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Risk Transfer,

Compliance, &

Verification

by

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Risk Transfer, Compliance, & Verification

NOTE: In this workshop we discuss what needs to be done to effectively transfer risk and verify Compliance with your Contract Insurance requirements to obtain maximum protection for the Public Entity.

You invest time and expense to set up Risk Transfer from your Public Entity to your Vendor/Contractor.

How do you know if they are complying with your requirements?

How will they provide the money to pay for the risk they have assumed? By Insurance, since most Contractors are not flush with cash!

How do you verify their Compliance with your Insurance requirements, especially with so many Insurance Companies now issuing “Restricted Coverage” policies?

All the Risk Transfer effort is useless if there is no money to pay for the risk assumed by your Contractor/Vendor! This is why you must verify coverage for your requirements!

This workshop review ***Risk Transfer*** provisions, **BUT THEN** the emphasis will be to ensure ***Compliance and Verification*** in an effective and time-saving manner.

But you say – we require Certificates of Insurance for every Contractor/Vendor!

There are many things NOT shown on a Certificate of Insurance (& Certificate Tracking Services) that endangers your Liability coverage from the actions of the Vendor/Contractor’s Insurance. Certificates of Insurance do—

1. NOT show if coverage complies with your Contract requirements – COI picks and chooses what to tell you
2. NOT show “Restrictive Coverage” policy exclusions & endorsements that mean NO coverage, or reduced coverage for you – There are many of them!
 - a. Restrictions, Exclusions, or Limitations for location, types of designated ongoing or completed operations, type of work, etc





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3. NOT show exclusions or limitations for Contractual liability coverage (which provides your Indemnity coverage), changes to “insured Contract” definition, or Vendor/Contractor employee “action over” exclusion
4. NOT show exclusions for Property Damage liability done by Subcontractors
5. NOT show Prior work exclusions, including:
 - a. Montrose exclusions, Continuous injury coverage exclusions, Modification of Occurrence definition, Continuous and Progressive or Pre-existing Damage endorsements.
 - b. All of these endorsements can have the effect of deleting Completed Operations Coverage, including Construction Defect coverage for you!
6. NOT show “Contractor’s endorsements” that change or exclude the standard coverages you thought you had for many policy provisions!
7. NOT show waiver(s) of subrogation
8. NOT show if coverage is primary for Underlying & Excess policy(ies)
9. NOT show specific Additional Insured Endorsements & Compliance for ongoing and completed operations
10. NOT show details of any large SIR endorsements and dangers
11. NOT show verification of Insurance for any Subs hired by your Contractor

We are proud to introduce and review with you the elements of our **Coverage Compliance Verification© (CCV) Program** that demonstrates how you can handle these issues. I have worked for years to create this program and make it operationally user-friendly. My online partner at Paladin Risk Management says we are getting the library out of my head and putting it online and available to PARMA’s Public Entity members.

Whether you use the program or not, you can resolve many of the same issues manually, or adapt to your own system – and I’m going to show you how to identify them and do that.

This is much more than just a Certificate of Insurance tracking system—This **Program actually verifies Coverage Compliance© with the customized Insurance requirements from your specific Contract for each item for each Contractor!**

More on that later... Right now we need to **understand the issues involved to see why and how to solve them.**



Transfer of Risk Using Contracts

1. When you hire a Contractor, you become liable for their work

- a. Public Entities & GCs have their own liability plus responsibility and liability for the actions of others they hire (Contractors and Subs)
- b. All parties need to have correct Insurance for both the liabilities they have, and the liabilities they assume in a Contract

2. Party best able to control the risk should be responsible—the Contractor/Vendor

- a. Proper use of Contract Agreements can transfer financial risk to the responsible party—Public Entity Transfers risk to the Contractor or his Subs doing the work and directly causing the risk
- b. The Contract specifies the requirements and responsibilities of each party and therefore the liabilities they assume

3. Two principal ways to transfer the cost to protect the Public Entity

1. Indemnity—Insured (paid for) by Contractor and by means of Contractual liability coverage and the definition of “insured contract” in Contractor’s Insurance policy
2. Insurance—Insure the Upstream Party by Additional Insured Endorsement(s) on the Contractor’s policy. We will cover those later.





4. **First** look at what contracts require, or should require—then examine the coverages that will pay for it.

