



State Of
Louisiana
OFFICE OF
RISK MANAGEMENT

Procedures Manual
For
Insurance Language in Contracts
And
Indemnification Agreements

Revised December 2019

PREFACE

This manual has been developed to provide useful information on insurance language to use in agency contracts with outside vendors, contractors or lessees. It acts as a guide for recommended limits, coverage, and language. Any unique circumstances or demands that necessitate deviation from these recommendations should be discussed with ORM and/or agency legal counsel. The manual does not supersede higher insurance limits required by state statute for certain types of contracts.

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INTRODUCTION TO THE MANUAL

DISTRIBUTION

This manual should be distributed to agency personnel who

- (1) Prepare RFP or Bid Documents
- (2) Negotiate Contracts
- (3) Review Certificates of Insurance
- (4) Prepare Indemnification/Hold Harmless Agreements

PURPOSE

The State of Louisiana, all State Departments, Agencies, Boards and Commissions (herein after referred to as "Agency") must require suppliers, contractors, subcontractors and tenants (herein after referred to as the "Other Party" to the Agency contract) to maintain insurance covering the Other Party against claims or judgments arising from their products, operations, actions or activities while under contract for the Agency. The Agency must also require that the Other Party add the Agency as an "additional insured" to their insurance policies to protect the Agency, its officers, officials, employees and volunteers against any negligence of the Other Party. A Certificate of Insurance submitted from the Other Party to the Agency is a practical way to confirm that appropriate coverages and additional insured terms are in force.

This manual explains how to establish insurance requirements for contracts with contractors, tenants and vendors and how to monitor their compliance with those requirements. It will provide guidelines and specific wording as to the types of insurance coverages and minimum limits that should be required. These insurance requirements should be made part of all Agency RFP or bid specifications and should be included in the contract between the Agency and the Other Party.

CHAPTER 1

THE BASICS

The first level of protection for the Agency is the requirement that the Other Party must maintain insurance coverage and must name the Agency as an additional insured on those policies. The Other Party is required to comply with the insurance terms described in the RFP, bid and/or contract. There should be a separate section of the RFP, bid and/or contract that outlines the specific insurance requirements to which the Other Party must comply. In many cases, this section also indicates the insurance coverages and limits to be provided by the Agency. It is necessary that the correct insurance specifications and forms are used as outlined in Chapter 6 of this manual.

The Agency should also require proof that these insurance requirements have been fulfilled. The required insurance in a bid or RFP does not take effect automatically. The Other Party's insurance company must first issue the required insurance policies or endorse existing policies to conform to the Agency's requirements. A Certificate of Insurance is required from the Other Party to confirm that appropriate coverages and endorsements are in force.

A second source of protection for the Agency is a signed and executed indemnification or hold-harmless agreement. This agreement states that the Other Party will hold harmless, defend and indemnify the Agency when the Agency is named in a claim or lawsuit due to the actions or products of the Other Party. It provides protection in addition to insurance purchased by the Other Party and is particularly important when the Other Party has a large deductible. The indemnification/hold harmless agreement automatically takes effect when a contract is signed if it is addressed in the contract. (Note: This may not be true when a contract is awarded through the bid process as required by Louisiana Revised Statute 39:1551 et seq. Please review the statute and seek legal advice when needed.) These signed agreements are necessary since court decisions have often invalidated or adversely affected the enforceability of the Other Party's Certificates of Insurance, when Certificates alone were used. It is necessary that the correct forms are used as outlined in Chapter 6 and the Exhibits sections of this manual.

This manual provides an example Certificate of Insurance and recommended wording for both the insurance requirements and the indemnification/hold harmless agreement. Correct insurance requirements and forms should be sent with the RFP or bid specifications up front, so that the proposer/bidder understands the nature of the required insurance and forms and can send them to their insurer for approval before the proposal/bid is submitted, thus eliminating delay after the award is made. Often, the Certificate is required to be submitted with the RFP proposal or bid quotation, so that they can be reviewed before an award is made.

Once the Agency reviews the RFP proposals or bid quotations and makes the award, the contract containing the appropriate indemnification/hold harmless wording should be signed by the awarded Other Party.

Certificates of Insurance should always be promptly reviewed by appropriate agency personnel for accuracy. The contract can be accepted, from an insurance standpoint, once it has been confirmed that the insurance requirements have been met.

CHAPTER 2

CONSIDERATIONS FOR DRAFTING INSURANCE SPECIFICATIONS FOR CONTRACTS

Review the language as shown in Chapter 6, Insurance and Indemnification found in this manual.

1. Determine the maximum deductibles or self-insured retention levels that the Other Party may maintain. This is the amount for which the Other Party is financially responsible before insurance coverage takes effect. The Other Party must disclose, and the Agency accept, such deductibles and levels of retention. An alternative to substantial deductibles and retention levels is to request the Other Party to post a surety bond guaranteeing payment of losses and defense costs within the deductible or retained layer. If the Other Party is financially unable to pay the deductible or self-insured retention, or if the court sets aside contract terms describing Other Party's responsibilities, the Agency could be subject to the amount of the loss up to the deductible or retention level.
2. Require the Other Party's insurer to add the Agency, its officers, officials, employees and volunteers as additional insureds to all required liability coverages, except workers compensation policies.
3. Policies shall be endorsed to give the Agency 30 days notification if the Other Party's insurance coverage is cancelled or lapses. The Certificate may or may not reflect the cancellation days requested. If it does not, then request a copy of the Cancellation Provision from the policy to confirm.
4. Insurance must be placed with commercial insurance companies which possess a minimum of A.M. Best Company rating of **A-:VI** or higher. The letter indicates the insurer's financial strength rating and the Roman numeral indicates financial size. The rating A- indicates excellent and the VI indicates a company with a policyholder surplus of at least \$25,000,000. This requirement may be waived for Workers Compensation coverage only.
5. This manual provides minimum insurance limits for normal, frequent situations. Higher limits should be required for hazardous activities, such as blasting, or where the activity has a severe loss potential, as in construction on or close to highways, utility lines or high-valued property.

Most insurers have forms that impose "aggregate limits" or the maximum amount the insurer will pay on all losses during the coverage term. Coverage provided by the Other Party containing aggregates could have the total aggregate limit reduced by losses arising out of projects for parties other than the Agency. Consequently, the Agency should require of the Other Party one of the following:

- a. A higher aggregate limit which is at least a 2 times multiple of the occurrence limit. For example, a \$1 million per occurrence limit with a \$2 million aggregate, OR
- b. A separate aggregate for the Agency's project.

In most circumstances, the aggregate wording described in Item a. is sufficient. Item b. is used mainly for construction projects, where construction companies are doing many projects for other parties where there is a high potential for loss at any or all of those other projects. Contact ORM for guidance if needed.

CHAPTER 3

INSURANCE TERMINOLOGY

The following chapter defines certain commonly used insurance terms and describes key types of coverage:

A. OCCURRENCE VERSUS CLAIMS-MADE POLICY FORMS

Most liability insurance policies sold by the commercial insurance market have traditionally been written on an "occurrence" basis, meaning that they insure accidents or events that happen during the policy term, even if a formal claim is not made until months or years later. For example, a child injured in an accident may, under certain circumstances, be allowed to make a formal claim for damages after reaching age eighteen, many years after the actual loss occurred. The insured would be protected against this claim by the policy in effect at the time of the accident. Thus, it is important to maintain, on a long-term basis, records of coverage even after the policies expire.

