



# **Insurance and Indemnification Guidelines for State of Arizona Contracts**

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# Insurance and Indemnification Guidelines for State of Arizona Contracts

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## Introduction

**Disclaimer: Please note these insurance modules are not intended to be used with Construction Contracts.**

### What is the Purpose of these Indemnification and Insurance Modules?

The modules have been developed by the State of Arizona, Department of Administration, Risk Management Division (State Risk) to assist State of Arizona staff in incorporating the State's insurance and indemnification requirements into written agreements (contracts), e.g. invitation for bids (IFBs), leases, and requests for proposals (RFPs). Our goal is to provide easy-to-use guidelines that can be cut and pasted into a contract document.

An Indemnification Clause is required in all State contracts so that the responsibility for claims that may arise out of the course and scope of the contract shall be transferred to the Contractor. The insurance requirements ensure that the Contractor has the financial resources to pay claims.

### Transferring Risk through Contracts

The State of Arizona transfers the risk of accidental loss through contracts. This transfer of risk is achieved by requiring the other party to the State of Arizona contract, e.g. the "contractor," "vendor," "permittee," or "lessee," to protect themselves and the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees against claims or judgments arising from their products, services, operations, activities or use of facilities. The best way to ensure that the transfer actually takes place, i.e. loss will be paid by someone other than State Risk, is to require an Indemnification Clause and insurance.

Bid specifications, contracts, and permit requirements should contain a clear description of the required insurance. In addition, they should contain a hold harmless and indemnification clause that works in conjunction with the insurance requirements. Such a hold harmless and indemnification clause is an agreement by which one contracting party assumes the liability of another and agrees to defend them in the event of a claim. It is the legal provision that transfers risk, while insurance provides the financial guarantee.

Insurance policies that financially support the hold harmless and indemnification clause may not automatically become effective upon execution of the contract. Coverage may apply only when the Contractor's insurance company issues the required insurance policies or endorses existing policies to match the insurance requirements of the contract.

As proof of coverage, most insurance agents and brokers will provide a document called a certificate of insurance. While a certificate is evidence that the Contractor has an insurance policy, it does not guarantee that the required insurance provisions are in place. Even with this shortcoming, the certificate of insurance, if completed correctly, is the only practical means of confirming that coverage exists. In some situations, it may be necessary to obtain and review the actual policy and specific endorsements.

The modules provide guidance on how to establish appropriate indemnification and insurance requirements to meet the scope of work in your contract.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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## Guide to Automobile Liability Exemption (Commuting)

Some contracts will not require the contractors to use their automobile at all. Others may require vehicle use within a limited scope, i.e. a commute. "Commute" means a trip between the Contractor's home or principal place of business and one State agency location or destination. In these cases, where **all** contractors under an agreement travel **only** within a "commute," or do not drive at all, the procurement officer may decide to delete the Automobile Liability insurance Requirements from the module they have chosen.

For example, Service Contracts, where the intended automobile use is limited to a commute, have been formatted to this situation. Other modules may be re-formatted by the Procurement Officer to implement this variable, provided the Contractor's automobile use is limited, based on the above criteria.

It is crucial that the Procurement Officer know the likelihood of such limited use **before** deciding to eliminate the Automobile Liability requirement. It is equally important that the Procurement Officer know the automobile use under the contract **before** contacting State Risk for advice regarding the Automobile Liability requirement.

## Statewide Contracts

*Please be aware that the indemnity and insurance provisions may apply to certain cooperative parties when a statewide contract is used. State Risk recommends that the Contract Administrator identify those cooperative parties in a section of the contract and state clearly, by reference to the indemnity and insurance provisions, the applicability of such provisions to those parties.*

## Contact State Risk

The modules do not address all possible insurance questions that can arise, but are intended to address the most common situations. If there are any questions about the information contained in this guidance document, or need assistance in determining the appropriate insurance and/or indemnification language, please contact State Risk:

*Arizona Department of Administration - Risk Management Division  
100 North 15th Avenue, Suite 301, Phoenix, AZ 85007  
Phone: (602) 542-2180*

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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## Professional Service Contracts

### 1. Standard Professional Service Contracts

Professional Liability insurance is issued for a “professional” and covers the rendering of, or failure to render, services of a professional nature. Professional Liability insurance is usually written on a claims-made basis. Therefore, the Contractor needs to maintain coverage during the contract period and for a specified period (typically two years) *after* the project has been completed.

The types of losses that can occur as a result of professional rendering services are often excluded under general liability insurance policies. Therefore, these losses need to be covered through a separate professional liability insurance policy.

Professional liability insurance is needed when one of the following applies:

- If the professional is licensed, registered, or certified and expected to follow the usual and customary standards of their profession. Professions in this category include, but are not limited to, accountants, attorneys, engineers/architects, construction management, technical consultant, surveyor (AF), and appraisers.
- If the information provided by the professional is to be used by the State of Arizona in a decision-making process that may have an impact to life, health, safety, and/or a significant financial impact to the State, its agencies, and the public.

If you have questions regarding the applicability of Professional Liability insurance, please contact your assigned State Risk Insurance Analyst.

#### 1.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

## **1.2 Insurance Requirements**

1.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

1.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

## **1.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

### **1.3.1 Commercial General Liability (CGL) – Occurrence Form**

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Damage to Rented Premises	\$50,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### **1.3.2 Business Automobile Liability**

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
  - a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 1.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 1.3.4 Professional Liability (Errors and Omissions Liability)

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000
- a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

## 1.4 Additional Insurance Requirements

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 1.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 1.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

## **1.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

## **1.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

## **1.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 1.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 1.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 1.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of



# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

## **1.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

## **1.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

## **1.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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## 2. Standard Professional Service Contracts (\$50,000 or under)

Professional Liability insurance is issued for a “professional” and covers the rendering of, or failure to render, services of a professional nature. Professional Liability insurance is usually written on a claims-made basis. Therefore, the Contractor needs to maintain coverage during the contract period and for a specified period (typically two years) *after* the project has been completed.

The types of losses that can occur as a result of professional rendering services are often excluded under general liability insurance policies. Therefore, these losses need to be covered through a separate professional liability insurance policy.

Professional liability insurance is needed when one of the following applies:

- If the professional is licensed, registered, or certified and expected to follow the usual and customary standards of their profession. Professions in this category include, but are not limited to, accountants, attorneys, engineers/architects, construction management, technical consultant, surveyor (AF), and appraisers.
- If the information provided by the professional is to be used by the State of Arizona in a decision-making process that may have an impact to life, health, safety, and/or a significant financial impact to the State, its agencies, and the public.

If you have questions regarding the applicability of Professional Liability insurance, please contact your assigned State Risk Insurance Analyst.

### 2.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

## **2.2 Insurance Requirements**

2.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

2.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

## **2.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

### **2.3.1 Commercial General Liability (CGL) – Occurrence Form**

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

• General Aggregate	\$1,000,000
• Products – Completed Operations Aggregate	\$500,000
• Personal and Advertising Injury	\$500,000
• Damage to Rented Premises	\$25,000
• Each Occurrence	\$500,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### **2.3.2 Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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- Combined Single Limit (CSL) \$500,000
  - a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 2.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$500,000
  - Disease – Each Employee \$500,000
  - Disease – Policy Limit \$500,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 2.3.4 Professional Liability (Errors and Omissions Liability)

- Each Claim \$1,000,000
- Annual Aggregate \$1,000,000
- a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

## 2.4 Additional Insurance Requirements

# **Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts**

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The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 2.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 2.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

## **2.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

## **2.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

## **2.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 2.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 2.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 2.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of

# **Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts**

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Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

**2.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

**2.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**2.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Professional Service Contracts

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### 3. Professional Service Contracts - Working With Children and/or Vulnerable Adults

Many professional services involve working with, or caring for, children and/or vulnerable adults (physically and developmentally disabled adults or inmates that are in the care, custody, and control of the State of Arizona). This activity creates an additional risk of liability to the State of Arizona because of the severe and sensitive nature of the possible allegations of wrongdoing.

When services involve working with these groups of individuals, the insurance requirements in the contract need to be revised to include coverage for "Sexual Abuse and Molestation (SAM)". Coverage for this type of claim, or allegation, is typically excluded from general liability policies, but some insurers offer a niche product with SAM coverage in their liability policy for classes of business with this exposure, i.e. church organizations, nonprofits, hospitals, children's sports clubs, etc. Therefore, contractors whose services include working with, and/or caring for children or vulnerable adults, should have their policies specifically endorsed to include this coverage. Due to the often complex and lengthy investigation and defense associated with the claims of abuse, defense cost should not erode the policy limits. This is also known as "defense outside the limits".

#### 3.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 3.2 Insurance Requirements

3.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

3.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### **3.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### **3.3.1 Commercial General Liability (CGL) – Occurrence Form**

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Damage to Rented Premises	\$50,000
• Each Occurrence	\$1,000,000

- a. The policy shall include coverage for Sexual Abuse and Molestation (SAM). This coverage may be sub-limited to no less than \$500,000. The limits may be included within the General Liability limit or provided by separate endorsement with its own limits. If you are unable to obtain SAM coverage under your General Liability because the insurance market will not support it, it should it be included with the Professional Liability.
- b. Contractor must provide the following statement on their Certificate(s) of Insurance: “Sexual Abuse and Molestation coverage is included” or “Sexual Abuse and Molestation coverage is not excluded.”
- c. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### **3.3.2 Business Automobile Liability**



# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
  - a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 3.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 3.3.4 Professional Liability (Errors and Omissions Liability)

- Each Claim \$ 2,000,000
- Annual Aggregate \$ 2,000,000
- a. If SAM coverage is being provided under this policy then Contractor must provide the following statement on their Certificate(s) of Insurance: “Sexual Abuse and Molestation coverage is included” or “Sexual Abuse and Molestation coverage is not excluded.” This coverage may be sub-limited to no less than \$500,000.
- b. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

- c. Policy shall cover professional misconduct or wrongful acts for those positions defined in the Scope of Work of this contract.

### **3.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 3.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 3.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **3.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **3.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **3.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 3.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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- 3.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 3.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **3.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **3.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **3.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Professional Service Contracts

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#### 4. Professional Service Contracts - Working With Children and/or Vulnerable Adults (Under \$50,000)

Many professional services involve working with, or caring for, children and/or vulnerable adults (physically and developmentally disabled adults or inmates that are in the care, custody, and control of the State of Arizona). This activity creates an additional risk of liability to the State of Arizona because of the severe and sensitive nature of the possible allegations of wrongdoing.

When services involve working with these groups of individuals, the insurance requirements in the contract need to be revised to include coverage for "Sexual Abuse and Molestation (SAM)". Coverage for this type of claim, or allegation, is typically excluded from general liability policies, but some insurers offer a niche product with SAM coverage in their liability policy for classes of business with this exposure, i.e. church organizations, nonprofits, hospitals, children's sports clubs, etc. Therefore, contractors whose services include working with, and/or caring for children or vulnerable adults, should have their policies specifically endorsed to include this coverage. Due to the often complex and lengthy investigation and defense associated with the claims of abuse, defense cost should not erode the policy limits. This is also known as "defense outside the limits."