5. **Indemnification and Risk Transfer**

- a. What it is—One party agrees to assume another's liability
- b. In California, the Legislature has codified the definition of indemnity as follows: "Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or some other person." California Civil Code § 2772.

6. **Types of liability to be Transferred**

- a. Vicarious liability—liability as a function of law regardless of the actions of the Hiring Party
 - i. Negligence is not required to have vicarious liability
- b. Negligent Tort liability—Duty of Care; Prudent person standard; Breach resulting in harm = Negligence
 - i. Active liability—What you did caused the harm
 - ii. Passive liability—What you did not do, but could have, caused the harm; you could have prevented it; Failure to prevent a known danger may be considered “Active” negligence



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1. Passive examples: Failure to discover, supervise, inspect; prevent; an omission of a duty
 - iii. Strict Liability—no negligence required, only causation; Products, etc
- c. Contractual Liability—Liability of others assumed by Contract; Liability because the Contract says so! What the Contractor does to indemnify you.
- d. Joint & Individual (Several) Liability and its effect = deep pockets
- e. Professional Liability—Different from General (tort) Liability in that it includes Financial Harm even if no Bodily Injury or Property Damage happens; a financial loss from an error or omission

7. Types of indemnity agreements:

- a. Type I Contractual Indemnity— Allows indemnification for the Public Entity's Liability for damages from any tort liability, including Active or Passive, whether or not caused by the contractor or within his scope of work.
 - i. Exceptions: 1—Sole or 2—Willful Liability, including fraud
- b. Type II—Indemnification for the Passive, but not Active Liability of the Public Entity regardless of who caused it, i.e. whether or not caused by the indemnifying contractor; Indemnifies passive liability caused by others
- c. Type III—Indemnification only for Passive liabilities caused by the indemnifying contractor, but not Passive liability caused by others





- d. General Indemnity clause does not specifically address how much of the Public Entity's negligence is indemnified. At most, only Passive, not Active liability, is indemnified. May be tossed out of Court entirely!
 - i. Reference for Types 1-3 & General Indemnity clause: *McCrary Construction Co. v. Metal Deck Specialists, Inc.*, 133 Cal. App. 4th 1528 (2005)

8. Elements of Indemnification—

- a. Hold Harmless, Defend, Indemnify, & Waive subrogation rights.
 - i. Contractual waiver must be endorsed for Work Comp policy, but is allowed by ISO carriers for CGL policy & Business Auto
 - ii. Effect of waiver of subrogation—no right of recovery
- b. Contractual Duty to defend can stand separate from the duty to Indemnify
 - i. *Crawford v. Weather Shield Mfg., Inc.* (July 2008): Duty to defend arises immediately upon a proper tender of defense by the Owner regardless of actual negligence of the Contractor.
 - ii. Review and update Defense obligation in contracts!
- c. Length of obligation—During Contract, or including after completion – Why later—Construction Defect





i. Currently, How long is allowed by law?

d. Is Indemnity regardless of or limited by insurance coverage?

9. INSURANCE COVERAGE FOR INDEMNITY OBLIGATIONS

a. Standard ISO CGL Policies contain coverage **for the Named Insured** for liability assumed (Indemnified by Contractor) in an “Insured contract.”

i. “That part of any other contract or agreement pertaining to your business under which you (*the Named Insured Vendor/Contractor*) assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization.” (definition “f.” of “insured contract” definition)

b. **BEWARE** of endorsements restricting the Contractual Liability coverage or other endorsements excluding or changing the “insured contract” definition that provides this coverage.

c. Do Insurance requirements prohibit “modification of the standard ISO Contractual liability definition of an “insured Contract”?”

i. ISO CG 21 39 deletes the “f.” portion of the definition clause above and results in no coverage for most Contracts (other than a. through e.)

d. Effect on indemnification provisions—Contractor liable & no coverage





10. Employer's Liability (Worker's Comp) Indemnification—

- a. "Action over" employee liability suit against Public Entity
- b. Employee lawsuit of Public Entity is indemnified by Employer's coverage provided under the same ISO CGL definition of an "insured contract"

