



BFB-BUS-63: Risk Transfer and Insurance Requirements ~~and Certificates of Insurance~~

Responsible Officer:	Chief Risk Officer
Responsible Office:	RK – Risk / EH&S
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I. POLICY SUMMARY

This policy establishes the required indemnification and insurance provisions to be included in contracts between Contractors/External Users and the University. These requirements must be included in the contract as a contractual obligation that must be complied with by the Contractor/External User before commencing work, providing goods, or using University facilities.

This policy also provides general guidelines for minimum insurance requirements to be included in the contract and maintained by the Contractor/External User.

II. DEFINITIONS

Certificate of Insurance: ~~A document that provides evidence that an individual or entity has adequate insurance coverage in force to protect the interests of the University (and other parties when necessary).~~ A document that provides evidence that an individual or entity has the necessary insurance coverage in force to satisfy the insurance requirements in the contract which are intended to provide a financial vehicle to satisfy the individual's or entity's indemnification obligations.

Contractors: Independent contractors, consultants, suppliers, vendors, or other service providers providing goods or services under a contract, purchase order or other written agreement with the University.

External Users: Non-University individuals or groups using University facilities, such as support groups, registered student organizations, or commercial tenants.

Indemnification: ~~An agreement to accept responsibility for another party's conduct, through the payment for defense costs and ultimate settlement and/or judgment on behalf of the other party.~~ An agreement by one party (the indemnifying party) to compensate the other party (the indemnified party) for certain costs and expenses, typically stemming from third-party claims.

Severability of Interest: An insurance policy provision indicating that the insurance applies to each insured as though a separate policy were issued to each (except as to policy limits). This would allow coverage to the University if it is sued by the Contractor/External User~~Vendor~~, if otherwise covered under the policy.

III. POLICY TEXT

- A. All agreements between Contractors or External Users and the University must include, as part of the contract:
1. A provision to defend, indemnify and hold harmless the University from losses, expenses, damages and liabilities~~injury or damage~~ caused by or as a result of the Contractor/External User's negligent or intentional acts arising out of the performance of the contract.
 2. A requirement that the Contractor/External User maintain certain levels of insurance (See Section V. below and Minimum Insurance Requirements (<http://www.ucop.edu/risk-services/risk-financing-claims/certificates-of-insurance.html>)¹)

¹ For international agreements please consult your local Risk Management Office as insurance markets, available coverages and limits vary by country.

3. A requirement that the Contractor/External User add the University as an additional insured, ~~and~~ This can be accomplished with a Blanket Additional Insured provision in their policy or through a specific endorsement.
 4. A requirement that the Contractor or External User provide a Certificate of Insurance showing evidence of compliance with the established minimum insurance requirements (or a signed statement from an authorized officer if the entity is self-insured) prior to commencing work, providing goods or services, or using University facilities. ~~See Section III-B below~~
- B. An agreement between Contractors/External Users and the University *may not* include an agreement by which the University assumes liability for conduct of persons other than University officers, agents, employees, students, invitees, and guests. See Regents' Standing Order 100.4(dd)(9).
- C. Under the terms and conditions of any contract, purchase order or other agreement, the non-University entity is required to show evidence of adequate insurance coverage by furnishing a Certificate(s) of Insurance indicating compliance with all requirements. Including the following:
- ~~C. All Certificates of Insurance issued to the University by the Contractor/External User must:~~
- ~~2.1.~~ Require advance written notice to the University in accordance with policy provisions, of any modification, change, or cancellation of any component of the insurance coverage;
 - ~~3.2.~~ Indicate that The Regents of the University of California are an additional insured as described in the contract, ~~except for Professional Liability and Workers' Compensation Insurance;~~
 - ~~4.3.~~ If Professional Liability (Errors & Omissions) coverage is required, include certification that the insurance policy for Professional Liability (Errors & Omissions) coverage includes contractual liability coverage for liability that would exist in the absence of the contract;
 - ~~5.4.~~ Include certification that the General Liability coverage contains a Severability of Interest provision and shall be primary insurance as respects the University, its officers, agents and employees, and that any insurance or self-insurance maintained by the University shall be excess of and non-contributory with such insurance.