##### 4.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

##### 4.2 Insurance Requirements

4.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

- 4.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

#### **4.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

##### **4.3.1 Commercial General Liability (CGL) – Occurrence Form**

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$500,000
- Personal and Advertising Injury \$500,000
- Damage to Rented Premises \$25,000
- Each Occurrence \$500,000

- a. The policy shall include coverage for Sexual Abuse and Molestation (SAM). This coverage may be sub-limited to no less than \$250,000. The limits may be included within the General Liability limit or provided by separate endorsement with its own dedicated limits. If you are unable to obtain SAM coverage under your General Liability because the insurance market will not support it, it should be included with the Professional Liability.
- b. Defense Costs should not erode the policy limits, also known as “defense outside the limits.”
- c. Contractor must provide the following statement on their Certificate(s) of Insurance: “Sexual Abuse and Molestation coverage is included” or “Sexual Abuse and Molestation coverage is not excluded.”
- d. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- e. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers,

# Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts

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officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 4.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$500,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 4.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$500,000
  - Disease – Each Employee \$500,000
  - Disease – Policy Limit \$500,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

#### 4.3.4 Professional Liability (Errors and Omissions Liability)

- Each Claim \$ 1,000,000
- Annual Aggregate \$ 1,000,000
- a. If SAM coverage is being provided under this policy then Contractor must provide the following statement on their Certificate(s) of Insurance: “Sexual Abuse and Molestation coverage is included” or

# **Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts**

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“Sexual Abuse and Molestation coverage is not excluded.” This coverage may be sub-limited to no less than \$250,000.

- b. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- c. Policy shall cover professional misconduct or wrongful acts for those positions defined in the Scope of Work of this contract.

#### **4.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

4.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

4.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

#### **4.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

#### **4.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

#### **4.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

# **Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts**

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- 4.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 4.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 4.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

#### **4.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

#### **4.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

#### **4.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### Service Contracts (Other Than Professional Services)

#### 5. Standard Service Contracts Using Contractor Vehicles

"Standard Service" contracts do not present any unique exposures to the State of Arizona, and are not considered "Professional Services" by insurance definitions. Therefore, the State of Arizona's standard *insurance requirements* that follow would be appropriate for use in most general service contracts. Depending on the nature of the services being provided, it may be necessary to require certain **supplemental insurance coverage** in addition to the State of Arizona's standard *insurance requirements* in order to address specific risks. Some of the unique services that may require supplemental insurance coverage have been addressed in this manual separately. Please refer to the Table of Contents in this manual for a list of such specific service contracts that do require special insurance language. This may include but not be limited to such activities as ticket vendors, elevator maintenance services, equipment purchase and installation, vehicle maintenance and repair, etc.

In addition, certain contracted services may or may not involve the use of contractor vehicles in order to perform the scope of services. Automobile liability should be required if the contract involves the contractor's use of a vehicle as part of the services being provided. Such use means vehicle operation beyond a commute, i.e. a trip between the contractor's home or principal place of business and one State agency location. Examples of such services include delivery services, transportation of persons or property, and vehicles used to carry contractor equipment to State of Arizona departments, agencies, boards, commissions, universities service site, etc. **The *insurance requirements* in this section assume the Contractor does use vehicle(s) in the delivery of services under the contract and therefore includes the requirement for Automobile Liability insurance.**

If the contracted services do not present any unique risks and are not professional in nature, use the following standard *insurance requirements*. If you are uncertain if a contract presents unique exposures that may require additional insurance coverage, contact State Risk for assistance in modifying the standard insurance requirements.

#### 5.1 **Indemnification:**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 5.2 Insurance Requirements

5.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

5.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 5.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 5.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 5.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 5.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

## 5.4 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- 5.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 5.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **5.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **5.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **5.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 5.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 5.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 5.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### **5.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **5.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **5.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 6. Standard Service Contracts Using Contractor Vehicles (\$50,000 or under)

"Standard Service" contracts do not present any unique exposures to the State of Arizona, and are not considered "Professional Services" by insurance definitions. Therefore, the State of Arizona's standard *insurance requirements* that follow would be appropriate for use in most general service contracts. Depending on the nature of the services being provided, it may be necessary to require certain **supplemental insurance coverage** in addition to the State of Arizona's standard *insurance requirements* in order to address specific risks. Some of the unique services that may require supplemental insurance coverage have been addressed in this manual separately. Please refer to the Table of Contents in this manual for a list of such specific service contracts that do require special insurance language. This may include but not be limited to such activities as ticket vendors, elevator maintenance services, equipment purchase and installation, vehicle maintenance and repair, etc.

In addition, certain contracted services may or may not involve the use of contractor vehicles in order to perform the scope of services. Automobile liability should be required if the contract involves the contractor's use of a vehicle as part of the services being provided. Such use means vehicle operation beyond a commute, i.e. a trip between the contractor's home or principal place of business and one State agency location. Examples of such services include delivery services, transportation of persons or property, and vehicles used to carry contractor equipment to State of Arizona departments, agencies, boards, commissions, universities service site, etc. **The *insurance requirements* in this section assume the Contractor does use vehicle(s) in the delivery of services under the contract and therefore includes the requirement for Automobile Liability insurance.**

If the contracted services do not present any unique risks and are not professional in nature, use the following standard *insurance requirements*. If you are uncertain if a contract presents unique exposures that may require additional insurance coverage, contact State Risk for assistance in modifying the standard insurance requirements.

#### 6.1 **Indemnification:**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 6.2 Insurance Requirements

6.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

6.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 6.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 6.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$500,000
- Personal and Advertising Injury \$500,000
- Damage to Rented Premises \$25,000
- Each Occurrence \$500,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers,

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 6.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$500,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 6.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$500,000
  - Disease – Each Employee \$500,000
  - Disease – Policy Limit \$500,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

## 6.4 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 6.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

6.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **6.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **6.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **6.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

6.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

6.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

6.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **6.8 Subcontractors**

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **6.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **6.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 7. Contractor Vehicles Limited to Commute

Certain contracted services will not involve the use of Contractor vehicles in order to perform the scope of services. Automobile liability should be required if the contract services involve the contractor's use of a vehicle as part of the services being provided. Such use means vehicle operation beyond a commute, i.e. a trip between the contractor's home or principal place of business and one State agency location or destination.

If vehicles are not used to perform the scope of services outlined in the contract, the requirement for automobile liability insurance should be omitted.

The sample requirements that follow do not include a requirement to provide automobile liability coverage. These are used for contracts without Professional Services.

#### 7.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 7.2 Insurance Requirements

7.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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7.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 7.3 **Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 7.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 7.3.2 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

# **Insurance and Indemnification Guidelines for State of Arizona Contracts**

## **Service Contracts (Other Than Professional Services)**

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- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### **7.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 7.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 7.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **7.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **7.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **7.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 7.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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7.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

7.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### 7.8 **Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### 7.9 **Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### 7.10 **Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 8. Contractor Vehicles Limited to Commute (\$50,000 or under)

Certain contracted services will not involve the use of Contractor vehicles in order to perform the scope of services. Automobile liability should be required if the contract services involve the contractor's use of a vehicle as part of the services being provided. Such use means vehicle operation beyond a commute, i.e. a trip between the contractor's home or principal place of business and one State agency location or destination.

If vehicles are not used to perform the scope of services outlined in the contract, the requirement for automobile liability insurance should be omitted.

The sample requirements that follow do not include a requirement to provide automobile liability coverage. These are used for contracts without Professional Services.

#### 8.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 8.2 Insurance Requirements

8.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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8.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 8.3 **Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 8.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$500,000
- Personal and Advertising Injury \$500,000
- Damage to Rented Premises \$25,000
- Each Occurrence \$500,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 8.3.2 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$500,000
  - Disease – Each Employee \$500,000
  - Disease – Policy Limit \$500,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.



# **Insurance and Indemnification Guidelines for State of Arizona Contracts**

## **Service Contracts (Other Than Professional Services)**

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- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### **8.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 8.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 8.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **8.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **8.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **8.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 8.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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8.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

8.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### 8.8 Subcontractors

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### 8.9 Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### 8.10 Exceptions

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 9. Service Contracts At a State Owned or Leased Airport

Contractors providing services at an airport on the airside (inside the fence) have a much higher risk of loss due to their physical relationship with the flow of air traffic. For this reason, we require that these contractors provide higher liability limits.

The Insurance Requirements section should be amended to require the Contractor provide both general liability (to include airports) and auto liability (to include airports) with minimum limits of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

**Note:** This can be accomplished by providing the full \$5,000,000 under each primary general and auto liability policy or as a combination of primary general and auto liability insurance and excess/umbrella liability insurance should follow form.

Please contact State Risk for appropriate requirements for all other aviation related activities, i.e. aircraft storage, fixed based operators, and tenants.

#### 9.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 9.2 Insurance Requirements

9.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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hereunder by the Contractor, its agents, representatives, employees or subcontractors.

9.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 9.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 9.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage. Policy shall be endorsed to include airports.

- General Aggregate \$5,000,000
- Products – Completed Operations Aggregate \$5,000,000
- Personal and Advertising Injury \$5,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$5,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 9.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract. Policy shall be endorsed to include airports.

- Combined Single Limit (CSL) \$5,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 9.3.3 Workers' Compensation and Employers' Liability

• Workers' Compensation	Statutory
• Employers' Liability	
○ Each Accident	\$1,000,000
○ Disease – Each Employee	\$1,000,000
○ Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 9.4 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

9.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

9.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### 9.5 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 9.6 Acceptability of Insurers

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### 9.7 Verification of Coverage

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

9.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

9.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

9.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### 9.8 Subcontractors

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### 9.9 Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### 9.10 Exceptions

## **Insurance and Indemnification Guidelines for State of Arizona Contracts**

### **Service Contracts (Other Than Professional Services)**

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In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 10. Janitorial / Building Maintenance / Caretaker Services

In contracts where the Contractor is providing janitorial, building maintenance or caretaker services to the State of Arizona, they may be responsible for keeping a "master key" to the property. In the event that the Contractor loses the master key, this coverage will pay the expense to have the building "re-keyed."

This supplemental coverage should be added to the standard *insurance requirements*. The following sample requirement includes the addition of this supplemental insurance requirement.

#### 10.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 10.2 Insurance Requirements

10.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

10.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### **10.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 10.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- c. The Policy shall be endorsed to include master key coverage.
- d. Policy shall be endorsed to include coverage for Broad Form Property Damage.

#### 10.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 10.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 10.4 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

10.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

10.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### 10.5 Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### 10.6 Acceptability of Insurers

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **10.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

10.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

10.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

10.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **10.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **10.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **10.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a

# **Insurance and Indemnification Guidelines for State of Arizona Contracts**

## **Service Contracts (Other Than Professional Services)**

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certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 11. Janitorial / Building Maintenance / Caretaker Services (\$50,000 or under)

In contracts where the Contractor is providing janitorial, building maintenance or caretaker services to the State of Arizona, they may be responsible for keeping a "master key" to the property. In the event that the Contractor loses the master key, this coverage will pay the expense to have the building "re-keyed."

This supplemental coverage should be added to the standard *insurance requirements*. The following sample requirement includes the addition of this supplemental insurance requirement.