Some insurers use a "claims-made" coverage form for certain types of insurance (professional liability being one) which imposes strict deadlines regarding the reporting of claims to the insurer. In its most fundamental form, claims-made coverage responds to claims made during the policy term, regardless of when the triggering accident or event happened. Using the example of the injured child, the policy in effect at the point in time that a formal claim is made would be the one to respond, even if it is years after the actual loss occurred.

While the restrictions may vary between insurers, the forms do allow for some exceptions. One common claims-made coverage form is written to apply only to claims that are submitted to the insurer during the policy term or within sixty (60) days thereafter. In this case, if the Agency's protection is to be preserved under this policy form, claims made against the Agency, either orally or in writing, must be reported immediately to the insurer within that 60-day window. In most cases, the Other Party will require that they be notified first and then they will send notice to their insurer on the Agency's behalf. It is important to follow up with the Other Party to make sure they have done so in a timely manner.

Another common policy provision in a claims-made form is that it will honor claims reported within five years after policy expiration, but only arising out of incidents that have been reported to the insurer during the policy term or within 60 days thereafter. In other words, if an incident is reported to the insurer that may generate a future claim, coverage is "locked in" for five years. If the incident is not reported (even if you didn't know about it) during the policy term and then the formal claim is submitted after the policy expiration, the policy will not cover it. Therefore, the Agency should also report incidents to the Other Party so that they can be reported to the insurer during the policy term in case of a future claim.

"Tail" coverage or extended reporting periods are seen in claims-made forms. If a claims-made policy is not renewed at the time of expiration, the Other Party can purchase additional time, in months or in years, to report claims that occurred during that policy period. This can be important when there is potential for claims that have a long exposure or development period (such as asbestosis) or the prescriptive period (statute of limitations) applicable to the type of work being done is long (10 years).

Although the occurrence form is preferred, you can expect to encounter some of the Other Party's insurance to be written on claims-made forms. Professional liability risks are almost always written on a claims-made basis, especially professional liability for architects, engineers, medical professionals and consultants. Also, hazardous products or activities, such as asbestos removal contracting, may be written on a claims-made form. However, most types of standard commercial business insurance are usually written on an occurrence form, including Commercial General Liability and Automobile Liability.

B. COMMONLY ENCOUNTERED INSURANCE COVERAGES

1. Commercial General Liability Insurance

This coverage provides protection against bodily injury and property damage claims arising from the operations of a contractor, supplier or tenant. Coverage applies to premises operations, use of independent contractors, products and completed operations, personal injury, and contractual liability. Major exclusions include liability arising out of the ownership, maintenance or use of watercraft, aircraft and automobiles. Other insurance policies normally cover these exposures.

The policy limits all loss payments to two aggregate limits, one for products and completed operations and one for all other losses. The aggregate limit is the total amount the policy will pay in one year. Prior claims can exhaust the amount of insurance available to pay on a current claim. It is important to ask if there are any claims pending if the policy has an aggregate. If prior claims paid or filed exceed the policy annual aggregate, you are not receiving any coverage at all. In some cases, some policies may eliminate the aggregate limit. This form can be written on either a claims-made or an occurrence basis.

The Agency should require a Commercial General Liability insurance policy from all contractors and tenants. The older form titled Comprehensive General Liability has been phased out and replaced by this newer form.

2. Business Automobile Liability Insurance

This coverage provides protection against liability claims arising out of the use of automobiles in the course of the Other Party's operations. The symbol used in the policy defines the scope of coverage. Below are the descriptions of automobile designation symbols from the standard Business Automobile Liability policy. Generally, you should require Code #1, which is the single broadest code, or #2 (owned), #8 (hired) and #9 (non-owned).

CODES USED IN BUSINESS AUTO POLICIES

1 = ANY AUTO

2 = OWNED AUTOS ONLY

Only those autos you own (and for liability coverage any trailers you don't own while attached to autos you own). This includes those autos you acquire ownership of after the policy begins.

3 = OWNED PRIVATE PASSENGER AUTOS ONLY

Only the private passenger autos you own. This includes those private passenger autos you acquire ownership of after the policy begins.

4 = OWNED AUTOS OTHER THAN PRIVATE PASSENGER AUTOS

Only those autos you own that are not of the private passenger type (and for liability coverage, any trailers you don't own while attached to autos you own). This includes those autos not of the private passenger type you acquire ownership of after the policy begins.

5 = OWNED AUTOS SUBJECT TO NO-FAULT

Only those autos you own that are required to have No Fault benefits in the state where they are licensed or principally garaged. This includes those autos you acquire ownership of after the policy begins.

- 6 = OWNED AUTOS SUBJECT TO A COMPULSORY UNINSURED MOTORISTS LAW
Only those autos you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject uninsured motorists insurance. This includes autos you acquire ownership of after the policy begins.
- 7 = SPECIFICALLY DESCRIBED AUTOS
Only those autos described for which a premium charge is shown (and for liability coverage any trailers you don't own while attached to autos specifically described).
- 8 = HIRED AUTOS ONLY
Only those autos you lease, hire, rent or borrow. This does not include any auto you lease, hire, rent, or borrow from any of your employees or partners or members of their households.
- 9 = NON-OWNED AUTOS ONLY
Only those autos you do not own, lease, hire, rent, or borrow that are used in connection with your business. This includes autos owned by your employees, partners, or board members or members of their households but only while used in your business or your personal affairs.

Automobile coverage requirements should be waived only when the Other Party's work clearly does not involve the use of an automobile. If any doubts exist, this coverage should be required.

3. Workers Compensation and Employers Liability Insurance

Workers compensation insurance provides statutory protection against bodily injury, sickness or disease sustained by employees of the Other Party in the scope of their employment. It should be required of any Other Party performing work for the Agency.

In Louisiana, the current Workers Compensation Statute 23:1035 allows officers of a corporation, partners in a partnership, members of a limited liability company, and sole proprietors to elect not to provide Workers compensation coverage on themselves. If any of these types of employees of the Other Party will be doing any of the work or will be on the Agency's site performing services at any time, they should elect to carry Workers Compensation coverage on themselves and provide proof thereof.

Employers' liability coverage is usually included in workers compensation policies. It protects the employer against claims of injured employees made in lieu of or in addition to a workers compensation claim.

To the extent allowed by law, the insurance policy should be endorsed to provide a waiver of subrogation in favor of the State as described in Item 14 below. In some states (examples include New Hampshire, Kentucky, New Jersey, and Missouri), the workers compensation laws declare waivers of subrogation against public policy.

In addition, if the Other Party's employees may have an exposure under the U.S. Longshore and Harbor Workers' Compensation Act (LHWCA), Jones Act, or other federal maritime laws, then those specific coverages should be included.

Maritime (Jones Act): Applies to workers who are permanent crew members of a water vessel that operates on or over navigable waters of the U.S., and assist in the navigation or well-being of the vessel.

U.S. Longshore and Harbor Workers' Compensation Act (LHWCA or USL&H): Applies to workers who load or unload vessels and repair or build vessels, and perform these duties on or over navigable waters of the U. S., including any adjoining pier, wharf, dry dock, terminal, marine railway or similar facility normally used to load or unload ships and vessels and to repair or build vessels.