11. What about high deductibles/SIRs? What's the difference?

- a. A policy with a deductible (not SIR) requires that the Insurance Company perform their duties (defense and coverage) with out prior payment such as is the case with SIRs.
- b. Danger of large SIRs (not deductibles)
 - i. Forecast Homes Inc. vs. Steadfast Insurance Company—Carrier not obligated to provide coverage to Additional Insureds where the Named insured failed to pay the SIR. The Additional insured could not satisfy the SIR on behalf of the Named insured in order to trigger coverage.
 - ii. Be very careful of granting such high limit SIRs which must be paid by the named Insured.
 - iii. With respect to a Contractor that has a very high SIR – Do your due diligence. Require financials, collateral, Letter of Credit, security, etc sufficient to pay the SIR. Require a Contract provision that the Contractor pay the SIR





- iv. Have the Insurance Company amend the policy to provide that the Public Entity, not just the named Insured, can satisfy the SIR (in order to trigger coverage).

12. Pass through or Pass down provision – require that any Subs hired by the Contractor require the same coverage for the Public Entity

13. Amount of risk not necessarily consistent with size of job

- a. Purchase order used for small jobs? Example: Tank Maintenance—built scaffold and EE injured
- b. Worker's comp “action over’ liability for Public Entity from Contractor’s or Sub’s Employees
- c. Most Public Entities have services for which you do NOT require a Contract
 - i. Balance needed to not require overly cumbersome, strict, or excessive Insurance requirements. Doing so may rule out small, local, responsible vendors and create higher Contract costs. Do these on a pre-vetted service basis.
 - ii. Evaluate higher risk operations for Contract requirements with higher limits. Awareness level training to:
 - 1. Distinguish low & high risk; routine vs suspicious; normal vs hazardous or risky. Examples: kids, large crowds, high voltage, water, heights, ladders, scaffolding, pyrotechnics, flammable, etc



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- iii. Special event & facility rentals; Boy Scouts vs 5k run; too much risk for City to take on their own. Some policies available for these. It is dangerous to allow higher exposure and not transfer the risk.
- iv. Put your “Indemnity & Insurance Requirements” on the Purchase Order (or Proposal, Memorandum of Understanding, Letter of Intent, etc. – whatever you use) and have them sign. This will “trigger” the “written Contract or Agreement” requirement for policy coverage.
- v. Surprising good coverage of small BOP policies.

Provides quick & early problem screening & policy trigger with late or no Contract!

15. Anti Indemnity Public Agency restrictions for all construction related contracts:

- i. Civil Code Section 2782(b) provides that indemnification for the active negligence of a public agency relating to a construction related contract is invalid (i.e. void and unenforceable)
 - 1. Type 1 is not allowable! Type 2 & 3 are ok
- ii. Assembly Bill 573, effective January 1, 2007 (Section 2782.8 of the California Civil Code) prohibits public agencies (but not the State) from requiring design professionals to indemnify for the public agencies’ negligence or other fault (not just active), unless caused by that design professional

- 1. Type 1 & 2 is not allowable! Only Type 3 is ok





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SB474—effective 1-1-2013

- b. NO MORE Type 1 indemnity—For contracts executed on or after 1-1-2013, Indemnification for active liability will no longer be allowed in any construction related contract
 - i. Limitation also applies to defense for the Public Entity's active negligence—may now obtain only defense proportionate to the extent of damage caused by the subcontractor.
- c. Does NOT apply to non-construction related contracts
- d. To avoid overly broad indemnity provisions, use qualifying language

The best indemnity Contract in the world is no good if the Contractor can not afford to pay for the indemnification promises, or does not have Insurance to do so!





There are 2 primary ways to cover Contract obligations with Insurance

1) **Coverage as an Indemnified Party (Indemnitee)**—

- a) Covered by means of Contractual liability coverage
- b) Coverage is limited by definition of “Insured Contract” in Contractor’s Policy
 - i) Is definition amended to require named insured contractor’s fault
 - ii) Does definition otherwise exclude or reduce Contractual Coverage
- c) **Policy** exclusions or limitations will also prevent coverage!

2) **Coverage by endorsement as an Additional Insured Party**

- a) By means of Additional Insured Endorsement – not just Certificate of Insurance!
- b) Limited by which coverage form is used for Additional Insured
- c) When does coverage apply, i.e. during operations or after completion
 - i) Completed Operations exposure for Construction, repair, and maintenance
- d) Does the form require contractor’s fault





- e) Does the policy itself have other exclusions or limitations that prevent coverage

ALL 2013 ISO Additional Insured forms do not apply unless required by Contract!