#### 11.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 11.2 Insurance Requirements

11.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

11.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 11.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 11.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$500,000
- Personal and Advertising Injury \$500,000
- Damage to Rented Premises \$25,000
- Each Occurrence \$500,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- c. The Policy shall be endorsed to include master key coverage.
- d. Policy shall be endorsed to include coverage for Broad Form Property Damage.

#### 11.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$500,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 11.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$500,000
  - Disease – Each Employee \$500,000
  - Disease – Policy Limit \$500,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 11.4 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

11.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

11.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### 11.5 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### 11.6 **Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Insurance List of Qualified Unauthorized Insurers. Insurers shall have an “A.M. Best” rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **11.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

11.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State’s receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

11.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

11.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **11.8 Subcontractors**

Contractor’s certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **11.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **11.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a



# **Insurance and Indemnification Guidelines for State of Arizona Contracts**

## **Service Contracts (Other Than Professional Services)**

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certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 12. Security Services Contracts - With Use of an Armored Car for Transport of Monies

In contracts where the Contractor is providing security or armored car services to transport monies and/or securities to the State of Arizona, the *insurance requirements* should include some very specialized insurance coverage that are specific to this industry.

General liability policies typically exclude many activities performed by security services. Therefore, either the contractor's policy **must be endorsed** to cover certain security service risks, or separate policies may need to be purchased. For example:

- Security may be responsible for keeping a "master key" to the property. In the event that the contracted security staff loses the master key, this coverage will pay the expense to have the building "re-keyed."
- Coverage for bodily injury and property damage, resulting from the use of reasonable force for the purpose of protecting persons or property, should be included.
- Special errors and omissions coverage for companies providing security services should be included.
- The contractor's policy should include coverage for property in the care, custody, and control of the contractor.
- If the security service is handling State of Arizona money, securities, or other valuable property, third-party fidelity insurance shall be provided, including coverage for theft and mysterious disappearance.

**Note:** Because the duties and responsibilities of security personnel pose a higher risk to the State of Arizona, State Risk recommends that higher limits of liability are required. The Contractor can accomplish this by providing the full-required limits under the primary general liability policy or a combination of a primary general liability insurance and excess/umbrella liability insurance in order to attain the total required limits of liability. In contracts in which the Contractor or employees of the Contractor handle money on behalf of the State of Arizona, a Commercial Crime Policy or Blanket Fidelity Bond should be required that includes third party fidelity coverage. The Commercial Crime Policy or Blanket Fidelity Bond shall provide coverage for all officers, directors, employees, and agents of the Contractor who are responsible for receiving, depositing, or transferring funds into program accounts, or issuing financial documents, checks or other instruments of payment for program costs. Generally, companies having more than just a few employees will need to purchase a Commercial Crime Policy or a Blanket Fidelity Bond that covers all employees.

***(The limit required should be adjusted based on the amount of cash or securities being handled by the Contractor subject to a minimum of \$25,000.)***

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 12.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 12.2 Insurance Requirements

12.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

12.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 12.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

12.3.1 Commercial General Liability (CGL) – Occurrence Form

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- c. The policy shall be endorsed to include Errors and Omissions coverage.
- d. Policy shall be endorsed to include Master Key coverage (if required as part of the Scope of Services).
- e. Policy shall be endorsed to include coverage for Broad Form Property Damage of property of others.
- f. Policy shall include coverage for the Operation of Mobile Equipment owned or leased by the State of Arizona (if required as part of the Scope of Services).
- g. The policy shall be endorsed to include coverage for Use of Reasonable Force to Protect Persons or Property.

### 12.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$5,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers,

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 12.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 12.3.4 Commercial Crime Policy or Blanket Fidelity Bond

- Coverage amount is \$ \_\_\_\_\_

Coverage should include but is not limited to:

- a. Employee Dishonesty (to include coverage for theft and mysterious disappearance and inventory shortage)
- b. Money & Securities Inside/Outside
- c. Computer Fraud
- d. Funds Transferred (if applicable)
- e. Forgery or Alteration
- f. The policy shall be endorsed to include the State of Arizona (and the respective agency) as Loss Payee
- g. The policy shall not contain a condition requiring a conviction or arrest in order to file a claim
- h. Coverage shall be extended to 3<sup>rd</sup> parties

## 12.4 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 12.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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12.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **12.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **12.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **12.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

12.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

12.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

12.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **12.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **12.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **12.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 13. Security Services Contracts - Without Use of an Armored Car

#### 13.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 13.2 Insurance Requirements

13.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

13.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

#### 13.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

13.3.1 Commercial General Liability (CGL) – Occurrence Form



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 13.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 13.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 13.3.4 Commercial Crime Policy or Blanket Fidelity Bond

- Coverage amount is \$ \_\_\_\_\_

Coverage should include but is not limited to:

- a. Employee Dishonesty (to include coverage for theft and mysterious disappearance and inventory shortage)
- b. Money & Securities Inside/Outside
- c. Computer Fraud
- d. Funds Transferred (if applicable)
- e. Forgery or Alteration
- f. The policy shall be endorsed to include the State of Arizona (and the respective agency) as Loss Payee
- g. The policy shall not contain a condition requiring a conviction or arrest in order to file a claim
- h. Coverage shall be extended to 3<sup>rd</sup> parties

### 13.4 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

13.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

13.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### 13.5 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **13.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **13.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

13.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

13.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

13.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **13.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **13.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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action will not require a formal Contract amendment but may be made by administrative action.

### **13.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 14. Service Contracts - Handling Money

In addition to the standard *insurance requirements* of General Liability, Automobile Liability, and Workers' Compensation insurance, additional insurance coverages may be required to address specific exposures not otherwise covered.

In contracts in which the Contractor or employees of the Contractor handle money on behalf of the State of Arizona, a commercial crime policy or blanket fidelity bond should be required that includes third party fidelity coverage.

The commercial crime policy or blanket fidelity bond shall provide coverage for all officers, directors, employees and agents of the Contractor who are responsible for receiving, depositing, or transferring funds into program accounts, or issuing financial documents, checks or other instruments of payment for program costs. Generally, companies having more than just a few employees will need to purchase a commercial crime policy or blanket fidelity bond that covers all employees.

In contracts in which the Contractor or employees of the Contractor handle money on behalf of the State of Arizona, a Commercial Crime Policy or Blanket Fidelity Bond should be required that includes third party fidelity coverage. The Commercial Crime Policy or Blanket Fidelity Bond shall provide coverage for all officers, directors, employees, and agents of the Contractor who are responsible for receiving, depositing, or transferring funds into program accounts, or issuing financial documents, checks or other instruments of payment for program costs. Generally, companies having more than just a few employees will need to purchase a Commercial Crime Policy or a Blanket Fidelity Bond that covers all employees. If the amount of funds being held is unknown, it is permissible to change the limit requirement to "100% of the value of funds held." Calculate based on the maximum period in which the funds are held – up to 1 year.

***(The limit required shall be adjusted based on the amount of cash or securities being handled by the Contractor subject to a minimum of \$25,000.)***

#### 14.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 14.2 Insurance Requirements

14.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

14.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 14.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 14.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Damage to Rented Premises	\$50,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers,

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 14.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 14.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 14.3.4 Commercial Crime Policy or Blanket Fidelity Bond

- Coverage amount is \$ \_\_\_\_\_
- Coverage should include but is not limited to:
- a. Employee Dishonesty (to include coverage for theft and mysterious disappearance and inventory shortage)
  - b. Money & Securities Inside/Outside

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- c. Computer Fraud
- d. Funds Transferred (if applicable)
- e. Forgery or Alteration
- f. The policy shall be endorsed to include the State of Arizona (and the respective agency) as Loss Payee
- g. The policy shall not contain a condition requiring a conviction or arrest in order to file a claim
- h. Coverage shall be extended to 3<sup>rd</sup> parties

### **14.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

14.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

14.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **14.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **14.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **14.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- 14.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 14.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 14.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **14.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **14.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **14.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 15. Service Contracts - Handling Money (\$50,000 or under)

In addition to the standard *insurance requirements* of General Liability, Automobile Liability, and Workers' Compensation insurance, additional insurance coverages may be required to address specific exposures not otherwise covered.

In contracts in which the Contractor or employees of the Contractor handle money on behalf of the State of Arizona, a commercial crime policy or blanket fidelity bond should be required that includes third party fidelity coverage.

The commercial crime policy or blanket fidelity bond shall provide coverage for all officers, directors, employees and agents of the Contractor who are responsible for receiving, depositing, or transferring funds into program accounts, or issuing financial documents, checks or other instruments of payment for program costs. Generally, companies having more than just a few employees will need to purchase a commercial crime policy or blanket fidelity bond that covers all employees.

In contracts in which the Contractor or employees of the Contractor handle money on behalf of the State of Arizona, a Commercial Crime Policy or Blanket Fidelity Bond should be required that includes third party fidelity coverage. The Commercial Crime Policy or Blanket Fidelity Bond shall provide coverage for all officers, directors, employees, and agents of the Contractor who are responsible for receiving, depositing, or transferring funds into program accounts, or issuing financial documents, checks or other instruments of payment for program costs. Generally, companies having more than just a few employees will need to purchase a Commercial Crime Policy or a Blanket Fidelity Bond that covers all employees.

***(The limit required shall be adjusted based on the amount of cash or securities being handled by the Contractor subject to a minimum of \$25,000.)***

#### 15.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 15.2 Insurance Requirements

15.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

15.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 15.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 15.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$500,000
- Personal and Advertising Injury \$500,000
- Damage to Rented Premises \$25,000
- Each Occurrence \$500,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 15.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$500,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 15.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$500,000
  - Disease – Each Employee \$500,000
  - Disease – Policy Limit \$500,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 15.3.4 Commercial Crime Policy or Blanket Fidelity Bond

- Coverage amount is \$ \_\_\_\_\_

Coverage should include but is not limited to:

- a. Employee Dishonesty (to include coverage for theft and mysterious disappearance and inventory shortage)
- b. Money & Securities Inside/Outside
- c. Computer Fraud
- d. Funds Transferred (if applicable)
- e. Forgery or Alteration

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- f. The policy shall be endorsed to include the State of Arizona (and the respective agency) as Loss Payee
- g. The policy shall not contain a condition requiring a conviction or arrest in order to file a claim
- h. Coverage shall be extended to 3<sup>rd</sup> parties

### **15.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

15.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

15.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **15.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **15.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **15.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

15.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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this written agreement shall not waive or otherwise affect the requirements of this agreement.

15.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

15.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **15.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **15.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **15.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 16. Purchase and Installation of Equipment

In contracts where the State of Arizona is purchasing highly valued equipment or machinery (i.e. compressors, air conditioning units, generators, etc.) the scope of services will generally include the installation of the equipment. The contract has now become more than just a standard commodity purchase agreement and falls under the category of a 'service contract.'

In addition to the standard general liability, automobile liability and workers' compensation insurance requirements contained in most service agreements, purchase and installation of equipment contracts should also require the vendor to carry an "installation floater." Installation floaters are similar to builders' risk policies and are used by contractors performing a specialized job on an existing building, or installing equipment or materials that are *not* included in a construction project contract.

(The limit required shall be based on an amount equal to the initial contract amount plus additional coverage equal to contract amount for all subsequent change orders.)

