be waived, however vendors that identify as sole proprietors can utilize the Sole Proprietor Waiver form (see section below).

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**Certificate of Insurance**

The insurance provisions in most contracts require the parties to provide written evidence that indeed have obtained the types and amounts of insurance coverage required by the agreement. This document is called a Certificate of Insurance, often identified by the acronym COI. The insurance industry uses standard forms for this purpose so there is consistency in format. The most commonly used form for commercial insurance is known as an ACORD form. An ACORD Certificate of Insurance summarizes the essential information about an insurance policy.

Completed Certificates of Insurance should contain the following information:

- Name and address of agent, phone number, and fax number
- Name of insurance company (ies) and policy number (s)
- Policy period (effective coverage dates are generally one year from date of inception, e.g. 5/1/2018 – 5/1/2019)
- Name and address of insured (the insured is the vendor/contractor who purchased the policy)
- Description of coverage (s)
- Policy limits
- Special instructions or terms of coverage (e.g. addition of the UA/ABOR/SOA as additional insured, waivers of subrogation, identification of project or operations with respect to the certificate being issued)
- The UA/ABOR/SOA listed as the Certificate Holder
- Signature of the insurer's agent or representative and date
Certificates of Insurance should be requested, received, and reviewed before the event or services take place. Please contact Risk Management with any questions related to COIs.

**Sole Proprietor Waiver**

As outlined above in the Standard Insurance Requirements, Workers’ Compensation insurance is required in all agreements. This is to comply with the compulsory Workers’ Compensation laws of the State of Arizona, A.R.S § 23-901 (et. seq.). Under Arizona law, it is mandatory for employers to secure Workers’ Compensation insurance for their employees. If an employer regularly hires workers in its customary business then the employer is required to carry Workers’ Compensation insurance regardless of the number of workers they have, whether those workers are part-time, full-time, minors, aliens, or family members. Additional details can be found here-
[https://www.azica.gov/sites/default/files/migrated_pdf/Claims_FAQs_WorkersCompensation.pdf](https://www.azica.gov/sites/default/files/migrated_pdf/Claims_FAQs_WorkersCompensation.pdf)

A notable exception to this requirement relates to Sole Proprietors. Sole Proprietors having no employees are not required to maintain Workers’ Compensation insurance on himself/herself. If there are any employees working for the Sole Proprietor, the Sole Proprietor must maintain workers’ compensation insurance on them. A.R.S. § 23-961(M) provides that a Sole Proprietor may waive his/her rights to Workers’ Compensation coverage and benefits if they have no employees. If a vendor asserts that they are a Sole Proprietor and not required to carry Workers’ Compensation, they should be asked to complete a Sole Proprietor Waiver. Completion of this form allows the UA to waive the requirement for Workers’ Compensation insurance.

**TULIP Policy**

As outlined in the above standard insurance requirements, third-party users of UA facilities (often referred to as temporary tenants) are required to provide evidence of CGL insurance. The purpose of this requirement is to protect the UA and the facility user from third-party liability claims for bodily injury or property damage related to the activities taking place in the UA facility. Many of these users are not commercial entities and generally do not carry CGL insurance.

To assist facility users with the procurement of the required CGL insurance coverage, the UA is pleased to offer access to the URMIA (University Risk Management & Insurance Association) TULIP Plus Program. The TULIP policy is a Tenants’ and Users’ Liability Insurance Policy designed to provide low cost general liability insurance to third-party users of UA facilities. There is no cost to the UA for this program and the tenant user only pays for the policy they actually purchase. Premiums are calculated based on the type of event, the number of days, number of attendees, and selected coverage limits. The base policy provides CGL coverage of $1M per occurrence with excess limits available up to $5M. Additionally, liquor liability coverage can be added for approved events in which alcohol is served.
Policies can be purchased for one day events or events lasting several days. A key benefit of the TULIP is that purchase documentation is automatically sent to RMS and the additional insured requirement is automatically incorporated into the policy, which eliminates the need for the UA department or facility to follow-up with the user to ensure compliance with the requirements.

Interested parties can be directed to the TULIP website for a quick quote-https://tulip.ajgrms.com/, To start to the “quick quote” process, potential customers should select the Arizona as the state in which the event will be held and the University of Arizona as the Location/Institution. After the UA has been selected, users are given a choice of venues and should select the venue where the event is taking place.

**INDEMNIFICATION**

**Indemnification Explanation**

According to Black’s Law Dictionary\(^2\), the word “indemnify” is defined as “a duty to make good any loss, damage, or liability incurred by another.” Indemnification is the act of not being held liable for or being protected from harm, loss, or damages, by shifting the liability to another party. By contractually requiring that all vendors, contractors, consultants, and tenants agree to indemnify the State of Arizona, the Arizona Board of Regents, and the University of Arizona, the UA is able to implement an effective Contractual Risk Transfer program.