1. **ALL** of the new 2013 ISO Additional Insured Endorsements with the edition date of 04.13 contain provisions limiting and restricting their Insurance coverage for the Additional Insured to ONLY the requirements in the written contract (or agreement) between the parties.
2. **COVERAGE**—The Contract must explicitly require the limits and extent of coverage or there is NO coverage! No clear Contract requirement = NO COVERAGE!
3. **LIMITS**—Even if your Contractor’s policy contains broader coverage or higher limits of liability than your contract requires, they will NOT apply in behalf of the Additional Insured or Indemnified Party (Indemnitee) unless it is required in the contract!

Contracts should require that the full coverage and limits available to the named insured shall also be available and applicable to the additional insured!

1. The new ISO CG 20 38 provides Additional Insured “ongoing operations” liability coverage for the Public Entity from the Contractor you hire **as well as for Subs he may hire** on an automatic basis **provided it is required** in the Contract.
 - a. The CG 20 33 provides this coverage for only the Contractor you hire and not any of his Subs. In this case the Subs must name you individually.
 - b. **Make sure your Contract requires it!** How—To receive the automatic blanket provisions of the CG 20 38 04 13 endorsement or coverage “at least as broad” (do not say “equivalent”) include a provision requiring it in your Contract.

The NEW ISO CG 20 01 ENDORSEMENT PROVIDES EXPLICIT PRIMARY AND NON-CONTRIBUTORY COVERAGE

1. This is a new endorsement that expressly states that the coverage is provided to an additional insured Public Entity on a “primary and non-contributory” basis,





2. This endorsement is activated only if the named insured Contractor has agreed to these terms in a written contract or agreement.
3. **Make this a requirement in all your Contracts!**
4. **Excess Insurance**—Most excess or umbrella policies usually contains language that makes them excess only, and not primary. Include language that requires the umbrella or excess Insurance to provide coverage on a primary and non contributory basis.

PRACTICAL EFFECTS OF THE 2013 FORMS—

1. Unless agreements between “friendly parties” (both parties are Public Entities) contain clear written requirements, you may have no Insurance coverage at all from your Insurance carrier for anything in excess of the Self Insured Retention limits!
2. Public Entities need the correct written requirements in their contracts! Otherwise the Insurance of Contractors will not provide the expected coverage!
3. Contracts or agreements **must be clear** as respects the extent of additional insured coverage required. Many agreements simply require a party to the contract to be an "additional insured" or simply "an insured." What, then, is the scope of coverage agreed upon? (Negligence or “Caused by” requirement, Active, Passive, Vicarious, etc.)
4. Require that Contractors provide coverage “at least as broad” (not just “equivalent”) as the specific ISO forms listed in your Insurance requirements. Make provisions to analyze whether “non-standard (non-ISO) forms” constitute coverage “at least as broad” since most, but not all Companies, use the ISO forms.
5. A reference Matrix of various ISO Indemnity and Additional Insured Endorsement forms and their appropriate application follows.





ISO COVERAGES for Parties Other than the Named Insured

CAUTION! Non-ISO Manuscript Policies or Modified Definitions or Endorsements differ from the standard ISO coverages below! Be very careful!

INDEMNIFIED PARTY Contractual Liability Coverage for Named Insured (Definition of “Insured Contract”)

Ongoing Operations (During Construction)	Completed Operations (After Construction)	NOT require “caused by” Named Insured; Covers Type 1, 2 or 3	REQUIRES “caused by” Named Insured; covers <u>only</u> Type 3 indemnity
Standard ISO “Insured Contract” definition in CG 00 01	Standard ISO “Insured Contract” definition in CG 00 01	Standard ISO “Insured Contract” definition in CG 00 01	CG 24 26 07 04 & 04.13+ AMENDMENT OF INSURED CONTRACT DEFINITION
CG 21 39 deletes “f.” NO COVERAGE	CG 21 39 deletes “f.” NO COVERAGE	CG 21 39 deletes “f.” NO COVERAGE	CG 21 39 deletes “f.” NO COVERAGE

BEWARE of endorsements amending, excluding, or changing Contractual Liability coverage or the “insured contract” definition that provides the liability coverage for Indemnification obligations assumed by Contract by the Named Insured.