#### 16.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 16.2 Insurance Requirements

16.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

16.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 16.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 16.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 16.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 16.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 16.3.4 Installation Floater

- Coverage amount is \$ \_\_\_\_\_
  - a. Policy shall contain an Additional Insured endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees.
  - b. The State of Arizona and the Department shall be named as loss payee as its interest may appear.
  - c. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for flood and earth movement as well as coverage for losses that may occur during equipment testing/commissioning.
  - d. Policy shall be maintained until whichever of the following shall first occur: (1) final payment has been made; or, (2) until no person or entity, other than the State of Arizona, has an insurable interest in the property required to be covered.
  - e. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the State of Arizona.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- f. The Installation Floater must provide coverage from the time the equipment/material becomes the responsibility of the Contractor and shall continue without interruption during the installation, testing and commissioning, including any time during which the equipment/material is being transported to the installation site, or awaiting installation, whether on or off site.
- g. Policy shall contain a Waiver of Subrogation endorsement, as required by written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by the Contractor for the State of Arizona.
- h. Contractor is responsible for the payment of all deductibles under the Installation Floater.

### **16.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

16.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

16.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **16.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **16.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **16.7 Verification of Coverage**

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

16.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

16.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

16.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **16.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **16.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **16.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 17. Purchase and Installation of Equipment (\$50,000 or under)

In contracts where the State of Arizona is purchasing highly valued equipment or machinery (i.e. compressors, air conditioning units, generators, etc.) the scope of services will generally include the installation of the equipment. The contract has now become more than just a standard commodity purchase agreement and falls under the category of a 'service contract.'

In addition to the standard general liability, automobile liability and workers' compensation insurance requirements contained in most service agreements, purchase and installation of equipment contracts should also require the vendor to carry an "installation floater." Installation floaters are similar to builders' risk policies and are used by contractors performing a specialized job on an existing building, or installing equipment or materials that are *not* included in a construction project contract.

(The limit required shall be based on an amount equal to the initial contract amount plus additional coverage equal to contract amount for all subsequent change orders.)

#### 17.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 17.2 Insurance Requirements

17.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

17.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 17.3 **Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 17.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$500,000
- Personal and Advertising Injury \$500,000
- Damage to Rented Premises \$25,000
- Each Occurrence \$500,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 17.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$500,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 17.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$500,000
  - Disease – Each Employee \$500,000
  - Disease – Policy Limit \$500,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 17.3.4 Installation Floater

- Coverage amount is \$\_\_\_\_\_
- a. Policy shall contain an Additional Insured endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees.
- b. The State of Arizona and the Department shall be named as loss payee as its interest may appear.
- c. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for flood and earth movement as well as coverage for losses that may occur during equipment testing/commissioning.
- d. Policy shall be maintained until whichever of the following shall first occur: (1) final payment has been made; or, (2) until no person or entity, other than the State of Arizona, has an insurable interest in the property required to be covered.
- e. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the State of Arizona.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- f. The Installation Floater must provide coverage from the time the equipment/material becomes the responsibility of the Contractor and shall continue without interruption during the installation, testing and commissioning, including any time during which the equipment/material is being transported to the installation site, or awaiting installation, whether on or off site.
- g. Policy shall contain a Waiver of Subrogation endorsement, as required by written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by the Contractor for the State of Arizona.
- h. Contractor is responsible for the payment of all deductibles under the Installation Floater.

### **17.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

17.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

17.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **17.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **17.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **17.7 Verification of Coverage**

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

17.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

17.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

17.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **17.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **17.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **17.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 18. Elevator Maintenance Contracts

Contracts involving elevator maintenance services present a higher risk to the State of Arizona. Therefore, the State of Arizona requires higher limits of liability from these contractors due to the serious nature of claims that could result from the negligence of the Contractor.

#### 18.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 18.2 Insurance Requirements

18.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

18.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

#### 18.3 Minimum Scope and Limits of Insurance

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Contractor shall provide coverage with limits of liability not less than those stated below.

### 18.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage. Policy shall be endorsed to include XCU (Explosion, Collapse, Underground) coverage.

- General Aggregate \$10,000,000
- Products – Completed Operations Aggregate \$10,000,000
- Personal and Advertising Injury \$10,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$10,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 18.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 18.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 18.4 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

18.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

18.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### 18.5 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### 18.6 **Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### 18.7 **Verification of Coverage**

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

18.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

18.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

18.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **18.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **18.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **18.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 19. Vehicle Transport / Storage / Repair

Contracts that provide vehicle storage, transport, or repair/maintenance services to the State of Arizona may require specialized liability insurance when the Contractor transports and/or stores or repairs the vehicle at their shop or garage. Two types of liability insurance should be required:

- Garage Liability, and
- Garagekeepers Legal Liability

#### Garage Liability vs. Garagekeepers Legal Liability (GKLL)

The **Garage Liability** policy is equivalent to a general liability policy for garage operations. This policy provides coverage for losses resulting on the garage premises or due to the operations of the garage, repair shop, service station, towing company, etc. This policy generally *excludes* damage to cars being repaired, stored, or transported by the Contractor. Therefore, it is necessary to add, or endorse, **Garagekeepers Legal Liability** coverage to this policy.

**Garagekeepers Legal Liability (GKLL)** on the other hand, provides protection to the Contractor for loss or damage to cars belonging to others that are in the care, custody and control of the Contractor. It is important to note that garagekeepers legal liability coverage only responds to legal liability of the Contractor. For example, if we take a watch to a repair shop and it is lost or damaged there, the loss is usually made good. If we take a car to the shop and it is damaged, we have the same expectation. Unfortunately, garagekeepers legal liability coverage will only respond for legally determined liability. In other words, the Contractor must be found negligent. It is therefore necessary to specify that coverage should be "**direct primary coverage**" in order to cover damage to vehicles belonging to others regardless of negligence.

In summary, the **garage liability** policy shall be substituted in place of the commercial general liability policy requirement. An additional requirement should be included for "**garagekeepers legal liability - direct primary coverage**" to be endorsed onto the garage liability policy so that vehicles belonging to the State of Arizona or the general public will be covered while in the Contractor's care.

#### 19.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 19.2 Insurance Requirements

19.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

19.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 19.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 19.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000
- Garage Liability (Premises and Operations) \$1,000,000
- Garagekeepers Legal Liability - Direct Primary Coverage:
  - Per Auto \$ 500,000
  - Comprehensive - aggregate \$1,000,000
  - Collision \$ 500,000

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- a. The policy shall be endorsed to include direct primary Garagekeepers Legal Liability coverage.
- b. Policy shall be endorsed, per this written agreement, to include Products Liability.
- c. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 19.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed to include coverage for towing (if towing services are included in the scope of services in the Contract or part of the normal operations of the Contractor).
  - b. Policy shall be endorsed to include Garagekeepers Coverage on a direct primary basis with the following limits and deductibles:
    - Per Auto \$500,000
    - Comprehensive - aggregate \$1,000,000
    - Collision \$500,000
  - c. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - d. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 19.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
  - Employers' Liability
    - Each Accident \$1,000,000
    - Disease – Each Employee \$1,000,000
    - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 19.4 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

19.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

19.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### 19.5 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### 19.6 **Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 19.7 Verification of Coverage

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

19.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

19.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

19.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### 19.8 Subcontractors

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### 19.9 Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### 19.10 Exceptions

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 20. Special Events

All Special Event Permits' agreements/contracts must contain indemnification and insurance requirements.

- The Special Events Insurance Module is to be used for the agreement between Agency and Permittee.
  - The Special Events Insurance Module will cover most scenarios when having a special event.
  - Determine the potential exposures in order to choose the correct types of insurance to insert into the agreement/contract.
- Permittee is responsible for entering into a written agreement/ contract with any vendors, suppliers, and contractors (Subcontractors). These agreements/ contracts must "follow form" and contain the same minimum insurance requirements.
- Permittee shall be responsible for either insuring all Subcontractors under its policies or shall require their Subcontractors to provide insurance as stated in the agreement.

Note: If an Agency is the Permittee then all Subcontractors shall meet insurance requirements as applicable. The Agency shall not insure nor indemnify the general contractor, design professional, vendors, suppliers, and/or subcontractors.

If the Agency is using an existing State Contractor, performing services provided under that contract, a separate Certificate of Insurance (COI) is not necessary, as the COI should be on file with SPO.

- Permittee is only required to provide their COIs for the Special Event; however, they are responsible for collecting and maintaining all COIs of their Subcontractors. In the case of specialty insurance, or at the discretion of Agency, the Permittee may be requested to provide the written agreements/contracts and COIs from any of its subcontractors.
- If the Special Event Permittee is a State Agency, the Agency is responsible for collecting all of the Subcontractors' written agreements and COIs and provide them to Agency for review.

#### **Special Note for State Agencies:**

If the special event is for another State Agency, ADOA will provide to the State Agency an agreement that will need to be completed by the Agency's co-sponsors, vendors, and contractors that will include indemnification and insurance requirements.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 20.1 Indemnification Hold Harmless Clause

If You Are:

#### Profit / Non-Profit

To the fullest extent permitted by law, Permittee shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Permittee or any of its owners, officers, directors, agents, employees or vendors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Permittee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Permittee from and against any and all claims. It is agreed that Permittee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Permit, the Permittee agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Permittee for the State of Arizona.

Permittee(s) / Vendor is a public/non-profit

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Signature of Authorized Representative/Title

Date

OR

#### Public Entity

Each party (as "indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officer, officials, agents, employees, or volunteers."

Permittee / Vendor is a Public Entity

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Signature of Authorized Representative/Title

Date

OR

#### State Of Arizona

There are no indemnification/hold harmless requirements for the State of Arizona Department's, Agencies, Boards, Commissions, or Universities.

### 20.2 Permittee Insurance Requirements

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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20.2.1 To the extent allowed by law, Permittee and vendors/contractor shall procure and maintain, until all of their obligations, including any warranty periods under this Permit, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the Special Event by the Permittee, his agents, representatives, employees or vendors.

20.2.2 The *insurance requirements* herein are minimum requirements for this Permit and in no way limit the indemnity covenants contained in this Permit. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Permittee from liabilities that might arise out of the Special Event under this Permit by the Permittee, its agents, representatives, employees or vendors, and Permittee is free to purchase additional insurance. Special Events Office reserves the right to increase limits based on the type of event and/or the number of participants.

### 20.3 Minimum Scope and Limits of Insurance

Permittee shall provide coverage with limits of liability not less than those stated below.

#### 20.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Damage to Rented Premises	\$50,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Permittee.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Permittee.

#### 20.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Permit.

• Combined Single Limit (CSL)	\$1,000,000
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# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Permittee involving automobiles owned, hired and/or non-owned by the Permittee.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Permittee.

### 20.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
  - Employers' Liability
    - Each Accident \$1,000,000
    - Disease – Each Employee \$1,000,000
    - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Permittee.
  - b. This requirement shall not apply to each Permittee or subcontractor that is exempt under A.R.S. § 23-901, and when such Permittee or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 20.3.4 Professional Liability (Errors and Omissions Liability)

- Each Claim \$2,000,000
  - Annual Aggregate \$2,000,000
- a. In the event that the Professional Liability insurance required by this Permit is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Permit and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Permit is completed.
  - b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this Permit.