IV. COMPLIANCE / RESPONSIBILITIES

A. Campus and Medical Center Responsibilities

1. Chancellors (or designee) ~~or local Risk Management Offices~~ will ensure the requirements described in this Policy have been met *before* the commencement date of a contract, purchase order, or other agreement.

~~3.2.~~ Campuses and medical centers must abide by the Minimum Insurance Requirements, unless they determine that an exception (pursuant to Section IV.A.3 below) is appropriate.

~~4.3.~~ Exceptions to the Minimum Insurance Requirements must be reviewed and approved by the local Risk Manager (or designee) (please see local Risk Manager contacts in section VI.).

~~a.~~ In certain situations, a local Risk Management Office may develop exceptions to the Minimum Insurance Requirements. The exceptions must be developed in consultation with the campus or medical center administrators.

Any exception process should be reviewed and approved by appropriate senior leadership and/or administration. Any exception within that process should be developed in consultation with the applicable contracting and compliance departments. In some instances, a local Risk Management Office may determine that additional risk is involved and higher limits or additional insurance lines are required, while in other instances a local Risk Management Office may determine that lower limits are adequate for the risk involved justified.

~~b.~~ In the event the local Risk Management Office and the campus or medical center administrators do not concur, the final determination will be made by the University Chief Risk Officer (or designee).

~~5.4.~~ Exceptions to the Contractor/External User's indemnification requirements must be reviewed and approved by the local Risk Manager (or designee) or UC Legal and the Office of General Counsel.

~~5.~~ Exceptions to certificates of insurance requirements must be approved by the local Risk Manager (or designee). The local Risk Manager should have an exception process reviewed by senior leadership and/or administration by which they can determine whether a Contractor/External User has the necessary financial resources to guarantee payment if and when required to indemnify and defend the University pursuant to the contract.

~~0.~~ Large companies are often self-insured, and may not be able to provide a Certificate of Insurance. As an option, the local Risk Manager may obtain a statement signed by an authorized corporate officer assuming liability on behalf of the company. The local Risk Manager shall, however, determine that a self-insured company has the necessary financial resources to guarantee payment if and when required to indemnify and defend the University pursuant to the contract. A determination as to necessary financial resources depends on the type of business and is as follows:

~~— Non-Publicly Traded Entity: a debt to net worth ratio of no more than 60%. The formula used is: (Current Liabilities) divided by (Tangible Net Worth) = Current Debt to Net Worth Ratio~~

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~~—Publicly Traded Entity: a credit rating of A or better from Standard and Poor's or a similar rating agency.~~

~~—Public Agency~~

~~In evaluating the acceptability of an entity's self insurance, the local Risk Management Office should obtain a recently audited financial statement and a description of the entity's self insurance program, including information on how the program is funded.~~

H.B. Office of the President Responsibilities

1. The Office of Risk Services shall maintain Minimum Insurance Requirements that establish the minimum insurance requirements for various University activities. The Minimum Insurance Requirements will be updated as necessary and posted on the Office of Risk Services website.
- ~~2. The Chief Risk Officer is responsible for the development of the policy regarding Certificates of Insurance.~~
- ~~3.2.~~ The University Chief Risk Officer (or designee) will periodically audit and review Certificates of Insurance issued on behalf of or to the University of California, including terms and conditions for any exceptions made by the local Risk Management office. The local Risk Management Office must maintain records of exceptions and make the records available for audit. Based upon the audit and review, the University Chief Risk Officer may issue additional guidelines as needed that may limit the range of exceptions allowed at the local level.
- ~~4.3.~~ In the event the local Risk Management Office and the campus, health centers and/or appropriate department(s) do not concur regarding exceptions to the Minimum Insurance Requirements, the final determination will be made by the University The Chief Risk Officer (or designee), ~~(see Section IV.A.3.) as necessary, will make the final determination for any exceptions to the Minimum Insurance Requirements.~~
- ~~5.4.~~ The Office of Risk Services, as necessary, will assist in developing exceptions to the established Minimum Insurance Requirements.
- ~~6.5.~~ UC Legal or the UCOP Research Policy Analysis and Coordination office ~~The Office of General Counsel~~ will advise on ~~and approve~~ exceptions to the ~~established~~ indemnification requirements mandated in Standing Order 100.4(dd)(9); in subawards, material/data transfer agreements, or land access agreements, all in furtherance of research, teaching, and public service. UC Legal will advise on all other exceptions to Standing Order 100.4(dd)(9).
- ~~7.6.~~ The Office of Risk Services is available to advise local Risk Management Offices on this Policy.