ADDITIONAL INSURED ENDORSEMENT Coverage (CG 20 01 adds Primary & Non-Contributory)

Ongoing Operations (During Construction)	Completed Operations (After Construction)	NOT require “caused by” Named Insured	REQUIRES “caused by” Named Insured to trigger coverage. <u>ALL</u> 07.04 & 04.13
CG 2010—All editions	CG 2010 11.85 Edition only	YES—all except 07.04 & 04.13*+	CG 2010 07.04 & 04.13*+
CG 2033 All editions & 2038 04.13*+	CG 2033 & 2038 04.13*+ = NO Coverage	YES—all except 07.04 & 04.13*+	CG 2033 07.04 & CG 2038 04.13*+
CG 2037 = NO Coverage	CG2037 ALL editions	YES 10.01; NO 07.04 & 04.13*+	CG 2037 07.04 & 04.13*+

EXAMINE CAREFULLY Non-ISO Additional Insured Endorsements to see how they differ from the above for coverage in each of the 4 column and 3 row categories.

+ All of the 04 13 Endorsements above apply only to the extent permitted by law

* ALL of the 04.13 Additional Insured Endorsements **will NOT (1) provide broader coverage or (2) pay higher limits than required by the written Contract or Agreement!** The Contract must explicitly require the limits and extent of coverage or there is NO coverage even if the policy would otherwise provide the coverage!

No clear Contract requirement = NO COVERAGE!





“RESTRICTED COVERAGE POLICIES” – A Whole new class of Insurance

- 1) Some Companies actually specialize in Restricted Coverage policies, and other Companies have them as options.

- 2) Chilling statements made by an executive of a large, national Insurance Company:
 - a) ‘Brokers need to understand and explain to their Insureds that we don’t ever expect to pay a loss under this type of policy.’

 - b) ‘They need to understand all they are getting is paper to allow them to get on the job.’

- 3) **Certificate of Insurance will not warn you of the restricted or excluded items!**

- 4) Your Contractor’s Insurance Company will not pay

- 5) Many, if not most, Contractor polices now have special endorsements!

- 6) **Examples of Restricted Coverage Endorsements** put on policies:
 - a) Non-standard Additional Insured Endorsements providing less coverage, or with unreasonable limitations or conditions

 - b) **Prior work exclusions—**
 - i) Montrose exclusions – continuous injury coverage exclusions.





- ii) Modification of Occurrence definition

- iii) Various Continuous and Progressive / Pre-existing Damage endorsements

- iv) These endorsements can have the effect of deleting Completed Operations Coverage, including Construction Defect coverage for both Additional Insured Endorsements and Contractual Liability indemnity coverage

- c) Restrictive exclusions – type of work, residential, # of units, etc

- d) Limitation of Coverage to Designated Premises or Project (CG 21 44)

- e) Exclusion—Designated Ongoing Operations (CG 21 53)

- f) Exclusion—Damage to Work Performed by Subcontractors on Your Behalf (CG 22 94) – Removes coverage for Property Damage**

- g) Wrap Up policies (OCIPs, CCIPS, etc) – can be very good, or very, very bad
 - i) Coverage Considerations for a Wrap Policy are completely different!

- h) Contractor’s Endorsements – the catch all!**
 - i) One Company underwriter said ‘we put all the bad stuff in that one endorsement hoping they won’t notice.’





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- 7) If the Public Entity is named on a **policy with exclusions** or “wrong” coverage or no coverage—**there is no coverage** for the Public Agency Additional Insured, or the named Insured Contractor!
- 8) **VERIFICATION** of Coverage Compliance© IS THE MOST IMPORTANT PART OF THE ENTIRE PROCESS! Make It **standard practice** (authorized & required by your Contract) that you **require a Certificate of Insurance with the following attached**—
- i) **Waiver of subrogation endorsement for Workers' Compensation**
 - ii) **Additional Insured Endorsement for “ongoing operations”** (i.e., CG 20 10, CG 20 33, or CG 20 38. Do not use the CG 20 33 if Subs may be involved. Phase out usage of the CG 20 33 as the CG 20 38 becomes available.)
 - iii) **Additional Insured Endorsement for “completed operations” exposures such as construction, repair, or maintenance operations** (i.e., CG 20 37 if scope of work makes it applicable due to completed operations exposure.)
 - iv) **Primary & non-contributory coverage**
 - v) **A copy of the Schedule of Policy Endorsements page for the GL policy.** (This is **necessary** to help **identify “Restricted Coverage” policies and endorsements** and verify if limitations or exclusions have been added to the policy.)