### 20.4 **Additional Insurance:**

If Permittee is having any of the following types of events, certificate of insurance will need to be provided to ADOA:

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- 20.4.1 **Firework Production** – Minimum of \$10,000,000 Liability coverage for the firework vendor. Vendor is required to provide all insurance coverage's as stated in 20.3.1 through 20.3.4 above.
- 20.4.2 **Carnival/Amusement Rides** – Minimum of \$5,000,000 Ride Liability coverage. Vendor is required to provide all insurance coverage's as stated in 20.3.1 through 20.3.4 above.
- 20.4.3 **Races or Events** – More than 1,000 participants and spectators will require a minimum of \$5,000,000 General Liability coverage in addition to the stated requirements in 20.3.1 through 20.3.4 above.
- 20.4.4 **Aviation** – If aircraft are being used during the event, GSD will contact Risk Management for guidance for insurance requirements to include in such an event.
- 20.4.5 **Medical Vendors** – If Permittee is required to have EMT's or medical professionals at the event Permittee will be required to have Permittee's vendor provide Medical Malpractice coverage. GSD will contact State Risk for insurance requirements to include in such an event.

### 20.5 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 20.5.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 20.5.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### 20.6 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### 20.7 **Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### 20.8 **Verification of Coverage**

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## **Service Contracts (Other Than Professional Services)**

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Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

20.8.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

20.8.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

20.8.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **20.9 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **20.10 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **20.11 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 21. Commercial Lease / Rental Contracts

*This type of insurance is to be used in commercial leases with non-state Tenant/Lessee in State owned buildings.*

*This Section does not apply to the following:*

- State of Arizona agencies paying rent to the Department of Administration or any other State Agency as Lessor
- Short-term agreements or permits for outside entities to use State properties (see also “Special Events”)
- Leases in which the State agency is a Lessee in a non-state building.

#### Fire Exposures

Damage to Rented Premises, a.k.a. Fire Legal Liability coverage, provides protection for negligent acts of the Lessee which result in fire damage to the State of Arizona property that is under the Lessee's care, custody, and control. The Commercial General Liability policy typically has a sub limit of liability for fire damage of \$100,000 to the maximum of the “each occurrence” limit of liability.

Consideration should be given to requiring a higher Damage to Rented Premises sub limit on the Commercial General Liability policy if the Lessee operates a business that presents a significant risk of fire (i.e. food preparation operations, laboratory chemicals, etc.). The minimum limit requirement should be no less than the rebuilding value of the premises or space being leased, including the contemplation of, but not limited to, all fixed equipment, betterments, improvements, etc. To determine the amount of limits necessary, you need to consider the dollar amount per square foot based on occupancy type, multiplied by the number of square feet being leased.

#### Supplemental Insurance Coverages

There are additional insurance coverages that may need to be required under certain circumstances and should be included in the *insurance requirements* when appropriate.

Examples of Supplemental Insurance Coverages:

- Builder's risk insurance - for those situations involving a ground lease, where the Lessee will construct a building or other tenant improvements.
- All risk property insurance - This insurance will be required on the building and the lessee's contents if the Lessee is leasing an existing State of Arizona facility where they are the sole occupant.
- Lease of property with Underground Storage Tanks, Aboveground Storage Tanks, or Dry Wells – If the Lessee is a gas station, or agricultural lease with storage tanks, then pollution coverage should be required along with the lessee



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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providing copies of all permits with the Arizona Department of Environmental Quality.

- If supplementary insurance coverage is required, contact State Risk for assistance, as the insurance language will need to be modified in two sections.

### **21.1 Indemnification Clause**

To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Lessee or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Lessee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Lessee from and against any and all claims. It is agreed that Lessee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Lease, the Lessee agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Lessee for the State of Arizona.

This indemnity shall not apply if the Lessee or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### **21.2 Insurance Requirements**

21.2.1 Lessee and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Lease, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Lessee, its agents, representatives, employees or subcontractors.

21.2.2 The Insurance Requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Lessee from liabilities that arise out of the performance of the work under this Lease by the Lessee, its agents, representatives, employees or subcontractors, and the Lessee is free to purchase additional insurance.

### **21.3 Minimum Scope and Limits of Insurance**

Lessee shall provide coverage with limits of liability not less than those stated below.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 21.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$100,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Lessee.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Lessee.

### 21.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Lease.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Lessee involving automobiles owned, hired and/or non-owned by the Lessee.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Lessee.

### 21.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Lessee.
- b. This requirement shall not apply to each Lessee or subcontractor that is exempt under A.R.S. § 23-901, and when such Lessee or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Lessee).

### 21.3.4 Property Insurance

Property insurance on the building is only required if the Lessee is the sole occupant of the building.

- Coverage on Lessee's contents \$ \_\_\_\_\_  
Replacement Value
- Coverage on building (if Lessee is sole occupant) \$ \_\_\_\_\_  
Replacement Value

- a. Property insurance shall be written on an "all risk" replacement cost coverage, including but not limited to contingent business interruption for neighboring premises, ingress/egress and for flood and earth movement.
- b. Policy shall include Leasehold Interest or Rental Expense for a minimum of a three-month indemnity period and/or for a limit of no less than rental value.
- c. If property coverage on the building is required, and the State has an insurable interest, then Arizona Department of Administration – Risk Management (and the respective agency or university) shall be named as a loss payee.
- d. Policy shall be endorsed as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the use and/or occupancy of the property subject to this Lease.
- e. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from the Lease.

### 21.4 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 21.4.1 The Lessee's policies, as applicable, shall stipulate that the insurance afforded the Lessee shall be primary and that any insurance carried by the Department,

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

21.4.2 Insurance provided by the Lessee shall not limit the Lessee's liability assumed under the indemnification provisions of this Lease.

### **21.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **21.6 Acceptability of Insurers**

Lessee's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Lessee from potential insurer insolvency.

### **21.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

21.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

21.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

21.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **21.8 Subcontractors**

Lessee's certificate(s) shall include all subcontractors as insureds under its policies or Lessee shall be responsible for ensuring and/or verifying that all subcontractors

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## **Service Contracts (Other Than Professional Services)**

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have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Lease, proof from the Lessee that its subcontractors have the required coverage.

### **21.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Lease, as deemed necessary. Such action will not require a formal Lease amendment but may be made by administrative action.

### **21.10 Exceptions**

In the event the Lessee or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Lessee or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 22. Commercial Lease / Rental Agreements / With Pollution Requirement

#### 22.1 Indemnification Clause

To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Lessee or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Lessee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Lessee from and against any and all claims. It is agreed that Lessee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Lease, the Lessee agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Lessee for the State of Arizona.

This indemnity shall not apply if the Lessee or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 22.2 Insurance Requirements

22.2.1 Lessee and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Lease, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Lessee, its agents, representatives, employees or subcontractors.

22.2.2 The Insurance Requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Lessee from liabilities that arise out of the performance of the work under this Lease by the Lessee, its agents, representatives, employees or subcontractors, and the Lessee is free to purchase additional insurance.

#### 22.3 Minimum Scope and Limits of Insurance

Lessee shall provide coverage with limits of liability not less than those stated below.

##### 22.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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- General Aggregate \$2,000,000
  - Products – Completed Operations Aggregate \$1,000,000
  - Personal and Advertising Injury \$1,000,000
  - Damage to Rented Premises \$100,000
  - Each Occurrence \$1,000,000
- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Lessee.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Lessee.

### 22.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Lease.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Lessee involving automobiles owned, hired and/or non-owned by the Lessee.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Lessee.

### 22.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
  - Employers' Liability
    - Each Accident \$1,000,000
    - Disease – Each Employee \$1,000,000
    - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers,

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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officials, agents, and employees for losses arising from work performed by or on behalf of the Lessee.

- b. This requirement shall not apply to each Lessee or subcontractor that is exempt under A.R.S. § 23-901, and when such Lessee or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Lessee).

### 22.3.4 Property Insurance

Property insurance on the building is only required if the Lessee is the sole occupant of the building.

- Coverage on Lessee's contents \$ \_\_\_\_\_  
Replacement Value
- Coverage on building (if Lessee is sole occupant) \$ \_\_\_\_\_  
Replacement Value

- a. Property insurance shall be written on an "all risk," replacement cost coverage, including but not limited to contingent business interruption for neighboring premises, ingress/egress and for flood and earth movement.
- b. Policy shall include Leasehold Interest or Rental Expense for a minimum of a three-month indemnity period and/or for a limit of no less than rental value.
- c. If property coverage on the building is required, and the State has an insurable interest, then Arizona Department of Administration – Risk Management (and the respective agency or university) shall be named as a loss payee.
- d. The Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the use and/or occupancy of the property subject to this Lease.
- e. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from the Lease.

### 22.3.5 Lessee Pollution Legal Liability

For losses caused by pollution conditions that arise from the operations of the Lessee as described in the Scope of Services section of this Lease.

- Per Occurrence \$1,000,000
- General Aggregate \$2,000,000

- a. Coverage must be **identified specific to the operations** as described in the Scope of Services in this Lease.
- b. Must include coverage for pollution losses arising out of completed operations.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- c. Pollution coverage must apply to all locations utilized for the acceptance, storage, or disposal of any hazardous materials.
- d. The policy is written on an "occurrence" basis with no sunset clause. In the event that the Pollution Liability insurance required by this Lease is written on a claims-made basis, Lessee warrants that any retroactive date under the policy shall precede the effective date of this Lease. That either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of ten (10) years beginning at the time this Lease is terminated.
- e. Pollution coverage must apply to all phases of the work described in the Scope of Services in this Lease.
- f. The policy shall include coverage for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death and medical monitoring costs.
- g. The policy shall include coverage for property damage, and physical damage to, or destruction of, tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed including diminution in value.
- h. The policy shall include coverage for environmental damage including physical damage to soil, surface water, ground water, plant, or animal life, caused by pollution conditions and giving rise to cleanup costs.
- i. For losses that arise from the facility, coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants, into or upon land, atmosphere, or any watercourse or body of water which results in cleanup costs, bodily injury or property damage.
- j. The policy shall include coverage for environmental damage including physical damage to soil, surface water, ground water, plant, or animal life, caused by pollution conditions and giving rise to cleanup costs.
- k. The policy shall include defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- l. The policy shall include coverage for asbestos and lead, mold, with no exclusions.
- m. The policy shall include Non-Owned Disposal Site coverage.
- n. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Lessee.
- o. The policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by the Lessee.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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### **22.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

22.4.1 The Lessee's policies, as applicable, shall stipulate that the insurance afforded the Lessee shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

22.4.2 Insurance provided by the Lessee shall not limit the Lessee's liability assumed under the indemnification provisions of this Lease.

### **22.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **22.6 Acceptability of Insurers**

Lessee's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Lessee from potential insurer insolvency.

### **22.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

22.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

22.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

22.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **22.8 Subcontractors**

Lessee's certificate(s) shall include all subcontractors as insureds under its policies or Lessee shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Lease, proof from the Lessee that its subcontractors have the required coverage.

### **22.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Lease, as deemed necessary. Such action will not require a formal Lease amendment but may be made by administrative action.

