

SPECIAL TERMS AND CONDITIONS

1. INDEMNIFICATION CLAUSE

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the ACA, 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 a resulting Task Order, 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 ACA.

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. PROFESSIONAL LIABILITY INSURANCE

Professional Liability Insurance is issued for a "professional" and covers the rendering of, or failure to render, services of a professional nature.

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 ACA 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.

3. INSURANCE REQUIREMENTS

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

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

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

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

1. Commercial General Liability – Occurrence Form

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

Type of Coverage	Contracts \$50,000 and Under	Contracts Above \$50,000
General Aggregate	\$1,000,000	\$2,000,000
Products – Completed Operations Aggregate	\$500,000	\$1,000,000
Personal and Advertising Injury	\$500,000	\$1,000,000
Damage to Rented Premises	\$25,000	\$50,000
Each Occurrence	\$500,000	\$1,000,000

- a. The policy shall be endorsed (BLANKET ENDORSEMENTS WILL NOT BE ACCEPTED) to include the following additional insured language: "The State of Arizona, and their departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor." Such additional insured shall be covered to the full limits of liability purchased by Contractor, even if those limits of liability are in excess of those required by this Contract.
- b. Policy shall contain a waiver of subrogation endorsement (BLANKET ENDORSEMENTS WILL NOT BE ACCEPTED) 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 Contractor.

2. Business Automobile Liability

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

Type of Coverage	Contracts \$50,000 and Under	Contracts Above \$50,000
Combined Single Limit (CSL)	\$500,000	\$1,000,000

- a. The policy shall be endorsed (BLANKET ENDORSEMENTS WILL NOT BE ACCEPTED) to include the following additional insured language: "The State of Arizona, and their departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor, involving automobiles owned, leased, hired or borrowed by Contractor." Such additional insured shall be covered to the full limits of liability purchased by Contractor, even if those limits of liability are in excess of those required by this Contract.
- b. Policy shall contain a waiver of subrogation endorsement (BLANKET ENDORSEMENTS WILL NOT BE ACCEPTED) 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 Contractor.
- c. Policy shall contain a severability of interest provision.

3. Worker's Compensation and Employers' Liability

Type of Coverage	Contracts \$50,000 and Under	Contracts Above \$50,000
Worker's Compensation	Statutory	Statutory
Employer's Liability		
Each Incident	\$500,000	\$1,000,000
Disease – Each Employee	\$500,000	\$1,000,000
Disease – Policy Limit	\$500,000	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement (BLANKET ENDORSEMENTS WILL NOT BE ACCEPTED) 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 Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form

4. Professional Liability (Errors and Omissions Liability)

Type of Coverage	Contracts \$50,000 and Under	Contracts Above \$50,000
Each Claim	\$1,000,000	\$2,000,000
Annual Aggregate	\$1,000,000	\$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 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.
- b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this Contract.

B. ADDITIONAL INSURANCE REQUIREMENTS

The policies shall include, or be endorsed (BLANKET ENDORSEMENTS WILL NOT BE ACCEPTED) to include, the following provisions:

- 1. Contractor's policies shall stipulate that the insurance afforded Contractor shall be primary insurance and that any insurance carried by the ACA, and 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. Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. NOTICE OF CANCELLATION

With the exception of a 10-day notice of cancellation for non-payment of premium, any changes material to compliance with this Contract in the insurance policies above shall require 30-days written notice to the State of Arizona. Such notice shall be sent directly to the ACA and shall be sent by certified mail, return receipt requested.

D. ACCEPTABILITY OF INSURERS

Contractor's insurance shall be placed with companies licensed in the State of Arizona or which 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-. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE

Contractor shall furnish the ACA with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements (BLANKET ENDORSEMENTS WILL NOT BE ACCEPTED) are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the ACA. The ACA 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.

F. SUBCONTRACTORS

Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the ACA separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. APPROVAL

Any modification or variation from the insurance requirements in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal Contract amendment but may be made by administrative action.

H. EXCEPTIONS

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