V. PROCEDURES

Consult the local Risk Management Office early in the contract process regarding insurance and indemnification contract provisions. Provide a copy of the contract or agreement or any other contracting document.

VI. RELATED INFORMATION

Minimum Insurance Requirements (broken out by the type of risk – General, Healthcare Related, Construction, and Transportation):

<http://www.ucop.edu/risk-services/risk-financing-claims/certificates-of-insurance.html>

<https://www.ucop.edu/risk-services-insurance/resources/certificates.html>

~~University of California Standard Terms and Conditions of Purchase, Business and Finance Bulletin BUS 43, Exhibit C.BFB-BUS-43 Purchases of Goods and Services; Supply Chain Management.~~

~~The Certificate of Insurance evidencing the University's self-insurance is available for download at the Risk Services website at <http://www.ucop.edu/risk-services/risk-financing-claims/certificates-of-insurance.html>~~

~~[Regents' Standing Order 100.4\(dd\)\(9\)](#)~~

~~[Research Policy Analysis and Coordination Contract and Grant Manual Chapter 21-400: University Requirements](#)~~

~~[Business and Finance Bulletin G-28 Travel Regulations-G-28 Travel Regulations](#)~~

Risk Management Staff contact information:

Office of the President, Risk Services	https://www.ucop.edu/risk-services/staff-contacts/index.html
Campus and Medical Center Risk Management	https://www.ucop.edu/risk-services/staff-contacts/campus-risk-managers/index.html
Medical Center Risk Management	https://www.ucop.edu/risk-services/staff-contacts/health-center-risk-managers/index.html
UC Legal Office of General Counsel	https://www.ucop.edu/uc-legalgeneral-counsel/index.html

VII. FREQUENTLY ASKED QUESTIONS

1. What does it mean for a Contractor/External User to “indemnify” the University?

When a [Contractor/External User](#) agrees to “indemnify” the University, it agrees to pay the University’s cost for any claim that is caused by the goods or services outlined in the contract. For example, if someone slips on a floor recently mopped by a [Contractor/External User](#) hired to maintain a University building, and that person sued the University, the [Contractor/External User](#) would be required to hire an attorney to defend the University and pay any settlement and/or judgment against the University. The provision that provides indemnity usually contains terms such as “hold harmless,” “indemnify” and/or “defend.”

2. Why is the Contractor/External User required to have insurance?

The insurance protects the University from loss, injury or damage caused by the negligent or intentional acts of the [Contractor/External User](#). A [Contractor/External User](#) could potentially cause financial loss to the University far greater than the value of the contract. Anyone working for or on behalf of the University exposes the University to liability, however small the task. The requirement that the [Contractor/External User](#) have adequate insurance coverage naming the Regents as an additional insured protects the University from loss or damage due to the negligence of the [Contractor/External User](#).

3. Why is it important for the Contractor/External User to have this insurance?

If the [Contractor/External User](#) has agreed to indemnify the University, but does not have insurance that covers the claim, the [Contractor/External User](#) is still responsible for paying the University’s costs relating to the claim. These costs would need to be paid by the [Contractor/External User](#) itself “out of pocket”. Because many [Contractors/External Users](#) cannot afford this, the University may not be able to recover these costs, or may need to spend the same amount, if not more, suing the [Contractor/External User](#) to recover. The insurance (~~naming the University as an additional insured~~) helps protect both the [Contractor/External User](#) and the University.

4. Why do we need an indemnity clause in our contract when the Contractor/External User is providing insurance?

Insurance is only one way that the Contractor/External User can financially guarantee its liabilities. The indemnity clause legally obligates the Contractor/External User to indemnify the University whether or not the Contractor/External User’s insurance covers the loss. This puts the burden on the Contractor/External User rather than the University to make certain that its coverage is sufficient and current.

The written indemnity clause in the contract is a trigger for the insurance coverage as, under normal circumstances, it creates an “Insured Contract” as defined in most commercial insurance policies.

5. If a Contractor/External User does not provide additional insured endorsement for GL/Auto, is it acceptable to waive this requirement?