IF YOU DO NOT KNOW WHAT AN ENDORSEMENT OR POLICY PROVIDES OR CONTAINS—GET HELP! Don't be paralyzed by fear.





THE BEST CONTRACT FOR INDEMNITY AND INSURANCE REQUIREMENTS ARE USELESS UNLESS VERIFIED FOR COVERAGE COMPLIANCE!

Our *Coverage Compliance Verification*© (CCV) Program demonstrates how you can handle these issues.

HOW IT WORKS—The Program actually verifies *Coverage Compliance*© with the customized Insurance requirements from your specific Contract for each item for each Contractor!

Upon receipt of your brief Intake information of your preferences and your Contract with your Insurance Coverage Requirements, we provide you—

1. An Insurance Coverage Requirements **Addendum** (if needed) for your Contract of typical Insurance requirements that may not be in the Agreement and are important to your coverage and verification of compliance.
2. We Prepare and Provide the **Insurance Requirements Guide** for the Contractor/Vendor and do all data entry.
3. We work with Contractors to facilitate and **verify** *Coverage Compliance*© and keep the Public Entity advised of communications.
4. **We upload all data and documentation** of *Coverage Compliance*© (or Non-Compliance) to the website for each item of your Insurance requirements for the Contractor along with copies of all documents and communication. Real time Status and comprehensive search features with password protection are available at all times on the website of each item for every Contractor for all Projects.
5. All communication is based upon your contact preferences, your specific insurance requirements, and our proprietary *Coverage Compliance Verification*© system with our large **Database of Restrictive and Prohibited endorsements** helping to identify policies and endorsements that could reduce or exclude your Risk Transfer coverage protection.

We have now automated to a large degree what previously we have done manually. Much faster—and much less expensive! I have been working to get that “library” out of my head and into an online automated system.



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***** Coverage Compliance© Verification© (CCV) demonstration *****

Since not all things can be automated, in addition to working with and overseeing the *Coverage Compliance Verification©* online system —

If the Public Entity desires consultation regarding waiver of individual requirements applying to specific project circumstances, or assistance with an initial setup or review of their Insurance Specifications or Indemnity requirements—we are available on a reduced fee program basis. For consulting information please see

<http://www.CertifiedRiskManagers.com/02BiographicalProfile.htm>

For additional information, or to get started or try out the program, you may contact me at Bob@CertifiedRiskManagers.com or my direct line at 949-613-7075; OR –

Mr. Sandy Greenstein at Sandy@PaladinRiskManagement.com or 888.240.4431 ext. 2
Advise him you are a Public Agency Bob Marshburn referred to him regarding the *Coverage Compliance Verification©* (CCV) Program.





APPLICATION OF KNOWLEDGE LEARNED

- 1) Use a “Summary of Indemnity and Insurance requirements” with signature for RFPs, RFQs, Purchase Orders, MOUs, LOIs, etc to prevent problems, solve earlier, trigger coverage, and make the process simpler & quicker!
 - a) Having this signed “Summary” triggers available coverage for:
 - i) Indemnity for Contractual Liability coverage (“Insured Contract” definition) and “action over” Workers' Compensation claims
 - ii) Automatic Blanket Additional Insured Endorsements
- 2) Use the new ISO CG 20 38 as available for broader coverage (for Subs) to replace the 20 33 automatic blanket Additional Insured (OK if no Subs)
- 3) Focus on high risk operations for higher limits. Awareness level training to:
 - a) Distinguish low & high risk; routine vs suspicious; normal vs hazardous or risky. Examples: kids, large crowds, high voltage, water, heights, ladders, scaffolding, pyrotechnics, flammable, etc
- 4) Verification of requirements –Require a Schedule of Policy endorsements with Certificate of Insurance. Review the Schedule and Evaluate Yellow (Need more info—could be a problem) and red flags (Prohibited endorsements). It saves time, expedites questions and delays to an earlier, manageable time process
- 5) Pay special attention to the Schedule of Policy endorsements for—
 - a) Contractual Liability “Insured Contract” definition changes or exclusions
 - b) The correct Additional Insured Endorsements per your requirements
 - c) Policy exclusions, limitations, and reductions in coverage





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BIOGRAPHICAL PROFILE—Robert J. Marshburn, CRM, CIC, ARM, CRIS, CISC



In independent industry evaluations, Mr. Marshburn is consistently rated as one of the nation's top Risk Management Consultants and Educators. He is the founder and principal of R. J. Marshburn & Associates, CertifiedRiskManagers.com, an independent risk management consulting and educational firm. He has been in risk management 40 years.