### **22.10 Exceptions**

In the event the Lessee or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Lessee or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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### 23. Commodity Purchase Contracts

The requirements included in this section pertain to standard commodity purchase contracts (e.g. stationery, office supplies, etc.). For most commodity purchases it is not necessary, or practical, to require the vendor to include the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as an additional insured under the liability coverages. The exposures presented as a result of purchasing such commodities are minimal; however, following are a few exceptions:

- Purchase of products that will be resold or distributed directly to the public. In this situation, the State of Arizona has a substantial product liability exposure and, therefore, the Indemnification Language and Insurance Requirements will be somewhat different. Contact State Risk for assistance in developing the appropriate insurance language for this type of commodity purchase contract.
- Purchase and installation of large equipment. When the State of Arizona purchases highly valued equipment, e.g. compressors, generators or other machinery, the scope of services will generally include the installation of the equipment. This is no longer just a "commodity" purchase. The vendor's installation of the equipment makes this more of a "service contract" and, therefore, special insurance requirements should be included to address the exposures that are inherent to the operations being performed. When purchasing large equipment and machinery that will be installed in State of Arizona facilities, refer to Purchase and Install Equipment in this manual for information about the appropriate Indemnification Language and Insurance Requirements to use.
- Purchase of aircraft or aircraft parts. When the State of Arizona purchases any type of product / equipment relating to aircraft, the limit of liability for Products/Completed Operations coverage should be increased to \$10,000,000 each occurrence / \$20,000,000 aggregate. Contact State Risk for more information on developing the appropriate language.
- Purchase of hazardous materials, such as chlorine and other water treatment chemicals, fertilizers, herbicides, and pesticides require special insurance as well as higher limits. Refer to Master Environmental Services in this manual for more information, or contact State Risk for assistance.

Please contact your State Risk Insurance Analyst to discuss the purchase of any hazardous commodity/material if such purchase is to be handled via Purchase Order without the use of a supporting master contract.

Automobile Liability should be required only if the commodity is being delivered to the State of Arizona by the vendor. If the commodity is being shipped by common carrier, Automobile Liability will not be required.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### **23.1 Indemnification Clause**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### **23.2 Insurance Requirements**

23.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

23.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### **23.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

23.3.1 Commercial General Liability (CGL) – Occurrence Form

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

---

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 23.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 23.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

---

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### **23.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

23.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

23.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **23.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **23.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **23.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- 23.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 23.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 23.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **23.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **23.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **23.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 24. Commodity Purchase Contracts (\$50,000 or under)

The requirements included in this section pertain to standard commodity purchase contracts (e.g. stationery, office supplies, etc.). For most commodity purchases it is not necessary, or practical, to require the vendor to include the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as an additional insured under the liability coverages. The exposures presented as a result of purchasing such commodities are minimal; however, following are a few exceptions:

- Purchase of products that will be resold or distributed directly to the public. In this situation, the State of Arizona has a substantial product liability exposure and, therefore, the Indemnification Language and Insurance Requirements will be somewhat different. Contact State Risk for assistance in developing the appropriate insurance language for this type of commodity purchase contract.
- Purchase and installation of large equipment. When the State of Arizona purchases highly valued equipment, e.g. compressors, generators or other machinery, the scope of services will generally include the installation of the equipment. This is no longer just a "commodity" purchase. The vendor's installation of the equipment makes this more of a "service contract" and, therefore, special insurance requirements should be included to address the exposures that are inherent to the operations being performed. When purchasing large equipment and machinery that will be installed in State of Arizona facilities, refer to Purchase and Install Equipment in this manual for information about the appropriate Indemnification Language and Insurance Requirements to use.
- Purchase of aircraft or aircraft parts. When the State of Arizona purchases any type of product / equipment relating to aircraft, the limit of liability for Products/Completed Operations coverage should be increased to \$10,000,000 each occurrence / \$20,000,000 aggregate. Contact State Risk for more information on developing the appropriate language.
- Purchase of hazardous materials, such as chlorine and other water treatment chemicals, fertilizers, herbicides, and pesticides require special insurance as well as higher limits. Refer to Master Environmental Services in this manual for more information, or contact State Risk for assistance.

Please contact your State Risk Insurance Analyst to discuss the purchase of any hazardous commodity/material if such purchase is to be handled via Purchase Order without the use of a supporting master contract.

Automobile Liability should be required only if the commodity is being delivered to the State of Arizona by the vendor. If the commodity is being shipped by common carrier, Automobile Liability will not be required.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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### 24.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### 24.2 Insurance Requirements

24.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

24.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 24.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

24.3.1 Commercial General Liability (CGL) – Occurrence Form

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$500,000
- Personal and Advertising Injury \$500,000
- Damage to Rented Premises \$25,000
- Each Occurrence \$500,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 24.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$500,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 24.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$500,000
  - Disease – Each Employee \$500,000
  - Disease – Policy Limit \$500,000

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### **24.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

24.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

24.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **24.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **24.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **24.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Service Contracts (Other Than Professional Services)

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- 24.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 24.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 24.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **24.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **24.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **24.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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### **Environmental Services and Consulting**

This section includes information regarding environmental service contracts. If the scope of services provided by the Contractor generates, transports, treats, stores, removes or disposes of hazardous materials, petroleum products or chemicals, the Contractor is liable for damaging the environment if an accident were to occur. Most general liability policies severely limit or exclude liability for pollution losses. Contractor's Pollution Liability insurance is required. Any facility disposing of or storing the hazardous material must provide Pollution Legal Liability. These policies provide coverage for losses caused by pollution conditions that arise from the Contractor's operations.

Following are examples of activities or services that may be included in the Contractor's scope of services that require pollution liability insurance:

- Remediation Services
- Asbestos or Lead Abatement
- Storage of Hazardous Materials
- Disposal Site Operators
- Transporters of Hazardous Materials
- Purchase and Delivery of Hazardous Materials
- Facilities That Accept Hazardous Waste
- Environmental Engineers and Consultants
- Master Environmental Consultants (Provide Both Professional Consulting Services and Manage the Remediation/Abatement Process)
- Certain Types of Recycling Facilities

Note: The Department of Administration, Arizona Department of Transportation, Department of Environmental Quality, and the Universities are responsible for most environmental engineering contracts. Please contact these agencies with questions about these types of contracts.

Contact State Risk if you have questions about the various types of insurance coverages required for environmental services and consulting contracts.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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### 25. Remediation and Abatement Services

Contractor's Pollution Liability can be considered "moving target" coverage that is not limited to work on specific premises. Contractors providing services are not limited to those that include remediation services or abatement of material, hazardous or otherwise. In fact, any contractor that performs work that has the potential to result in a pollution condition or event doing work for the State of Arizona should include Contractor Pollution Liability.

This type of insurance provides coverage for bodily injury, property damage and cleanup arising from pollution conditions the Contractor creates or exacerbates a pollution condition during work at a job site.

If the Scope of Services in this Contract requires the Contractor to accept, store or dispose of any hazardous materials, the Contractor or the sub-contracted disposal or storage facility shall provide this coverage.

Some examples of events and pollutants are:

- During excavation, a contractor strikes an underground water pipe that escapes into a protected waterway
- Contractor demolishes a wall containing asbestos, the asbestos enters the HVAC system on an operational building
- Contractors transporting or applying chemicals (pesticides/herbicides) to State Property.

If services also include testing or consulting services, please refer to Environmental Consulting and Testing Services.

#### 25.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### **25.2 Insurance Requirements**

25.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

25.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### **25.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 25.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Damage to Rented Premises	\$50,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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### 25.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 25.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 25.3.4 Professional Environmental Liability

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000
- a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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- b. The Professional Liability insurance must include coverage for claims of bodily injury or property damage arising out of pollution for environmental work, asbestos, laboratory analysis and/or the operations of a treatment plant, if required by the Scope of Services.
- c. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

### 25.3.5 Contractors Pollution Liability

For losses caused by pollution conditions that arise from the operations of the Contractor as described in the Scope of Services section of this Contract.

- Per Occurrence \$1,000,000
- General Aggregate \$2,000,000

- a. Coverage must be **identified specific to the operations** as described in the Scope of Services in this Contract.
- b. Must include coverage for pollution losses arising out of completed operations.
- c. Pollution coverage must apply to all locations utilized for the acceptance, storage, or disposal of any hazardous materials.
- d. The policy is to be written on an “occurrence” basis with no sunset clause. In the event that the Pollution Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract. That either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of ten (10) years beginning at the time this Contract is terminated.
- e. Pollution coverage must apply to all phases of the work described in the Scope of Services in this Contract.
- f. The policy shall include coverage for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death and medical monitoring costs.
- g. The policy shall include coverage for property damage, and physical damage to, or destruction of, tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed including diminution in value.
- h. For losses that arise from the facility, coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants, into or upon land, atmosphere, or any watercourse or body of water which results in cleanup costs, bodily injury or property damage.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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- i. The policy shall include coverage for environmental damage including physical damage to soil, surface water, ground water, plant, or animal life, caused by pollution conditions and giving rise to cleanup costs.
- j. The policy shall include defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- k. The policy shall include coverage for asbestos and lead, mold, with no exclusions.
- l. The policy shall include Non-Owned Disposal Site coverage.
- m. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- n. The policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by the Contractor.

### **25.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

25.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

25.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **25.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **25.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **25.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

25.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

25.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

25.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **25.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

### **25.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **25.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

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For losses caused by pollution conditions that arise from the operations of the Contractor as described in the Scope of Services section of this Contract.

### **25.11 Pollution Legal Liability**

- Per Occurrence \$1,000,000
  - General Aggregate \$2,000,000
- a. Coverage must be specific to the operations as described in the Scope of Services in this Contract.
  - b. Must include coverage for pollution losses arising out of completed operations.
  - c. Pollution coverage must apply to all locations utilized for the acceptance, storage, or disposal of any hazardous materials.
  - d. The policy is to be written on an "occurrence" basis with no sunset clause. In the event that the Pollution Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract. That either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of ten (10) years beginning at the time this Contract is terminated.
  - e. Pollution coverage must apply to all phases of the work described in the Scope of Services in this Contract.
  - f. The policy shall include coverage for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death and medical monitoring costs.
  - g. The policy shall include coverage for property damage, and physical damage to, or destruction of, tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed including diminution in value.
  - h. For losses that arise from the facility, coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants, into or upon land, atmosphere, or any watercourse or body of water which results in cleanup costs, bodily injury or property damage.
  - i. The policy shall include coverage for environmental damage including physical damage to soil, surface water, ground water, plant, or animal life, caused by pollution conditions and giving rise to cleanup costs.
  - j. The policy shall include defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
  - k. The policy shall include coverage for asbestos and lead, mold, with no exclusions.
  - l. The policy shall include Non-Owned Disposal Site coverage.
  - m. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards,

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commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

- n. The policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by the Contractor.

**The following is only applicable to Contractor's treating, storing or disposing of State generated Hazardous Waste at a separate facility:**

### **25.12 Treatment, Storage or Disposal of Hazardous Wastes**

Contractor shall furnish an insurance certificate from the designated disposal facility establishing that the facility operator maintains current Pollution Legal Liability Insurance in the amount of not less than \$10,000,000 per occurrence / annual aggregate, and will cover sudden and gradual pollution losses arising from the facility, associated with work performed under this agreement.