Defense Base Act (DBA): Applies to overseas civilian workers providing services on public work contracts.

C. OTHER TERMS AND TYPES OF INSURANCE

1. Contractual Liability

This coverage provides protection for liability assumed by the insured in a contract or agreement.

This coverage should be required from all contractors and suppliers. It technically is not needed from tenants of Agency properties, as Commercial General Liability insurance includes contractual liability assumed in insured contracts, such as leases. An insured contract is an agreement involving the insured's business, including construction, demolition and maintenance work, leases, and licenses. Indemnification of others because of tort liability, liability that is imposed by the law, is covered. Contractual liability insurance is usually included in the Commercial General Liability policy or it can be written as a separate coverage.

2. Personal Injury and Advertising Liability

This coverage insures liability for certain non-physical injuries, such as:

- a. False arrest, detention or imprisonment,
- b. Libel, slander or defamation, and
- c. Wrongful entry or eviction.

Personal injury liability insurance should be required of anyone dealing with the public, such as contract security guards or commissioned law enforcement officers. It is typically included in the Commercial General Liability policy or it can be written as a separate coverage.

3. Broad Form Property Damage Liability

This coverage provides important additional protection to contractors for liability arising out of damage they may cause to property they are working on. Agencies should require this coverage from the Other Party working on Agency premises.

It is typically included in the Commercial General Liability policy or it can be written as a separate coverage.

4. Products and Completed Operations Liability

This coverage insures liability for bodily injury or property damage resulting from:

- a. A product that is sold, handled or distributed by a supplier,
- b. Work completed by a contractor that is found to be faulty.

The Agency should require products and completed operations liability coverage from all

contractors and suppliers, especially for products of a hazardous nature, such as guns and ammunition. Keep in mind that a distributor is not the same as a supplier and may not carry this coverage. Typically, this coverage is included in the Commercial General Liability policy.

5. Liquor Liability

If the tenant is not in the liquor-selling business, but is serving liquor for a single event, the Commercial General Liability policy is appropriate. If the tenant is in the business of manufacturing, distributing, selling, serving or giving alcoholic beverages to the public or is a landlord of such a business, special liquor liability coverage may be needed.

The Agency should require liquor liability coverage from every tenant that sells or serves alcoholic beverages on Agency property.

6. Professional Liability

This coverage insures the errors and omissions of specific professionals, including physicians, accountants, attorneys, engineers, etc. Medical malpractice is a specific term for physicians' professional liability coverage. Claims-made policies are the standard in this line of coverage.

The Agency should require professional liability when any of these types of professionals will be providing services.

7. Aircraft Liability and Watercraft Liability Insurance

These coverages protect the Other Party against liability for injury to other people and their property arising out of the ownership and/or use of aircraft or watercraft.

This coverage should be required of any contractor using aircraft or watercraft. Aircraft liability coverage should be extended to include passenger liability. Watercraft liability coverage should include Protection and Indemnity coverage for third-parties.

8. Property Insurance

This type of insurance protects against financial loss resulting from destruction of the insured's property by perils such as fire, wind, theft, etc. This is a different type of coverage than property damage liability insurance which covers the insured's legal liability for damage to others' property.

The Agency is responsible for property insurance on their own property and when it has a financial interest in property leased to others. The Agency will purchase the property insurance when it owns the building, rather than requiring the tenant to purchase coverage on behalf of the Agency. The advantages of the Agency purchasing the property insurance on their own property are that it

- a. Ensures that the right amount of coverage is purchased for the value of the property, and
- b. Ensures that premiums will be paid, thus avoiding cancellation for non-payment of premium.

Case #1 – Agency Owns Building and Leases It to Other Party

The Agency will require that the Other Party provide Commercial General Liability

insurance and an indemnification/hold harmless agreement. If the Other Party is a residential tenant, they may provide a renters policy, which is commonly referred to in the insurance industry as an HO-4 policy, along with the indemnification/hold harmless agreement.

Case #2 – Other Party Owns Building and Leases It to Agency

If the Agency leases a building from an Other Party, the Other Party (owner of the building) shall provide coverage on the building structure and all of the non-state owned contents. The Agency shall provide coverage for State-owned contents only. Again, an indemnification/hold harmless agreement should be required from the Other Party to protect the Agency from the negligent actions of the Other Party.

Case #3 – Other Party Owns Building on Agency Land

The Other Party shall provide proof of insurance as follows:

- a. Property coverage using, at least, the Causes of Loss-Basic Form (sometimes referred to as fire and extended coverage) with the covered perils defined as fire, lightning, explosion, windstorm, hail, smoke, aircraft or vehicles, smoke, riot or civil commotion, vandalism, sprinkler leakage, sinkhole collapse, and volcanic action, and
- b. Insure the building and contents to at least 90% of the replacement cost.
- c. The Agency should also be added as an additional insured on the Other Party's commercial general liability policy and the Other Party shall issue an indemnification/hold harmless agreement protecting the Agency from the negligent actions of the Other Party.

Case #4 – Agency Owns Building on Other Party's Land

The Agency should request an indemnification/hold harmless agreement from the owner of the land (Other Party) for the negligent actions of the Other Party not relating to occurrences which are the negligence of the State.

9. Builders Risk

This provides property coverage for buildings under construction. It protects both the owner and the contractor because both have a financial investment in the project until it is completed. Once completed and turned over to the owner, the builders risk coverage ends and a regular property policy then insures the building. Builders risk has nearly identical wording of a property policy and covers the same types of perils.

This coverage should be required of any general contractor constructing a new building, adding an addition to an existing structure, or renovating a building where the majority of the building is under the contractor's control. Demolition of a building is not considered construction and this coverage is not needed.

In the case of a specialized contractor providing installation services, such as roofing, drywall, or carpet installation or an HVAC equipment contractor, an "Installation Floater" is needed in lieu of a Builders Risk policy. An installation floater provides many of the same coverages but is tailored for specialty contractors.

10. Bonds

Surety: Guarantees that the Other Party will meet its financial obligations (paying employees, subcontractors, suppliers, etc.) during the term of the contract

Fidelity (Dishonesty): Protects the Agency from dishonest acts of the Other Party's employees

Performance: Guarantees Other Party's satisfactory completion of the contracted project

The type of work being done will dictate which bonds are applicable. L.R.S. 38:2241(A)(2) requires that a surety bond be provided by the contractor for all public construction contracts over \$25,000.

11. Crime Coverage

This protects the Other Party from the loss of property or money due to the criminal actions of a third party. Examples include break-ins where there is obvious forced entry and hijacking of armored cars transporting money. Policy limits are determined based on the estimated maximum amount of property/funds that would be targeted for theft at any one time.

12. Cyber Liability

This provides coverage for security breaches of confidential data, including inadvertent release, hacking, viruses, improper destruction, etc. Data includes corporate confidential info (CCI), personal financial info (PII), personal health info (PHI), and payment card info (PCI) stored in electronic format. The coverage would pay for not only liability for a third-party's claim of identity theft for example, but also the fees to comply with mandatory notifications, audits, and credit tracking where needed, plus regulatory penalties imposed due to unauthorized disclosure.