Mr. Marshburn holds the professional designations of Certified Risk Manager (CRM), Associate in Risk Management (ARM), Certified Insurance Counselor (CIC), Construction Risk & Insurance Specialist (CRIS), and Certified Insurance Specialist in Construction (CISC).

Mr. Marshburn works as an outsourced risk manager, as an independent consultant to clients, and in association with other professionals with their clients. He is an appealing, frequent speaker before various groups on risk management and insurance topics.

Mr. Marshburn was an original designated member of the National Faculty of the Certified Risk Manager's program teaching advanced Risk Management courses leading to qualification for the CRM professional designation. He also served as a consultant in developing the CRM program on the Curricula Advisory Committee.

He authored Graduate courses and teaches workshops in Indemnification & Additional Insureds, Contractual Liability & Insurance Coverage, Construction Defect issues, Wrap-Up Policies, and Ethics.

He is the co-creator and author of the Certified Insurance Specialist in Construction (CISC) professional designation that was later merged into the Construction Risk & Insurance Specialist (CRIS) program from the International Risk Management Institute which he also teaches. In addition, he serves as the Senior Educational Consultant and Instructor to the Insurance Community University.

Mr. Marshburn is a nationally recognized expert in the field of Contractual risk transfer, including indemnity and insurance requirements for risk management. He specializes in the challenges posed in Construction Risk, including Construction Contracts, Contractual Liability Analysis & Design, Insurance Policy Coverages and Endorsements, Wrap Policies (OCIPs, CCIPs, etc), Construction Defect Liability, and Coverage Disputes.

Mr. Marshburn has been retained as a consultant, educator, and expert witness for some of the nation's premier builders, contractors, risk managers, carriers, developers, brokers, consultants, attorneys, public entities, industry & trade associations, and educational organizations.



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EXHIBITS



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

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

HIGHLIGHTS ADDED TO THE FORM

Color Font Added to the Form

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The **most we will pay** on behalf of the additional insured **is the amount** of insurance:

- 1. **Required by the contract** or agreement you have entered into with the additional insured; **or**
- 2. **Available under the applicable Limits** of Insurance shown in the Declarations; **whichever is less.**

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

HIGHLIGHTS ADDED TO THE FORM

Color Font Added to the Form

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
<p>MUST LIST ALL ENTITIES PRECISELY! IF NOT LISTED, THEY ARE NOT COVERED!</p>	<p>ALL LOCATIONS FOR XYZ ENTITY(IES)</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" **caused, in whole or in part, by:**

1. **Your acts or omissions; or**
2. The acts or omissions of **those acting on your behalf;**

in the performance of **your ongoing operations** for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured **only applies to the extent permitted by law;** and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured **will not be broader than** that which you are **required by** the **contract** or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance **does not apply to** "bodily injury" or "property damage" occurring **after:**

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered **operations** has been **completed;** or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

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

1. **Required by the contract** or agreement; **or**

2. **Available** under the applicable **Limits** of Insurance shown in the Declarations; **whichever is less.**

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

HIGHLIGHTS ADDED TO THE FORM

RED CAPS WORDING ADDED TO THE FORM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
MUST LIST ALL ENTITIES PRECISELY! IF NOT LISTED, THEY ARE NOT COVERED!	ALL LOCATIONS FOR XYZ ENTITY(IES)

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" **caused, in whole or in part, by "your work"** at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the **"products-completed operations hazard"**.

However:

1. The insurance afforded to such additional insured **only applies to the extent permitted by law;** and
2. If coverage provided to the additional insured is required by a contract or agreement, the **insurance** afforded to such additional insured **will not be broader than** that which you are **required by the contract** or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

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

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

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

HIGHLIGHTS ADDED TO THE FORM

RED CAPS WORDING ADDED TO THE FORM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

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

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

SAMPLE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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

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

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

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

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

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