

## **How to Protect Your Facility by Having Third Party Contracts in Place**

Every contract has risks that must be reviewed from the perspective of protecting your entity and assets. This document is designed to provide you with guidelines and tools to help you manage those risks and to consider the regulatory and liability implications from contracted services.

Inherent parts of contract management include:

1. Evaluating the risks involved;
2. Deciding whether to avoid, transfer, or accept the risks, and;
3. Implementing appropriate risk transfer and or risk financing mechanisms.

Read each contract thoroughly and anticipate events or situations that could happen within the scope of the work outlined. Within the contract, risk transfer is accomplished through a combination of indemnification, hold harmless clauses, and waiver of subrogation clauses. Insurance is commonly required as a means of providing the financial support to back the Indemnitor's obligation to hold another party harmless.

### **Regulatory Consideration:**

According to F500, if the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement, agreement or contract. The arrangement, agreement, or contract must specify in writing that the facility assumes responsibility for obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility and the timeliness of the services.

Therefore, the facility is required to have contracts with all third party vendors that provide contract services. Contracts may include:

- Clarification of services/scope of work
- Timeliness of the services
- Payment arrangements of the services/compensation
- Clarification of reporting/documentation requirements
- Staff training requirements, screening, licensure, etc.
- Confidentiality/HIPAA Clause
- Contract terms
- Period of agreement
- Termination of agreement

## **Risk Management Considerations:**

All contracts should contain language obligating the consultant, contractor, or vendor to indemnify, defend, and hold harmless your entity from and against any and all claims or losses arising from injury to persons or damage to property as a result of an act or omission of the consultant, contractor, or vendor. Different states or laws should be considered when drafting the following clauses within your contracts.

From the risk management perspective, the following additional clauses should be considered for inclusion in contractual agreements:

- **Independent Contractor provision** – This clause would be added to clarify that the contractor is not a facility employee and therefore not subject to any benefits, such as, but not limited to, the facility's worker's compensation benefits, unemployment benefits, social security benefits, etc. The contractor is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this agreement.
- **Hold Harmless provision** – This clause clarifies that the vendor or independent contractor releases your entity from all liability for any loss or damage and any claim or demands for damages. A hold harmless agreement is designed to release one or more parties from legal liability. In a standard agreement, one of the parties essentially agrees not to sue the other for certain kinds of expenses, losses, or damages that may result from the relationship or provision of services. These agreements may address claims that arise between the contracting parties themselves, or they may only protect a contracting party from claims brought by a person or entity who is not a party to the agreement.
- **Indemnity Agreement provision** – "Indemnity" is defined as "a duty to make good any loss, damage, or liability incurred by another (Black's Law Dictionary). Indemnity has the general meaning of "hold harmless;" that is, one party holds the other harmless for some loss or damage. Indemnity also includes an understanding that an injured party has a right to claim reimbursement or compensation for a loss or damage against the person who has the duty. Indemnity can also refer to compensation for loss or damage from the actions of another party. Additionally, indemnity can be described as a legal exemption from loss or damages. An indemnity agreement is contract language that indemnifies one of the parties in a contract for specific actions that might cause damage to the other party.

Example. To the fullest extent permitted by law, the contractor (party name) will indemnify and hold \_\_\_\_\_ (your entity name) harmless from all claims arising from and in connection with (1) the provision of services in this agreement; (2) any act, omission, or negligence of the contractor (party name) (3) any accident, injury, or damage whatsoever occurring except where the injury or damage is caused by our (your entity name) sole negligence. Any amount of fault on the part of the indemnitor obligates the indemnitor to indemnify us (your entity name) for the total amount of damages.

***We recommend that each facility consult with Corporate Counsel on the usage of appropriate language in all third party contracts.***

Each contractual relationship should require the vendor or independent contractor to secure insurance coverage specific to the services to be provided to the facility. At a minimum, the insurance coverage to be secured would be Worker's Compensation, Commercial General Liability, and Professional Liability. Additional or different types of insurance should be considered based upon the type of agreement and or services. A certificate of insurance listing your entity as a certificate holder should be obtained annually. A sample copy of a certificate of insurance is attached.

***We would like to emphasize that the discussion set forth above is only an insurance/risk management perspective and is NOT legal advice. We do not provide legal advice as we are not qualified to do so. We highly recommend that you seek the advice of legal counsel in order to become fully apprised of the legal implications related to these issues.***



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/01/2014

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).

PRODUCER Name of Insurance Brokerage or Agency Street Address City St Zip	CONTACT NAME: Broker/Agent Contact Information Name
	PHONE (A/C, No, Ext): Broker/Agent Phone Number FAX (A/C, No): E-MAIL ADDRESS:
INSURED Insured Name Street Address City St Zip	INSURER(S) AFFORDING COVERAGE NAIC #
	INSURER A: ABC Insurance Company 12345
	INSURER B: XYZ Insurance Company 56789
	INSURER C: NOP Insurance Company 00000
	INSURER D:
	INSURER E:

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.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	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 GENTL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	Policy Number	01/01/2014	01/01/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPI/OP AGG \$ 2,000,000	
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> PIP (if req)			Policy Number	01/01/2014	01/01/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTIONS 10,000			Policy Number	01/01/2014	01/01/2015	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000	
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	X	Policy Number	01/01/2014	01/01/2015	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Contractors Pollution Liability or Limited Pollution on General Liability			Policy Number	01/01/2014	01/01/2015	Limit Per Loss/Aggregate \$1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
See the attached for information that is to be included here or on a separate page which is a part of the certificate.

CERTIFICATE HOLDER Address City St Zip	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
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