25.12.1 For pollution losses arising from the insured facility, coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage.

The policy shall also include the following coverages:

25.12.2 Bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death and medical monitoring costs.

25.12.3 Property damage, including physical injury to or destruction of tangible property, including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed and diminution in value.

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### 26. Disposal / Recycling / Storage Facilities

The State of Arizona may enter into a contract with facilities that handle or store hazardous waste or materials. These operations include, but are not limited to:

- Facilities That Store Hazardous Materials
- Facilities That Accept Hazardous Waste
- Disposal Site Operators
- Certain Types Of Recycling Facilities That Recycle Metals, Lead-Acid Batteries, Used Oil, Etc.

These types of operations require special liability insurance called Pollution Legal Liability. This insurance is designed to cover bodily injury, property damage and cleanup costs arising from pollution claims resulting from the Contractor's operations. The sample requirements that follow include this special insurance in the requirements.

#### 26.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 26.2 Insurance Requirements

26.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

26.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 26.3 **Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 26.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 26.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees



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as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 26.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 26.3.4 Pollution Legal Liability

- Per Occurrence \$1,000,000
- General Aggregate \$2,000,000

- a. Coverage must be specific to the operations as described in the Scope of Services in this Contract.
- b. Must include coverage for pollution losses arising out of completed operations.
- c. Pollution coverage must apply to all locations utilized for the acceptance, storage, or disposal of any hazardous materials.
- d. The policy is to be written on an "occurrence" basis with no sunset clause. In the event that the Pollution Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract. That either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of ten (10) years beginning at the time this Contract is terminated.
- e. Pollution coverage must apply to all phases of the work described in the Scope of Services in this Contract.

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- f. The policy shall include coverage for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death and medical monitoring costs.
- g. The policy shall include coverage for property damage, and physical damage to, or destruction of, tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed including diminution in value.
- h. For losses that arise from the facility, coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants, into or upon land, atmosphere, or any watercourse or body of water which results in cleanup costs, bodily injury or property damage.
- i. The policy shall include coverage for environmental damage including physical damage to soil, surface water, ground water, plant, or animal life, caused by pollution conditions and giving rise to cleanup costs.
- j. The policy shall include defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- k. The policy shall include coverage for asbestos and lead, mold, with no exclusions.
- l. The policy shall include Non-Owned Disposal Site coverage.
- m. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- n. The policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by the Contractor.

### **26.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

26.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

26.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **26.5 Notice of Cancellation**

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Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **26.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **26.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

26.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

26.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

26.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **26.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

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### **26.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **26.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

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### 27. Environmental Consulting And Testing Services

Some pollution claims arise from services that are performed by environmental "professionals." If the scope of services in the contract includes activities such as the following, the *insurance requirements* in this section should be included:

- Consulting on environmental issues
- Architects or engineers involved in environmental projects
- Testing for materials or air quality for pollutants or other hazardous materials of any kind

These contractors provide a "professional service" which could result in a claim alleging damage to the environment or injury to the public. Therefore, the requirements should include a requirement for Environmental Liability insurance, which is normally excluded in a standard Professional Liability insurance policy.

#### 27.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 27.2 Insurance Requirements

27.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to

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property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

27.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### 27.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 27.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 27.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the

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activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 27.3.3 Workers' Compensation and Employers' Liability

- |                           |             |
|---------------------------|-------------|
| • Workers' Compensation   | Statutory   |
| • Employers' Liability    |             |
| ○ Each Accident           | \$1,000,000 |
| ○ Disease – Each Employee | \$1,000,000 |
| ○ Disease – Policy Limit  | \$1,000,000 |

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 27.3.4 Professional Environmental Liability

- |                    |             |
|--------------------|-------------|
| • Each Claim       | \$2,000,000 |
| • Annual Aggregate | \$2,000,000 |
- a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
  - b. The Professional Liability insurance must include coverage for claims of bodily injury or property damage arising out of pollution for environmental work, asbestos, laboratory analysis and/or the operations of a treatment plant, if required by the Scope of Services.
  - c. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

## 27.4 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

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27.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

27.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **27.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **27.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **27.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

27.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

27.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

27.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.



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### **27.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

### **27.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **27.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

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### 28. Master Environmental Services

You may find that some contractors will provide all services required under a large environmental contract. Master environmental service contracts can require the Contractor to provide a variety of environment-related services; i.e. testing for pollutants and air quality, environmental consulting services and remediation or abatement services (removal of the hazardous material), including transporting hazardous materials, petroleum products or chemicals.

Therefore, the Contractor is required to provide a variety of coverages that will address the entire scope of services of the contract. The sample requirements that follow address the various insurance coverages required from a master environmental contract that involves all of these activities.

#### 28.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 28.2 Insurance Requirements

28.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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28.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### **28.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 28.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 28.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 28.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 28.3.4 Professional Environmental Liability

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000

- a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The Professional Liability insurance must include coverage for claims of bodily injury or property damage arising out of pollution for environmental work, asbestos, laboratory analysis and/or the operations of a treatment plant, if required by the Scope of Services.
- c. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

### 28.3.5 Contractors Pollution Liability

- Per Occurrence \$1,000,000
- General Aggregate \$2,000,000

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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- a. Coverage must be **identified specific to the operations** as described in the Scope of Services in this Contract.
- b. Must include coverage for pollution losses arising out of completed operations.
- c. The policy is to be written on an “occurrence” basis with no sunset clause. In the event that the Pollution Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract. That either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of ten (10) years beginning at the time this Contract is terminated.
- d. Pollution coverage must apply to all phases of the work described in the Scope of Services in this Contract.
- e. The policy shall include coverage for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death and medical monitoring costs.
- f. The policy shall include coverage for property damage, and physical damage to, or destruction of, tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed including diminution in value.
- g. The policy shall include coverage for environmental damage including physical damage to soil, surface water, ground water, plant, or animal life, caused by pollution conditions and giving rise to cleanup costs.
- h. The policy shall include defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- i. The policy shall include coverage for asbestos and lead, mold, with no exclusions.
- j. The policy shall include Non-Owned Disposal Site coverage.
- k. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- l. The policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by the Contractor

### **28.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 28.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

28.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **28.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **28.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **28.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

28.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

28.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

28.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **28.8 Subcontractors**

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

### **28.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **28.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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### 29. Hazardous Material Hauling

The State of Arizona may enter into a contract where the scope of services includes the transportation of pollutants. This can generally be found in contracts for the purchase and delivery of hazardous materials. These pollutants can include, but are not limited to the following:

- Chemicals, such as chlorine products
- Petroleum products, such as fuel
- Hazardous waste products, such as asbestos

Standard business auto liability policies do not provide coverage for pollution resulting from a spill of any cargo carried in, towed by, or being loaded into or from the automobile. This risk is specifically excluded under the automobile policies normally required of contractors.

Therefore, Automobile Pollution Liability should be required from any Contractor moving hazardous products or waste in the Contractor's vehicles.

If the scope of services in the contract address only the transportation of hazardous materials and do not include any other operations that could affect the environment, then the following sample requirements should be included in the contract.

#### 29.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

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This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### **29.2 Insurance Requirements**

29.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

29.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### **29.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 29.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 29.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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- Combined Single Limit (CSL) \$5,000,000

When hazardous materials are transported, the automobile liability policy shall include the following endorsements:

- CA 99 48 Pollution Liability-broadened coverage for covered autos
  - MCS-90 (Motor Carrier Act) endorsements
- a. The policy shall include Automobile Pollution Liability specific to the transportation of hazardous materials.
  - b. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - c. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 29.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
  - Employers' Liability
    - Each Accident \$1,000,000
    - Disease – Each Employee \$1,000,000
    - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
  - b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 29.3.4 Contractors Pollution Liability

For losses caused by pollution conditions that arise from the operations of the Contractor as described in the Scope of Services section of this Contract.

- Per Occurrence \$1,000,000
- General Aggregate \$2,000,000

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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- a. Coverage must be identified specific to the operations as described in the Scope of Services in this Contract.
- b. Must include coverage for pollution losses arising out of completed operations.
- c. The policy is to be written on an "occurrence" basis with no sunset clause. In the event that the Pollution Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract. That either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of ten (10) years beginning at the time this Contract is terminated.
- d. Pollution coverage must apply to all phases of the work described in the Scope of Services in this Contract.
- e. The policy shall include coverage for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death and medical monitoring costs.
- f. The policy shall include coverage for property damage, and physical damage to, or destruction of, tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed including diminution in value.
- g. The policy shall include coverage for environmental damage including physical damage to soil, surface water, ground water, plant, or animal life, caused by pollution conditions and giving rise to cleanup costs.
- h. The policy shall include defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- i. The policy shall include coverage for asbestos and lead, mold, with no exclusions.
- j. The policy shall include Non-Owned Disposal Site coverage.
- k. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- l. The policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by the Contractor.

### **29.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 29.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Environmental Services and Consulting

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the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

29.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **29.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **29.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **29.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

29.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

29.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

29.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **29.8 Subcontractors**

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## Environmental Services and Consulting

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Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

### **29.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **29.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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### Information Technology Contracts

#### 30. Technology Errors & Omissions (Tech E&O) Insurance

Technology Errors & Omissions (Tech E&O) is professional liability insurance, also known as errors and omissions insurance, designed for technology companies. Any individual or firm that provides technology services or products should be required to provide Tech E&O in the event their unintended error or omission in performing services or providing back or front-end product(s) causes a loss to a third party(s) and for which a claim is brought against the insured and/or the State. This coverage is applicable to but is not limited to:

- Outsourced IT providers
- Hosted solutions (web hosting, FTP hosting)
- E-mail hosting
- Data storage (cloud services)
- Backup
- SaaS tools – CRM, information governance, E-mail marketing, MDM platform
- Developers – website, marketing content
- Physical and cyber security providers
- Payment processing
- Internet service providers & other connectivity solutions

Below are a few examples of exposures to ADOA State Risk from each of the different vendors:

- Website developers:
  - Introduction of malware due to vulnerabilities in the code
- Outsourced IT director:
  - Theft of sensitive or valuable information
  - Outage and resultant business interruption
  - Data loss and associated recovery costs
- Offsite data backup or other hosted solutions:
  - Loss of company or client data that could trigger breach requirements, reputation damage, or result in fines/penalties
- E-mail provider:
  - Outage could cause a loss of revenue by decreasing productivity or provider could be responsible for a loss of data

Depending on nature of work and the services and/or products provided by the Contractor, additional coverage should be ascertained, i.e. in the event the Contractor will have access to any data of a personal or confidential nature e.g., employee records, general public personal information, health records, or financials records, Contract shall be required to include (or not exclude) coverage for data breach, the Network Security (Cyber) and Privacy Liability coverage in addition to this Tech E&O.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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The requirements listed below are the minimum and should in no way preclude you from requiring higher limits based on the potential exposure to the State. Please contact State Risk Management for guidance.

### **30.1 Indemnification Clause**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### **30.2 Insurance Requirements**

30.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

30.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### **30.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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### 30.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 30.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 30.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 30.3.4 Technology Errors & Omissions Insurance

- Each Claim \$2,000,000
  - Annual Aggregate \$2,000,000
- a. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.
  - b. Coverage shall include copyright infringement, infringement of trade dress, domain name, title or slogan.
  - c. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

### 30.4 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 30.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 30.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### 30.5 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **30.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **30.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

30.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

30.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

30.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **30.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

### **30.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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action will not require a formal Contract amendment but may be made by administrative action.