This coverage is needed when a contractor will be storing or processing financial data (credit card numbers for example), individuals' health information (HIPAA/HITECH Acts), or company/individual identifying information (social security numbers for example). Claims-made policies are the standard in this line of coverage.

13. Pollution Liability

This provides specialized coverage for hazardous operations and activities that could damage the environment. Contractors working with any type of potential pollutant, such as oil, gasoline, asbestos, hazardous waste, lead, etc. must carry this coverage for both gradual release and sudden and accidental release. Claims-made policies are the standard in this line of coverage.

The Agency should require pollution liability when a contractor will be remediating, transporting, or maintaining hazardous materials, even incidentally, during the course of its work for the Agency.

14. X, C, U Hazard Liability

X = Explosion
C = Collapse
U = Damage to underground property

Usually, Commercial General Liability policies insure liability for these risks, as they are not exclusions in the policy. However, they may be excluded by endorsement. Certain types of contractors may have to pay additional premiums to buy back these coverages because of their high exposure.

15. Waiver of Subrogation

Waiver of subrogation means that one party relinquishes the right to seek reimbursement for a loss they have paid from the party responsible for that loss. It is often required that a waiver of subrogation be added to a Contractor's workers compensation policy to prevent the workers compensation insurer from paying the claim of the Contractor's injured employee and then seeking reimbursement from the Agency (for example, if a defect in the Agency's premises caused the injury). Waivers can be requested for other lines of coverage also.

16. Owners Protective Liability (OPL) – also known as Owners and Contractors Protective Liability (OCP)

An Agency may be exposed to vicarious liability for the actions of independent contractors. Even if an Agency exercises no control over the way in which work is performed by its independent contractor, the Agency can still be held liable for injury or damage arising out of the independent contractor's work in certain circumstances.

The OPL policy is usually purchased by the contractor in the name of the party for whom the work is to be done (owner). The contractor or subcontractor purchasing it has limited coverage under this type of policy.

Per R.S. 9:2780.1, specific contracts, most importantly construction contracts, cannot require the contractor to purchase liability insurance to cover the acts or omissions of the project owner when an indemnification agreement is present in the contract. Therefore, an OPL policy is not required as part of these insurance recommendations. If an OPL is needed for a specific project, consult ORM for further guidance.

D. Hold Harmless Versus Indemnification Agreements

Although they are often used interchangeably, there are subtle but distinct differences between hold harmless agreements and indemnification agreements.

A hold harmless agreement is a legal arrangement in which one party agrees to hold the other party free from responsibility for any liability or damage caused to the first party that might arise out of the other party's implementation of the contract. Simple hold harmless agreements can also be called "waivers of liability". For example, many leases include a hold harmless clause in which the tenant agrees not to sue the landlord if the tenant is injured due to the landlord's failure to maintain the premises.

An indemnification agreement is a legal arrangement where one party agrees to make the other party "whole" by paying for loss the first party may suffer due to the other party's implementation of the contract. For example, a tenant may agree in a lease to indemnify the landlord for any damages incurred by the landlord due to the tenant's actions. The term "indemnify" means to compensate or pay on behalf of. Indemnity may include, not only payment for damages, but also the cost of legal defense if a third-party files a lawsuit against both parties to the contract for damages that they incurred. The person who pays for another is called the indemnitor and the person who receives the payment from another is called the indemnitee.

Most often you will see a combination of hold harmless and indemnification wording together in one agreement. One party desires to have the other party hold them harmless for any liability AND pay for their losses and/or defense. The most advantageous wording for the Agency's protection includes all three terms: "The Other Party agrees to hold harmless, defend, and indemnify the Agency..."

L. R. S. 38:2195 limits the State from assuming liability for injuries or damages caused by the negligence or fault of any other party besides the State itself. The hold harmless/indemnification agreements found in this manual are worded carefully to comply with this law as not to provide intent for the State to assume and pay for another's negligence.

CHAPTER 4

GUIDELINES FOR DETERMINING WHICH EXHIBIT TO USE

Although the Agency may enter into a variety of contracts each year, most of these contracts may be grouped into a few categories for insurance purposes. The Exhibits at the end of this manual provide standardized forms suitable for most contracts. This chapter provides guidelines for the exhibits.

The first two (2) sets of insurance specifications at the end of the manual have been developed for the most common situations that the Agency will encounter:

- Exhibit A - Insurance Requirements for Contractors
- Exhibit B - Insurance Requirements for Lessees

Exhibit A is the broadest set of requirements. While its requirements are broader than needed for tenant or other similar contracts, it can be used in those situations also. For example: Exhibit A requires Automobile insurance. Automobile insurance is not customarily required in some contracts. Exhibit B is identical to Exhibit A, but deletes the Automobile requirement.

If the scope of the contract fits into more than one category, use the broadest applicable language. For example, if a vendor will install and maintain the product or perform other services for the Agency, the vendor should be considered as a contractor for the purpose of insurance requirements and the broader language of Exhibit A should be used.

When the agency is entering a joint venture (Exhibit C), contact your Agency's legal counsel and/or ORM for special wording during the preparation of the joint venture contract or any RFP or bid specifications related to it. The Indemnification Agreement for joint ventures needs to be drafted separately because of the complexity of issues of joint ventures as described in Chapter 5.

Exhibit D is to be used when a bid or RFP involves a large construction or renovation project.

Exhibit E is a stand-alone indemnification-hold harmless agreement.

Please remember that this contract manual is intended for standard contracts. It does not fit all situations. Any questions regarding the increase or decrease in limits of insurance suggested in this manual should be referred to ORM and/or your Agency's legal counsel.

The insurance wording found in the Exhibits should be made part of all Agency RFP or bid specifications and should be included in the contract between the Agency and the Other Party.

Examples of contracts which fall under the Exhibits are as follows:

EXHIBIT A

Janitorial Services
Movers
Equipment Maintenance
Road Maintenance
Towing Services
Tree/Landscape Services
Minor
Construction/Remodeling
Welding
Plumbing
Painting
Electrical
Fireworks
Engineers*
Attorneys*
Architects*
Consultants*
Concessionaires
Supplies
(Installation required)
Most Cooperative Endeavor
Agreements (CEAs)

EXHIBIT B

Leases
Tenants
Renters

Use of Premises for:
Weddings
Club Functions
Meetings
Dances
Craft Exhibits
Classes
Animal Shows

*Use of Property for
Recreational Activities:*
Sporting Events
Picnics
Camping

EXHIBIT D

Large New Construction
Building Additions
Building-wide Renovations

* Additional insurance language may be needed. See Chapter 5.

CHAPTER 5

GUIDELINES FOR DETERMINING IF SPECIAL LANGUAGE IS NEEDED

The following are some examples and guidelines for determining if additional or special language needs to be included in addition to the Exhibits. Contact Agency's legal counsel or ORM for recommended wording if needed.

1. Construction and Services Contracts

- a. Includes most construction and remodeling, janitorial service, movers, on-site equipment maintenance agreements, tow service, tree maintenance, road maintenance, welding, plumbing, painting, electrical work and fireworks exhibits. \$1,000,000 minimum limit for commercial general liability, with a minimum annual aggregate of \$2,000,000.