In simple terms, if the UA is named in a third-party claim or lawsuit based on negligence or torts (wrongful acts) arising from the scope of work, activities, or event related to the contractual agreement (Facility Use Agreement, Independent Contractor/Consultant Agreement, Outside Professional Services Agreement etc.), the other party is required to financially absorb those losses and defend the UA.

By requiring indemnification, the UA is seeking protection from any harm arising out of or connected to any party of the agreement or relationship. The only notable exception to this is found in the second to last sentence in our standard indemnification language (see below), in which the clause clearly establishes that the contractor’s indemnity obligation shall not extend to any liability caused by the sole negligence of the UA.

**Standard Indemnification Language**

“Contractor shall indemnify, defend, and hold harmless to the fullest extent allowed by law the State of Arizona, the Arizona Board of Regents and the University, its officers, agents, and employees (“Indemnitees”) from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including attorney’s fees and/or litigation expenses, which may be brought or made against or incurred on account of breach, or loss of or damage to any property, or for injuries to or death of any person, or financial loss incurred by Indemnitees, caused by, arising out

of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of Contractor, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of the Agreement, or arising out of Workers Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of Contractor and/or its subcontractors of claims under similar such laws and obligations. Contractor’s obligation under this provision shall not extend to any liability caused by the sole negligence of the State of Arizona, Arizona Board of Regents, University or its officers, agents, and employees. Such indemnification shall specifically include infringement claims made against any and all intellectual property supplied by Contractor and third party infringement under the Agreement.”

Any attempts by an outside party to change or modify our standard insurance language should be thoroughly scrutinized. The UA’s standard indemnification clause is carefully crafted to provide a comprehensive level of protection against third-party claims and lawsuits arising out of or in connection the contract.

**Third Party Agreements with Public Entities**

On a frequent basis, the UA enters into agreements with a wide variety of public entities, including cities, towns, counties, public school districts, public universities and other state and federal entities. Based on the nature of these agreements and our high level of confidence that other public entities are adequately insured (by statute in many cases), the UA is able to replace standard indemnification language with “Mutual Indemnification” language. The language provided below has been authorized by the Arizona Department of Administration, Risk Management Division, and does not require additional approval.

“Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. The State of Arizona, (State Agency) is self-insured per A.R.S. 41-621.”
STATE EXCEPTION REQUESTS

The University of Arizona participates in a program of self-insurance which provides coverage against loss for its employees, officers, and agents under the provisions of Arizona Revised Statutes §41-621 et seq. The scope of this statutory self-insurance program includes general, auto, and professional liability, worker’s compensation, and coverage of university property. Eligibility for liability coverage also includes volunteers working under the University’s direction and control, and to student interns, externs, residents, and fellows enrolled in University professional training programs. Workers’ Compensation coverage for state employees is self-insured in accordance with other provisions of the referenced statute. The enabling statute does not specify dollar limits of coverage, or an expiration date. This program is administered by the Arizona Department of Administration, Risk Management Division (ADOA-RMD).

The Arizona Board of Regents on behalf of the University of Arizona (“ABOR”) is a public institution and instrumentality of the State of Arizona and, as such, any indemnification, hold harmless or defense provision is limited as provided by the laws of the State of Arizona, including without limitation Article 9, Sections 5 and 7 of the Arizona Constitution and Sections 35-154 and 41-621 of the Arizona Revised Statutes. Consequently, the University of Arizona is limited in its ability to provide indemnification to other parties in contracts, and is prohibited from naming non-state entities as additional insured parties under the State of Arizona self-insurance program.

From time to time, for a variety of essential business purposes, the UA is required by an outside party to contractually agree to terms that we generally prohibited from agreeing to in contract. Here are several examples of terms that the UA, under normal conditions, is unable to agree to in contract:

- Indemnity Provisions (contract language obligating the UA to defend, indemnify, or hold-harmless the other party)
- Additional Insured Endorsement (contract language requiring the UA to grant additional insured status to the other party on our State-issued insurance policy)
- Waiver of Subrogation (contract language requiring the UA to waive subrogation rights against the other party/the other party’s insurer on behalf of our insurer, ADOA-RMD)

To support the UA with the capacity to enter into essential agreements containing prohibited language, ADOA-RMD has implemented an Exception Request process in which state entities can formally request exceptions to the above restrictions.

Please contact RMS directly if you need assistance with executing a contract or agreement that contains any of the above referenced prohibitions. RMS can review the document and help determine whether a state exception is needed to proceed. If State approval is needed, RMS will need a clean copy of the agreement (no redlines) for submittal to ADOA-RMD. Once sent to ADOA-RMD, the approval process ordinarily takes 2-5 business days.
LIMITATIONS OF LIABILITY

With increasing frequency, outside vendors are attempting to insert contract clauses commonly referred to as “Limitations of Liability.” These clauses aim to limit or cap the amount of the vendor’s liability to a specific dollar amount. In many cases, the specific dollar amount of the proposed cap is the total dollar amount of the contract or the fees paid under the contract.