### **30.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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### 31. Media Liability Insurance

Media Liability coverage is a type of Errors and Omissions Liability insurance designed for publishers, broadcasters, and other media-related services including web design and/or marketing firms. This type of policy responds to third-party claims for personal injury, i.e. financial loss/loss of profits, reputation damage, etc. due to both online and offline content shared or accessible to the public. The claims made by third parties can range from libel/slander and false advertisement to copyright infringement. It is important to note that there are many different flavors and hence nomenclature for media liability designed for the various types of services or products provided by the vendors. The requirements listed below are the minimum and should in no way preclude you from requiring higher limits depending on the potential exposure to the State. Please contact State Risk Management for guidance.

#### 31.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 31.2 Insurance Requirements

31.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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31.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### **31.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### 31.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 31.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 31.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 31.3.4 Media Liability Coverage

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000
- a. Such insurance shall cover any and all errors and omissions or negligent acts in the production of content, including but not limited to plagiarism, defamation, libel, slander, false advertising, invasion of privacy, and infringement of copyright, title, slogan, trademark, service mark and trade dress.
- b. In the event that the Media Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

## 31.4 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 31.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

31.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **31.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **31.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **31.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

31.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

31.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

31.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **31.8 Subcontractors**

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Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

### **31.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

### **31.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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### 32. Network Security (Cyber) and Privacy Liability Insurance

Network Security and Privacy Liability insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, I.D. theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.).

Network Security and Privacy Liability insurance is sometimes packaged with Technology Errors and Omissions (Tech E&O) insurance, depending on the carrier or can be obtained as stand-alone coverage. Network Security and Privacy Liability insurance can also include first-party coverage (no third party claim required) for emergency response in the event of a network or privacy breach such as costs to notify individuals whose data may have been compromised through registered mail. Also part of emergency response costs are call center services as an intake for individuals to contact to trigger credit-monitoring services. Nevertheless, Network Security and Privacy policies can contain similar insuring agreements to Tech E & O.

The typical exposures to the State are:

- Outsourced IT director:
  - Theft of sensitive or valuable information
  - Outage and resultant business interruption
  - Data loss and associated recovery costs
- Offsite data backup or other hosted solutions:
  - Loss of company or client data that could trigger breach requirements, reputation damage, or result in fines/penalties
- E-mail provider:
  - Outage could cause a loss of revenue by decreasing productivity or provider could be responsible for a loss of data

The requirements listed below are the minimum and should in no way preclude you from requiring higher limits depending on the potential exposure to the State. Please contact State Risk Management for guidance.

#### 32.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### **32.2 Insurance Requirements**

32.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

32.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

### **32.3 Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

#### **32.3.1 Commercial General Liability (CGL) – Occurrence Form**

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 32.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 32.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 32.3.4 Network Security (Cyber) and Privacy Liability

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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- a. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.
- b. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- c. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to vicarious liability of the insured arising out of the activities performed by or on behalf of the Contractor.
- d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### **32.4 Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 32.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 32.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### **32.5 Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed

# Insurance and Indemnification Guidelines for State of Arizona Contracts

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for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### **32.6 Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **32.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

32.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

32.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

32.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **32.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

### **32.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Information Technology Contracts

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action will not require a formal Contract amendment but may be made by administrative action.

### **32.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Other Contract Types

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### Other Contract Types

#### 33. Grants

A Grant Contract allows the State to disburse funds to a recipient following approval of the grant application process. The funds may originate from a public or private source, and the State acts as administrator to distribute funds for specific use as defined by the originator. The final recipient must qualify under the grant application criteria. The grant contract is different from the grant application – it is a means to convey money.

There are several types of Grants:

1. Funding is directed from the State to a recipient; there is no written scope of services; there is no contractual duty to perform services or provide goods directly to the State; one lump sum disbursement is made. The benefit to the State is indirect. There is vicarious liability to the State for providing the funds to the recipient.
2. Funding is directed from the State to a recipient. There is a contractual duty to perform services within a written directive. The written directives in the grant contract (often found in an attachment such as the grant application) may show or describe:
  - Tangible goods or services
  - Intangibles such as intellectual property

Since these directives require the recipient to perform certain duties for the State, there is a greater contractual obligation to the State than in item #1 above. There could be various methods of grant payments to the recipient other than one lump sum.

3. Funding is directed to the State as a grantee. There is a contractual duty for the State to perform services within a written directive. A portion of the State's funds may be to sub-grantees to carry out the written directives further. The disbursement of funds to one or more sub-grantees may be done using various methods such as:
  - Sub-grantee contract
  - Solicitation of goods or services
  - Purchase order

Each of these usually identifies the type of goods or services needed or required.

If your contract most resembles #1 above, then use indemnity paragraph from [Standard Service Contractors - Using Contractor Vehicles](#) with no further insurance requirements.

If your contract most resembles #2 above, then use the module that best fits the type of contract that will be issued.

Use [Intergovernmental Agreements \(IGA\)](#) for Grants in which all parties are public entities. For Grants in which public and private entities are parties, contact your State Risk Insurance Analyst for advice.

# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Other Contract Types

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### 34. Intern Work Service

When a State agency enters into an agreement for the use of a student intern, and such service allows the student to gain credentials toward a curriculum, the agreement is usually called an Intern work service agreement.

When such intern services are used under an agreement, the agreement must contain Insurance requirements binding upon the facilitating school or University providing the interns (does not apply to the State of Arizona Universities).

The procurement officer should consider using the [Standard Professional Service Contracts](#) module, excluding the Professional Liability insurance requirement, depending on whether the intern is qualified to give professional advice. Keep in mind that most undergraduate student interns are not yet licensed or Board certified as professionals, however, some graduate school interns may have licensing in a profession and be continuing their graduate level education. If in doubt in the Professional Liability requirement or ask the host school or college to define the credentials of the interns in question.

Once the procurement officer has selected a module appropriate for the intern services, then a final modification to the Insurance Requirements must be made:

Since a student is not employed by either their school or the State agency, the Workers' Compensation requirement is not applicable. In its place, the contract paragraph should say:

“All interns under this agreement must insure their health/disability/disease by securing personal or family medical coverage.”

All other language in the module pertaining to Indemnity and Liability Insurance should remain.



# Insurance and Indemnification Guidelines for State of Arizona Contracts

## Other Contract Types

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### 35. Intergovernmental Agreements (IGA)

For most mutually beneficial IGAs, it is not necessary or practical to require additional insured status from the other governmental entity. Each entity should be responsible for its own acts. In fact, the *insurance requirements* for an IGA with most major governmental entities, depending on the nature of the agreement, can be either omitted or accepted at a minimal level, provided State Risk approves.

For this reason, specific indemnification language has been developed and agreed upon by the various governmental entities in the State of Arizona.

When the other governmental entity procures the services of a contractor, subcontractor, or outside vendor to do work on State of Arizona property, those non-governmental entities must provide insurance in the amount specified in the Sample Insurance Requirements, and name all the involved governmental entities as additional insureds.

Use the indemnification language found in this section **for IGAs only**. Contact State Risk or your Risk Management Department for guidance.

Contact your State Risk Insurance Analyst for any IGA or similar agreement with an agency of the Federal Government, or any Sovereign/Tribal Nation.

#### General Guidelines for IGAs

##### 1. For Work in Right-of-Way, Revocable Permits and Leases:

- There are no insurance requirements for the Permittee/Lessee (that is, the other governmental entity).
- Use the indemnification language shown in this section.
- “Standard” insurance requirements for any contractor/outside vendor doing work related to the permit, shall name the Permitter/Lessor (State of Arizona) as an additional insured.
- The governmental entity that receives the permit or rents the property (the Permittee or Lessee) must require its contractor(s) and subcontractor(s) to indemnify the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees to the same extent as they indemnify the other governmental entity.
- All governmental entities that are a party to the IGA shall be named as additional insureds on the Contractor’s insurance.

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2. **For the IGA as a Funding Conduit, including Grants** (e.g. Area Agency on Aging, Block Watch Grants, Railroad Crossing Upgrades, etc.):
  - There are no *insurance requirements* for the other governmental entity.
  - Use the vicarious indemnification language shown in this section.
  - If any Contractor or outside vendor is involved, all governmental entities party to the IGA shall be named as additional insureds on the Contractor's/outside vendor's insurance.
3. For Mutual Aid Agreements (e.g. Fire, Police, Trash Collection, etc.):
  - There are no *insurance requirements* for the other governmental entity.
  - Use the indemnification language shown in this section.
  - If any Contractor or outside vendor is involved, all governmental entities party to the IGA shall be named as additional insureds on the Contractor's/outside vendor's insurance.
4. For Airports:
  - Anyone, including governmental entities, occupying a hangar located at a State of Arizona airport must have Hangar Keepers' Liability Insurance, with the airport operator (State of Arizona) named as an additional insured.
  - Contractors and subcontractors of the other governmental entity/ies in the IGA are required to carry insurance limits of \$5,000,000 General Liability and \$5,000,000 combined single limits for Automobile Liability when performing operations or services on the "air side" of airport terminals. Policy must be endorsed to include airports. For further details and assistance regarding an IGA that involves operations at an airport, please contact State Risk.

### **35.1 Indemnification:**

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

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In addition, should (insert name of other governmental entity) utilize a contractor(s) and subcontractor(s) the indemnification clause between (insert name of other governmental entity) and its contractor(s) and subcontractor(s) shall include the following:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the (insert name of other governmental entity) and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, , officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Additionally on all applicable insurance policies, contractor and its subcontractors shall name the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as an additional insured and also include a waiver of subrogation in favor of the State.

### **35.2 Insurance Requirements for Governmental Parties to an IGA**

- None

### **35.3 Insurance Requirements for Any Contractors Used by a Party to the Intergovernmental Agreement**

*(Note: this applies only to Contractors used by a governmental entity, not to the governmental entity itself.)* The *insurance requirements* herein are minimum requirements and in no way limit the indemnity covenants contained in the Intergovernmental Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors, and Contractor and the governmental entity are free to purchase additional insurance.

### **35.4 Minimum Scope And Limits Of Insurance**

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Contractor shall provide coverage with limits of liability not less than those stated below.

### 35.4.1 Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Damage to Rented Premises	\$ 50,000
• Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

*(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)*

### 35.5 **Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- |                               |             |
|-------------------------------|-------------|
| • Combined Single Limit (CSL) | \$1,000,000 |
|-------------------------------|-------------|
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
  - b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

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*(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)*

### 35.5.1 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

### 35.6 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

35.6.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

35.6.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

### 35.7 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

### 35.8 **Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of

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Insurance List of Qualified Unauthorized Insurers. Insurers shall have an “A.M. Best” rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

### **35.9 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

35.9.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State’s receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

35.9.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

35.9.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **35.10 Subcontractors**

Contractor’s certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

### **35.11 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment, but may be made by administrative action.

### **35.12 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a

# **Insurance and Indemnification Guidelines for State of Arizona Contracts**

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certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.