2. Professional Services and Environmental Risks, including asbestos, hazardous chemicals or waste, and nuclear risks

- a. Includes architects, engineers, consultants, attorneys and accountants, any activity involving asbestos, hazardous wastes, or nuclear fuels, facilities or wastes. Professional Liability is also labeled Errors and Omissions coverage.
- b. Specifications and limits: Special insurance specifications are needed, as professional liability insurers are generally unwilling to add other parties such as the Agency as additional insureds. Also, most professional liability insurers will not insure liabilities assumed by professionals in contracts such as indemnification/hold harmless agreements. Therefore, the wording of these agreements may have to be adjusted. Most professional liability and specialty policies are only written on a "claims-made" basis. This will require special language in your RFP, bid or contract.

Limits should be set to fit individual circumstances. **Minimum** limit of \$1,000,000 per claim.

Special insurance is available for nuclear risks and may be available for asbestos removal or containment or waste handling. Coverage specifications and limits should be developed to fit the special circumstances of the situation.

It is important to require that "claims-made" professional liability coverage continue to be in effect even after the work is complete for the prescriptive period (statute of limitations) applicable to the type of work being done ("tail" coverage or extended reporting period). As prescriptive periods vary, consult your Agency's legal counsel to determine the applicable prescriptive period that applies to your contract.

3. Liquor Liability

Required if tenant is in the business of manufacturing, distributing, selling, serving or giving alcoholic beverages to the public or is a landlord of such a business.

Limit: \$1,000,000 per occurrence

4. Aircraft, Watercraft and Airports Operated Under Contract

- a. Includes charter of aircraft or watercraft by the Agency or by another party in performance of work for the Agency.

Minimum Liability Limits: Aircraft: \$ 5,000,000 per occurrence

Watercraft: \$ 5,000,000 per occurrence

5. Tenants and Concessionaires

- a. Includes food and beverage concessions, gift shops, office space tenants, childcare centers, senior centers and other space rental to lessees who have full-time or part-time employees.
- b. Special case: If the tenant's activities include valet parking, either with or without fee, an additional specialized coverage called garage keepers legal liability may be needed.

6. Vendors and Space Rental for Special Occasions/Functions

- a. Includes vendors who supply equipment or other products to the Agency and who do not perform other functions, such as installation or maintenance. Also includes short-term space rental for special occasions to groups who have no employees, such as club functions, weddings, dances, picnics or social dinners, crafts exhibitions or classes, animal shows and recreational activities.
- b. Special case: If liquor is served and/or if there is valet parking, then the vendor may also be required to provide liquor liability and/or garage keepers liability.

7. Property Risks

These insurance specifications presume that all supplies and equipment to be installed remain the property of the Other Party until the project is complete and accepted by the Agency. Likewise for suppliers; it assumes that the goods remain the property of the supplier until delivered to the receiving location at the Agency. Therefore, these documents do not address this type of property risk.

If the Other Party's property might be considered as being in the custody of the Agency, such as storage of tools and equipment on Agency-owned or controlled premises, this risk may be mitigated by a properly worded hold harmless agreement. If Agency property is to be in the custody of a supplier, for example, a shipment sent F.O.B. to the supplier's warehouse, the Agency may arrange for transit insurance or request the supplier to do so. This situation could occur, for example, if ownership transfers at the warehouse and the Agency takes the risk of loss in transit.

8. Owner-Controlled or Contractor-Controlled Insurance Programs or "Wrap-Ups" for Major Construction Projects

The specifications in this manual are intended for routine projects. Major construction projects, especially those that involve many subcontractors, will call for special insurance requirements. Wrap-ups are complicated and require special attention. Typically, wrap-ups are only financially feasible for projects over \$100,000,000. Contact ORM prior to consideration of a project that includes the use of a wrap-up.

9. Fidelity (or Dishonesty) Bond

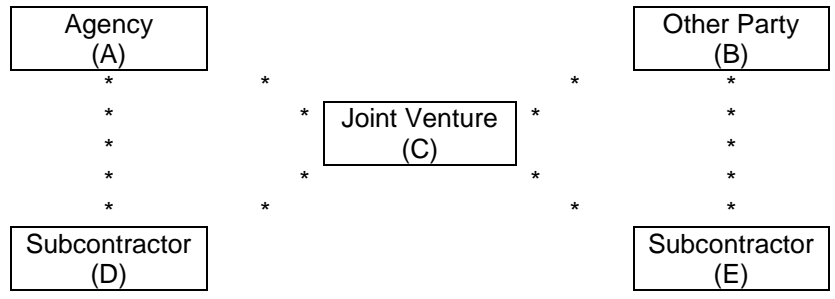
This is purchased by private employers to cover loss caused by dishonesty of their employees. The employer also has the option to cover himself/herself.

10. Joint Ventures

Joint ventures are usually between the Agency and another governmental entity. The diagram below may help in the explanation of the different contractual relationships between Agency (A) and the Other Party (B) which makes up the joint venture (C). When A joins with B, the joint venture

(C) is a result of the contract. When the joint venture (C) subcontracts with either Subcontractor D or E, then the Subcontractor should provide insurance coverage(s) as in any standard contract in favor of the Joint Venture (C). A problem arises when the Other Party (B) enters into a contract with Subcontractor (E) that has nothing to do with the Joint Venture (C). The Other Party (B) should hold harmless the joint venture for its contractual relationships directly with Subcontractor (E) for operations which do not arise out of the Joint Venture (C). Any work done by a contractor/subcontractor on behalf of the joint venture should be contracted for/by the joint venture and not the individual parties.

With respect to the Joint Venture, if it can be determined that the claim or occurrence was a direct result of a negligence of the Other Party (B) then the Other Party's insurance coverage shall be primary insurance as respects the Agency (A). Any insurance or self-insurance maintained by Agency (A) shall be excess over the Other Party's insurance and shall not contribute to it. If it is determined that the claim or occurrence is the direct result of Agency (A), then the Agency's insurance coverage shall be primary. If it is not clear who the negligent party was that caused the occurrence that resulted in a loss or claim, both the Agency (A) and the Other Party's (B) insurance shall share equally in the payment of the claim.



CHAPTER 6

INSURANCE AND INDEMNIFICATION **ADDITIONAL EXPLANATION OF EXHIBITS A - D**

Before commencing work, the Other Party shall obtain at its own cost and expense the following insurance placed with insurance companies authorized to do business in the State of Louisiana with A.M. Best ratings of **A-VI or higher**. The Other Party shall provide evidence of such insurance as required by the Agency. The Certificates of insurance should confirm that a thirty-day policy cancellation notice has been provided to the Agency for all of the following stated insurance policies

A. **Workers Compensation**

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Other Party's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/per person/per disease. 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.

B. **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.

C. **Automobile Liability**

Automobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. The 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 the following automobile coverage classes:

1. Owned automobiles
2. Hired automobiles
3. Non-owned automobiles

Location of operations shall be "All Locations".

Note: If the vendor/contractor does not own an automobile and an automobile is utilized in the execution of the contract, then only hired and non-owned coverage is acceptable. If an automobile is not utilized in the execution of the contract, then automobile coverage is not required.

D. **Professional Liability (Errors and Omissions)**

Professional Liability (Error & Omissions) insurance, which covers the professional errors, acts, or omissions of the Contractor, shall have a minimum limit of \$1,000,000 per claim. Claims-made coverage is acceptable. The date of the inception of the policy must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of at least 24 months, with full reinstatement of limits, from the expiration date of the policy, if policy is not renewed.