Here are several examples of Limitation of Liability clauses:

- To the fullest extent permitted by law, the total liability, in the aggregate, of Consultant, Consultant’s officers, directors, partners, employees, agents, and subconsultants, to Client, and anyone claiming by, through, or under Client for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to this Project or Agreement from any cause or causes, including but not limited to negligence, professional errors and omissions, strict liability, breach of contract, or breach of warranty, shall not exceed the total compensation received by Consultant or $50,000 whichever is greater.

- Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages up to the aggregate amount of funding disbursed as of the time the dispute arises.

- COMPANY WILL NOT BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL COMPANY’S AGGREGATE LIABILITY UNDER THIS MSA OR ANY AGREEMENT EXCEED THE FEES PAID TO COMPANY HEREUNDER OR THEREUNDER (AS APPLICABLE) DURING THE 12 MONTHS PRECEDING THE OCCURRENCE OF THE CLAIM, AND NO CLAIM MAY BE BROUGHT MORE THAN 24 MONTHS AFTER CLIENT KNEW OF OR REASONABLY SHOULD HAVE KNOWN OF THE CLAIM. THE PARTIES AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS MATERIAL TO THE AGREEMENT AND IS A SIGNIFICANT CONSIDERATION IN COMPANY’S WILLINGNESS TO ENTER INTO THIS AGREEMENT.

As noted above, the specific language in each example slightly differs, but the primary intent in each case is to limit the aggregate total of liability related to claims to an amount commensurate with the contract value. From a risk management perspective, this is extremely troublesome as there is generally very little correlation between the project value and the potential risk exposure that might be associated with it.

To further demonstrate these concerns, consider the following scenarios:
- **Scenario One**: The UA hires an Electrical Contractor to perform electrical work related to a building renovation. The contract value is $25,000.00. The vendor performs a faulty installation of an electrical outlet, which later causes a fire. The fire burns down the entire building with a total loss amount of $2,000,000.00.

- **Scenario Two**: The UA enters into a service contract with a software developer to purchase a computer program that will be used in the administration of workers’ compensation claims. The contract value is $75,000.00. A programming error by the vendor is directly responsible for a data breach of sensitive employee information. The total costs associated with the data breach are $3,000,000.00.

As evidenced in the above examples, the potential risk exposure (in dollars) has absolutely no correlation with the dollar amount of the contract or agreement. In either case, it would have been detrimental to the UA had an enforceable limitation of liability been agreed to.

With respect to potential solutions when a Limitation of Liability clause creates a gridlock in contract negotiations, one option is for the UA to request a Limitation of Liability proportionate to the coverage limits as established in the contract’s insurance requirements.

### RENTAL VEHICLES

**UA/State of Arizona Rental Vehicle Contracts**

When the need arises for a UA department or employee to rent a vehicle, travelers should utilize the existing State of Arizona contracts with either Enterprise Rent-a-Car/National Car Rental or Hertz Car Rental. The State’s contracts with Enterprise and Hertz include coverage for a collision damage waiver (CDW) and liability coverage (coverage limits of $100,000/$300,000/$50,000) within the rate structure, at no additional cost to the UA. Contract details are available below. When making a reservation, it is imperative to reference the agreement/contract number. RMS strongly encourages the use of these pre-negotiated rental agreements as they prevent the UA from being exposed to additional claims for vehicle damage or third party liability.

**Enterprise/National**: Agreement #XZ50223-
[https://risk.arizona.edu/sites/default/files/university_of_arizona_enterprise_rental_program_summary_11-17-15_00000002.pdf](https://risk.arizona.edu/sites/default/files/university_of_arizona_enterprise_rental_program_summary_11-17-15_00000002.pdf)

**Hertz**: Agreement CDP#66596-
[https://risk.arizona.edu/sites/default/files/hertz_programsummary_00000002.pdf](https://risk.arizona.edu/sites/default/files/hertz_programsummary_00000002.pdf)

**Rental Vehicle Claims when the UA/State of Arizona Contract is Not Used**

If a rental car (when the State of Arizona rental contract is not used) is damaged while in U of A use, the rental agency must make a liability claim against the State to obtain recovery of the damages. Always report damage immediately to the rental car agency, and refer them to RMS for
guidance and claim instructions. For U.S. rentals (when the State of Arizona rental contract is not
used), driver should decline all insurance offered by the rental agency, which typically will include
a loss damage waiver or collision damage waiver (LDW or CDW) and any supplemental liability
coverage.

Liability incurred while using a rental vehicle on authorized UA business is covered by the State
Risk Management self-insurance program. Rental vehicles used for non-business personal travel
are not covered by UA insurance. Drivers who wish to combine personal use with UA business use
(example - vacation time following a conference) should consider their need for additional
insurance, at their own expense.

**International Commercial Rental Vehicles**

When traveling internationally and renting a vehicle, RMS *strongly recommends* the purchase
of a loss damage waiver (LDW) or collision damage waiver (CDW), if offered by the rental vendor.
Purchasing the LDW or CDW will inhibit vehicle damage charges to a user’s personal credit card or
UA department PCard.