Contact your local Risk Management Office to initiate a discussion and assessment of the risk associated with the work or services to be performed, and to determine whether an additional insured endorsement is necessary. Many insurance policies have a "Blanket Additional Insured" clause or endorsement that automatically provides additional insured status if it is required under a written agreement or contract. Therefore, a separate endorsement may not be necessary.

6. Why is the additional insured endorsement required?

The additional insured endorsement gives the University direct rights under the Contractor/External User's insurance policies and greatly increases the University's chances of recovery in the event of a loss. In essence, it gives the University a second contract, direct with the Contractor/External User's insurer, to pursue payment for potentially covered claims.

4.7. What if the Contractor/External User has insurance, but it does not meet the recommended minimum insurance limits required?

The Contractor/External User should ask its insurance broker and/or carrier to increase coverage limits to meet the UC requirements. Alternatively, the Contractor/External User can use the UC program established for Contractors/External Users to purchase insurance for University-related goods or services. This insurance is available only with regard to University- contracted goods and services. See the Risk Services website under "CampusConnexions and Student Group Coverage" (<https://www.ucop.edu/risk-services-insurance/connexions.html>) (<https://www.ucop.edu/risk-services-insurance/connexions.html>)

5.8. What if the Contractor/External User is unable to secure additional coverage?

All Contractors/External Users must provide and meet the minimum insurance requirements. Only under extenuating circumstances after an analysis by your local Risk Management Office may an exception be made to this Policy. Each exception is made on a case-by-case basis when there is no feasible alternative.

6. What if the contractor does not have insurance?

See Question 5, above.

8.9. What if the Contractor/External User is performing work/services that involves hazardous activity or poses a high risk?

Contact your local Risk Management Office early in the contract process to initiate a discussion and assessment of the risks associated with the work or services to be performed, and to determine what the appropriate insurance requirements.

10. Does this policy apply to international agreements?

Yes, however, insurance markets, available insurance coverages and limits vary by country. Please consult with your local Risk Management Office should you have questions regarding insurance for an international agreement.

40-11. Who can provide a recommendation as to when higher limits should be required of a Contractor/External User?

Your local Risk Management Office can assist in these efforts. If necessary, that Office can engage the Office of the President, Risk Services, and/or the University's insurance broker to assist in determining what insurance is appropriate.

11. What if I need an exception to the recommended minimum insurance requirements?

~~You must consult with your local Risk Management Office, which will perform a risk identification and assessment, and provide a recommendation.~~

43-12. What if I don't agree with the recommendation made by the local Risk Management Office?

Contact Risk Services in the Office of the President. The University Chief Risk Officer (or designee) will make the final determination for any exceptions to the recommended minimum insurance requirements.

44-13. Can the recommended insurance requirement be waived in its entirety?

No, the insurance requirement ~~should not~~ cannot be waived. All Contractors/External Users providing goods or services or using University facilities must provide evidence of insurance.

45-14. How do I know if the University's insurance requirements have been met?

~~The University's insurance requirements are confirmed by receipt of a A Certificate of Insurance. The certificate provides evidence of insurance to meet the requirements of the contract. must be provided to the University contracting office before the commencement date of a contract, purchase order, or other agreement for services. A Certificate of Insurance provides evidence of insurance to meet the requirement stipulated in the contract. Upon receipt of the Certificate of Insurance, it must be reviewed for compliance by the University contracting office.~~

All efforts must be made to receive the certificate before the commencement date of a contract, purchase order or other agreement for services. Upon receipt of the certificate of insurance, it must be reviewed for compliance by the University contracting office.

46-15. Who do I contact if I need assistance or have questions?

Your local Risk Management Office should be consulted early in the contract process to assist with risk identification and assessment, to ensure the appropriate insurance coverage is in place, and that the arrangement complies with this policy.

Campus Risk and Medical Center Risk Management at:
<http://www.ucop.edu/risk-services/staff-contacts/campus-risk-managers/index.html>

VIII. REVISION HISTORY

January 5, 2020: Technical edits to update contact info

August 9, 2019: Technical edits to update contact info, corrected spelling of contractor and updated link (page 6). This Policy was also remediated to meet Web Content Accessibility Guidelines (WCAG) 2.0.

April 1, 2012: This policy was reformatted into the standard University of California policy template.

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