E. **Cyber Liability**

Cyber liability insurance, including first-party costs, due to an electronic breach that compromises the State's confidential data shall have a minimum limit per occurrence of \$1,000,000. Claims-made coverage is acceptable. The date of the inception of the policy must be no later than the first

date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 24 months from the expiration date of the policy, if the policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premium.

- F. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Other Party shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days. Upon failure of the Other Party to furnish, deliver and maintain such insurance as above provided, this contract, at the election of the Agency, may be suspended, discontinued or terminated. Failure of the Other Party to purchase and/or maintain any required insurance shall not relieve the Other Party from any liability or indemnification under the contract.
- G. All Certificates of Insurance of the Other Party shall reflect the following:
 - 1) The Other Party's insurer will have no right of recovery or subrogation against the Agency. It is the intention of the parties that the Other Party's insurance policies shall protect both parties and shall be the primary coverage for any and all losses that occur under the contract.
 - 2) The Agency shall be named as an additional insured as regards negligence by the contractor. The 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.
 - 3) The insurance companies issuing the policy or policies shall have no recourse against the Agency for payment of any premiums or for assessments under any form of the policy or policies.
 - 4 Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.
- H. The following Indemnification Agreement shall be a provision of the contract:

The Other Party agrees to save and hold harmless, protect, defend, and indemnify the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, employees and volunteers, from and against any and all claims, demands, 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 the Other Party, its agents, servants and employees, or any and all costs, expenses and/or attorney fees incurred by the Other Party as a result of any claim, demands, and/or causes of action, except those claims, demands, and/or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its agents, representatives, employees and volunteers.

The Other Party agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands or suits at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claim, demand or suit is groundless, false or fraudulent. The State of Louisiana may, but is not required to, consult with the Other Party in the defense of claims, but this shall not affect the Other Party's responsibility for the handling of and expenses for all claims.
- I. Any deductibles or self-insured retentions must be declared to and accepted by the Agency. Any and all deductibles shall be assumed in their entirety by the Other Party.
- J. All property losses to Agency's property caused by the actions of the Other Party shall be adjusted with and made payable to the Agency.

- K. The acceptance of the completed work, payment, failure of the Agency to require proof of compliance, or Agency's acceptance of a non-compliant certificate of insurance shall not release the Other Party from the insurance requirements and indemnification agreement obligations.
- L. Additional insurance may be required on an individual basis for hazardous activities and specific service agreements. If such additional insurance is required for a specific contract, that requirement should be added to the list of required coverages found in the appropriate Exhibit.
- M. If the Other Party does not continue to comply with all of the insurance requirements at any time during the contract or at contract renewal, the Agency has the following options:
 - 1. Payments to the Other Party may be withheld until the requirements have been met;
 - 2. The Agency may pay any renewal policy premiums and withhold such payments from any monies due the Other Party;
 - 3. The Agency may suspend, discontinue or terminate the contract.

CHAPTER 7

OBTAINING PROOF OF COMPLIANCE

It is standard practice for the Other Party to submit a Certificate of Insurance as proof of compliance with insurance requirements contained in any RFP, bid or contract. The Acord™ Certificate Form is the most widely accepted form in the insurance industry. Other forms are acceptable if approved by the Department of Insurance. Contact ORM if you have questions regarding the acceptability of a form. The Certificate must be signed by an authorized representative of the Other Party's insurer and sent to the Agency before work can begin.

The Certificate is for informational purposes and it imparts no rights upon the Certificate Holder that have not already been provided in the actual insurance policy. The insurance codes of some states limit Certificate Holder's rights and various court decisions may affect a Certificate Holder's rights; consequently, the Agency should also obtain a signed Indemnification/Hold Harmless Agreement in addition to Certificates.

Items that must be added by endorsement to the Other Party's insurance are not automatic, including naming the Agency as an additional insured, providing a waiver of subrogation in favor of the Agency, and any specific notification requirements. The Other Party's insurance agent should obtain all necessary endorsements first and then issue the Certificate of Insurance describing the coverage that has already been put in place.

LA R.S. 22:890 and the Louisiana Department of Insurance (LDI) Regulation 99 specifically govern the issuance of Certificates of Insurance. Certificate forms and the verbiage that can be written on them are heavily regulated through the LDI. Actual policies and/or endorsements may have to be obtained from the Other Party to completely confirm that all insurance requirements have been met.

Problems can be eliminated by properly reviewing the Certificate of Insurance and/or insurance policies either during proposal or bid evaluations or before the contract is signed. It is important that the Agency assess the financial stability of the Other Party's insurers. Using the A.M. Best rating system (www.ambest.com), this is easily accomplished. If the insurer meets or exceeds the rating in the insurance requirements, then the insurance company is acceptable. If an insurer does not meet the minimum A.M. Best rating, the Other Party shall obtain a policy with an insurer that does meet the A.M. Best rating at the Agency's request.

Keep in mind that if the contract is longer than one year or the policy period of the insurance expires during the contract period, then the Agency must make sure the insurance has been renewed by requesting an updated Certificate of Insurance. It may be helpful to place a coverage check on a 30 day diary prior to the insurance expiration date of policies expiring during the project. If, at diary date, coverage renewal or replacement hasn't taken place, the Other Party should be informed that a new Certificate of Insurance needs to be completed. The Agency should request confirmation of continued coverage immediately and the Certificates of Insurance and/or insurance policies returned promptly before the coverage expiration date.

All Certificates of Insurance associated with a particular contract must be kept for a minimum of five years, since this may be the only record of coverage available. Certificates for specialized coverage, like professional liability, that are subject to a prescriptive period or a statute of limitations may need to be kept longer. Consult your Agency's attorney or ORM for guidance. The Other Party's insurer must be notified in writing immediately of any incidents or claims arising out of the Other Party's actions or products. Because some policies impose strict deadlines on claims reporting, immediate notification is always essential to avoid coverage problems in this area.

The following pages include a basic Certificate review checklist. The Agency can modify it to include their exact standard insurance requirements.

Also, an example of a standard Certificate of Insurance is included to illustrate the recommended insurance coverages and limits.

Certificate Review Checklist

No**	Yes	
		Date of issue is current
		Producer: Name and contact information of the insurance broker/agency is listed
		Insured: EXACT name and address of Other Party that is under contract with the Agency
		Insurers Affording Coverage: Each insurance company has an A.M. Best Rating of A-: VI, EXCEPT the Workers Compensation insurer (www.ambest.com),
		Coverages: Commercial General Liability
		Occurrence box is marked
		General Aggregate Limit Applies Per Project, if required, is marked
		“ADDL INSR” box is checked or has a “Y”
		Policy Number is listed
		Policy Effective and Expiration Dates are listed AND the contract start date falls within the dates listed
		Each Occurrence limit is at least \$1,000,000
		Personal Injury Limit is at least \$1,000,000
		General Aggregate Limit is at least \$2,000,000
		Products-Completed Operations Aggregate (if applicable) is at least \$2,000,000
		Coverages: Automobile Liability, if required
		Any Auto is marked OR All Owned, Hired and Non-Owned Autos are marked
		“ADDL INSR” box is checked or has a “Y”
		Policy Number is listed
		Policy Effective and Expiration Dates are listed AND the contract start date falls within the dates listed
		Combined Single Limit is at least \$1,000,000
		Coverages: Excess/Umbrella Liability (if listed)
		Occurrence box is marked
		“ADDL INSR” box is checked or has a “Y”

No**	Yes	
		Policy Number is listed
		Policy Effective and Expiration Dates are listed AND the contract start date falls within the dates listed
		Each Occurrence and Aggregate Limit is listed AND, if the CGL and AL limits above do NOT meet the insurance requirements, by adding this excess/umbrella limit to each now make CGL and AL meet the requirements
		Coverages: Workers Compensation and Employers Liability
		Any Proprietor/Partner/Executive Officer/Member Excluded? is marked No. If it is Yes, then names should be listed in Special Provisions section. Make sure those names are NOT working on site under the Agency contract. If they will be, then their Workers Comp is out of compliance.
		"SUBR WVD" box is checked or has a "Y"
		Policy Number is listed
		Policy Effective and Expiration Dates are listed AND the contract start date falls within the dates listed
		Employers Liability Each Accident/Disease Each Employee/Disease Policy Limit is at least \$1,000,00
		LHWCA, Jones Act, or other maritime law coverage is listed, if applicable
		Coverages: Other (if listed) (May be listed as Professional Liability, Pollution Liability, Aircraft Liability, Watercraft Liability, etc.)
		"ADDL INSR" box is checked or has a "Y", if applicable to the coverage listed
		"SUBR WVD" box is checked or has a "Y", if applicable to the coverage listed
		Policy Number is listed
		Policy Effective and Expiration Dates are listed AND the contract start date falls within the dates listed
		Each Occurrence liability limit is at least \$1,000,000 meets the required limit
		"ADDL INSR" box is checked or has a "Y", if applicable
		Coverages: Description of Operations/Locations/Etc.
		Additional Insured and/or Waiver of Subrogation language, if included here
		Certificate Holder is the name and address of your Agency
		Authorized Representative section is signed

**If any of the above are marked "No", then reviewer must contact the Other Party for further explanation. If the explanation is reasonable and will not affect the Agency's protection under the Other Party's insurance and/or cause increased liability to the State, then it can be accepted. Please contact ORM for assistance if needed.

Example Certificate of Insurance

[Click here for Example Certificate in pdf format](#)

EXHIBITS

The following exhibits are encouraged to be used as is, with as few modifications in wording as possible.

- Exhibit A - Insurance Requirements for Contractors
- Exhibit B - Insurance Requirements for Lessee (No Auto Risks)
- Exhibit C - Insurance Requirements for Joint Ventures
- Exhibit D - Insurance Requirements for New Construction, Additions and Large Renovations
- Exhibit E - Indemnification/Hold Harmless Agreement

EXHIBIT A

INSURANCE REQUIREMENTS FOR CONTRACTORS

The Contractor shall purchase and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. **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.

2. **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.

3. **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.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Contractor shall be responsible for all deductibles and self-insured retentions.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

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. The Contractor's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers for any and all losses that occur under the contract. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Contractor's insurance.

2. Workers Compensation and Employers Liability Coverage

To the fullest extent allowed by law, the insurer shall agree to waive all rights of subrogation against

the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for the Agency.

3. All Coverages

- a. All policies must be endorsed to require 30 days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits.
- b. The acceptance of the completed work, payment, failure of the Agency to require proof of compliance, or Agency's acceptance of a non-compliant certificate of insurance shall not release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

1. All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for workers compensation coverage only.
2. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days.

E. VERIFICATION OF COVERAGE

1. 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.
2. The Certificate Holder Shall be listed as follows:

State of Louisiana
Agency Name, Its Officers, Agents, Employees and Volunteers
Address, City, State, Zip
Project or Contract #:
3. In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.
4. Upon failure of the Contractor to furnish, deliver and maintain required insurance, this contract, at the election of the Agency, may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

F. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of subcontractor's Certificates at any time.

G. WORKERS COMPENSATION INDEMNITY

In the event Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

H. INDEMNIFICATION/HOLD HARMLESS AGREEMENT

1. 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.
2. 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. The State of Louisiana may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling of and expenses for all claims.

EXHIBIT B

INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

Lessee shall purchase and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operations and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. **Workers Compensation**

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Lessee'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.

2. **Commercial General Liability**

Commercial General Liability insurance, including Personal and Advertising Injury Liability, 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.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Lessee shall be responsible for all deductibles and self-insured retentions.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

- a. The Agency, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the Lessee. ISO Form CG 20 10 (for ongoing work) (current form approved for use in Louisiana), or equivalent, is to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the Agency.
- b. The Lessee's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Lessee's insurance.

2. Workers Compensation and Employers Liability Coverage

To the fullest extent allowed by law, the insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Lessee's for the Agency.

3. All Coverages

- a. All policies must be endorsed to require 30 days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications

shall comply with the standard cancellation provisions in the Lessee's policy. In addition, Lessee is required to notify Agency of policy cancellations or reductions in limits.

- b. The acceptance of the completed work, payment, failure of the Agency to require proof of compliance, or Agency's acceptance of a non-compliant certificate of insurance shall not release the Lessee from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Lessee to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

- 1. All required insurance shall be provided by a company or companies lawfully authorized to do business in Louisiana. Insurance shall be placed with insurers with an A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for workers compensation coverage only.
- 2. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Lessee shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days.

E. VERIFICATION OF COVERAGE

- 1. Lessee 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.
- 2. The Certificate Holder Shall be listed as follows:

State of Louisiana
Agency Name, Its Officers, Agents, Employees and Volunteers
Address, City, State, Zip
Project or Contract #:
- 3. In addition to the Certificates, Lessee shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.
- 4. Upon failure of the Lessee to furnish, deliver and maintain required insurance, this contract, at the election of the Agency, may be suspended, discontinued or terminated. Failure of the Lessee to purchase and/or maintain any required insurance shall not relieve the Lessee from any liability or indemnification under the contract.

F. SUB-LESSEES

Lessee shall include all sub-lessees as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each sub-lessee. Sub-lessees shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of sub-lessee's Certificates at any time.

G. WORKERS COMPENSATION INDEMNITY

In the event Lessee is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Lessee, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Lessee, its owners, agents and employees. The parties further agree that Lessee is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Lessee hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

H. INDEMNIFICATION/HOLD HARMLESS AGREEMENT

1. Lessee 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 Lessee, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by Lessee 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.
2. Lessee 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. The State of Louisiana may, but is not required to, consult with the Lessee in the defense of claims, but this shall not affect the Lessee's responsibility for the handling of and expenses for all claims.

EXHIBIT C

INSURANCE REQUIREMENTS FOR JOINT VENTURES

The Contractor which enters into a joint venture with the Agency shall purchase and maintain for the duration of the joint venture insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. **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.

2. **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.

3. **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.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Contractor shall be responsible for all deductibles and self-insured retentions.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. **Commercial General Liability and Automobile Liability Coverages**

- 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 equivalent, are to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the Agency.
- b. If it can be determined that the claim or occurrence was a direct result of the negligence of the Contractor, the Contractor's insurance coverage shall be primary insurance as respects the Agency, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the Agency, its officers, agents, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. If it is determined that the claim or occurrence is the direct result of the Agency, then the Agency's insurance coverage shall be

primary. If it is not clear as to the negligent party in the event of a loss or both party's contributed to the negligent act that caused the loss, both the Contractor's and the Agency's insurance shall share equally in the payment of the claim.

2. **Workers Compensation and Employers Liability Coverage**

To the fullest extent allowed by law, the insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor in conjunction with the Joint Venture.

3. **All Coverages**

- a. All policies must be endorsed to require 30 days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits.
- b. The acceptance of the completed work, payment, failure of the Agency to require proof of compliance, or Agency's acceptance of a non-compliant certificate of insurance shall not release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

1. All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for workers compensation coverage only.
2. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days.

E. VERIFICATION OF COVERAGE

1. 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.

2. The Certificate Holder Shall be listed as follows:

State of Louisiana
Agency Name, Its Officers, Agents, Employees and Volunteers
Address, City, State, Zip
Project or Contract #:

3. In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified

copies of all required insurance policies at any time.

4. Upon failure of the Contractor to furnish, deliver and maintain required insurance, this contract, at the election of the Agency, may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

F. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of subcontractor's Certificates at any time.

G. WORKERS COMPENSATION INDEMNITY

In the event Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

H. INDEMNIFICATION/HOLD HARMLESS AGREEMENT

1. 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.
2. 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. The State of Louisiana may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling of and expenses for all claims.

EXHIBIT D

**INSURANCE REQUIREMENTS
FOR NEW CONSTRUCTION, ADDITIONS AND LARGE RENOVATIONS**

The Contractor shall purchase and maintain without interruption for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors, or anyone employed directly or indirectly by any of them. The duration of the contract shall be from the inception of the contract until the date of final payment.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. 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.

2. Commercial General Liability

- a. Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations Liability, shall have a minimum limit per occurrence based on the project value. 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.
- b. The aggregate loss limit must apply to each project. ISO form CG 25 03 (current form approved for use in Louisiana), or equivalent, shall also be submitted. The State project number, including part number, and project name shall be included on this endorsement.
- c. COMBINED SINGLE LIMIT (CSL) PER OCCURRENCE

<u>Type of Construction</u>	<u>Projects up to \$1,000,000</u>	<u>Projects over \$1,000,000 up to \$10,000,000</u>	<u>Projects over \$10,000,000</u>
New Buildings:			
Each Occurrence Minimum Limit	\$1,000,000	\$2,000,000	\$4,000,000
Per Project Aggregate	\$2,000,000	\$4,000,000	\$8,000,000
Renovations:			
	The building(s) value for the Project is \$_____.		
Each Occurrence Minimum Limit	\$1,000,000 **	\$2,000,000 **	\$4,000,000 **
Per Project Aggregate	2 times per occur limit **	2 times per occur limit **	2 times per occur limit **

** While the minimum Combined Single Limit of \$1,000,000 is required for any renovation, the limit is calculated by taking 10% of the building value and rounding it to the nearest \$1,000,000 to get

the insurance limit. Example: Renovation on a \$33,000,000 building would have a calculated \$3,000,000 combined single limit of coverage (33,000,000 times .10 = 3,300,000 and then rounding down to \$3,000,000). If the calculated limit is less than the minimum limit listed in the above chart, then the amount needed is the minimum listed in the chart. Maximum per occurrence limit required is \$10,000,000 regardless of building value. The per project aggregate limit is then calculated as twice the per occurrence limit.

3. **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.

4. **Excess Umbrella**

Excess Umbrella insurance may be used to meet the minimum requirements for Commercial General Liability and Automobile Liability only.

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.

c. 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.

d. The policy must include coverage for the Owner, Contractor and any subcontractors as their interests may appear.

6. **Pollution Liability (required when asbestos or other hazardous material abatement is included in the contract)**

Pollution Liability insurance, including gradual release as well as sudden and accidental, shall have a minimum limit of not less than \$1,000,000 per claim. A claims-made form will be acceptable. A policy period inception date of no later than the first day of anticipated work under this contract and an expiration date of no earlier than 30 days after anticipated completion of all work under the contract shall be provided. There shall be an extended reporting period of at least 24 months, with full reinstatement of limits, from the expiration date of the policy if policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premium.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Contractor shall be responsible for all deductibles and self-insured retentions.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. Workers Compensation and Employers Liability Coverage

To the fullest extent allowed by law, the insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for the Agency.

2. Commercial General Liability Coverage

a. The Agency, its officers, agents, employees and volunteers are to be added as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used 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 equivalent, are to be used.

b. The Contractor's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers for any and all losses that occur under the contract. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, its officers, officials, employees or volunteers. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Contractor's insurance.

3. Builder's Risk

The policy must include an endorsement providing the following:

In the event of a disagreement regarding a loss covered by this policy which may also be covered by a State of Louisiana self-insurance or commercial property policy through the Office of Risk Management (ORM), Contractor and its insurer agree to follow the following procedure to establish coverage and/or the amount of loss:

Any party to a loss may make written demand for an appraisal of the matter in disagreement. Within 20 days of receipt of written demand, the Contractor's insurer and either ORM or its commercial insurance company shall each select a competent and impartial appraiser and notify the other of the appraiser selected. The two appraisers will select a competent and impartial umpire. The appraisers will then identify the policy or policies under which the loss is insured and, if necessary, state separately the value of the property and the amount of the loss that must be borne by each policy. If the two appraisers fail to agree, they shall submit their differences to the umpire. A written decision by any two shall determine the policy or policies and the amount of the loss. Each insurance company agree that the decision of the appraisers and the umpire if involved will be binding and final and that neither party will resort to litigation. Each of the two parties shall pay its chosen appraiser and bear the cost of the umpire equally.

4. All Coverages

a. All policies must be endorsed to require 30 days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits.

- b. Neither the acceptance of the completed work nor the payment thereof shall not release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

- 1. All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for workers' compensation coverage only.
- 2. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days.

E. VERIFICATION OF COVERAGE

- 1. 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.
- 2. The Certificate Holder Shall be listed as follows:
 - State of Louisiana
 - Agency Name, Its Officers, Agents, Employees and Volunteers
 - Address, City, State, Zip
 - Project or Contract #:
- 3. In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.
- 4. If the Contractor does not meet the insurance requirements at policy renewal, at the option of the Agency, payment to the Contractor may be withheld until the requirements have been met, OR the Agency may pay the renewal premium and withhold such payment from any monies due the Contractor, OR the contract may be suspended or terminated for cause. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

F. SUBCONTRACTORS

- 1. Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of subcontractor's Certificates at any time.
- 2. If Contractor does not verify subcontractors' insurance as described above, Agency has the right to withhold payments to the Contractor until the requirements have been met.

G. WORKERS COMPENSATION INDEMNITY

In the event Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent Contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

H. INDEMNIFICATION/HOLD HARMLESS AGREEMENT

1. 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.
2. 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. The State of Louisiana may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling of and expenses for all claims.

EXHIBIT E
INDEMNIFICATION AGREEMENT

The _____ {Contractor/Lessee} 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/Lessee}, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by _____ {Contractor/Lessee} 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/Lessee} 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. The State of Louisiana may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling of and expenses for all claims.

Accepted by _____
Company Name

Signature

Title

Date Accepted _____

Is Certificate of Insurance Attached? _____ Yes _____ No

Contract No. _____ for _____
State Agency Name

PURPOSE OF
CONTRACT: _____

