

Third Party Usage

Basic Overview

Third party usage of your property brings additional liability exposure to your organization. You can mitigate this increased exposure through proper risk transfer procedures.

Whenever there is a 3rd party using your premises, it's paramount to transfer your risk fully to that party (where reasonable). Types of situations that warrant your attention are non-owned day care, after school programs, business operations, organization rentals (non or for profit entities), counseling groups (AA, NA), scouting organizations (boy/girl scouts), and many others.

Perhaps the most important thing to remember throughout any of these conversations is that **it's generally free to transfer your risk to that 3rd party**. These groups typically do not incur greater costs to take your risk both from a contractual and additional insured standpoint. You may encounter pushback from the 3rd parties but typically can move past the initial discomfort.

How do you get General Liability coverage under someone else's policy? There are two methods of which **both should be obtained in all instances**:

1. Contractual Liability Coverage - via Indemnity Agreement covers tort liability (not breach of contract)
2. Additional Insured Status

The samples included throughout this primer are designed as a framework for what to ask for from a contractor or vendor on premises. The document includes the following:

Part 1 addresses contractual liability & general requirements that should be in your agreements

Part 2 requests the specific limits

Part 3 outlines common contract mistakes

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Part 1: General Requirements (Sample)

These are the general requirements that you should request from the tenant

1. All policies must be written with insurers maintaining an AM Best Rating of "A" IX or better and admitted to do business in the State where the contract is to be performed.
2. General Liability coverage must include Our Client and related entities and their respective officers, directors and employees must be named as Additional Insured using form CG 20 26 ed 04/13 during the entire facility usage period. Evidence of such insurance must be provided at inception of the agreement and annually thereafter until the usage of Our Client's property ceases.
3. All coverage required in this contract must be primary and non-contributory to any insurance maintained by Our Client. "Primary and non-contributory" in this clause means that Third Party's policies must provide coverage before any other applicable policy of insurance, deductible or self-insured retention program maintained by Our Client without seeking contribution from other insurance carried by Our Client and related entities and their respective officers, directors and employees. Third party must also include form CG 20 01 ed 04/13 on their policy. Evidence of such policy endorsement must be provided at inception of the agreement and annually thereafter until the usage of Our Client's property ceases
4. Each policy must be endorsed to require at least 30 days notice of cancellation (10 days for non-payment of premium) to Our Client. If, after reasonable effort, Tenant is unable to secure such endorsement, Tenant must provide Our Client written notice of any cancellation within 3 working days of any written or oral notice of such cancellation.
5. No deductible or self-insured retention shall apply to any insurance required hereunder without the express written consent of Our Client. Should Our Client agree to a deductible or self-insured retention, Tenant agrees to be responsible for defense, including all claims and investigation expenses and any loss payments to the extent coverage would have been provided by the insurer had no deductible or self-insured retention applied to such insurance.
6. Tenant waives all rights against Our Client to the extent of any insurance carried or required to be carried under this agreement. Policies of insurance must be endorsed, as needed, to provide such waivers - including but not limited to forms CG 24 04 ed 05/09 and WC 00 03 ed 04/84 or their equivalent. Such waivers will be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Such waiver shall also apply to the extent that any deductible or self-insured retention applies to any such policy and to the extent that the insured party is underinsured.
7. These requirements apply to all past, current, and ongoing operations of the Tenant at Our Client's location.

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8. Failure to obtain and to keep in force any of the required insurance coverage shall be deemed to be sufficient cause for termination of this contract for default.
9. Tenant's liability shall not be limited to the limits of any required insurance.
10. Our Client shall not be liable for payment of any premiums under any required policies of insurance.
11. Our Client reserves the right to require complete copies of all required insurance policies at any time. If requested, copies must be furnished within 10 working days from the date of the request.
12. Limits required may be purchased in any combination of primary and excess to achieve the required total limits
13. DOCUMENTATION TO BE SUBMITTED PRIOR TO TENANT OCCUPANCY AND AT EACH INSURANCE RENEWAL OR REPLACEMENT UNTIL INSURANCE IS NO LONGER REQUIRED
 - a. Certificates of Insurance evidencing requirements above
 - b. Copy of Additional Insured endorsement
 - c. Copy of Waiver of Subrogation endorsement on Workers Compensation policy
14. If you have any questions regarding a Certificate of Insurance or insurance provision within an agreement contact your service team:

Sovereign Insurance Group

p 800.222.4478 | f 610.535.6810

info@sovinsurance.com

DISCLAIMER: Any document review does not constitute legal advice and is for insurance purposes only, all agreements must be reviewed by appropriate legal counsel.

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Part 2: Limits Requested (Sample)

The coverage required below will not be limited by any other provisions in the contract documents or elsewhere. Tenant must comply with the following requirements:

I. General Liability Limits Requested

Each Occurrence	\$1,000,000
Personal & Advertising Injury	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Agg Limit	\$2,000,000
Fired Damage Liability – Per Fire	\$100,000
Medical Expense Limit	\$5,000

Other Considerations

- **ISO form CG 00 01** or equivalent; aggregate limit to apply per project; coverage must be on Occurrence form. "Claims Made" is not acceptable.
- **Additional Insured Entities:** Our Client and related entities and their respective officers, directors, employees, and volunteers must be named as Additional Insured
- **Additional Insured Endorsement Form Required:** CG 20 26 ed 04/13 Additional Insured- Designated Person or Organization
- **Primary and Noncontributory Form Required:** CG 20 01 ed 04/13 Primary and Noncontributory – Other Insurance Condition
- **Waiver of Rights of Recovery Form Required:** CG 24 04 ed 05/09 Waiver of Transfer of Rights of Recovery Against Others To Us
- **Coverage may not exclude or limit coverage for:** The Employer’s Liability exclusion may not exclude coverage for an employee of "any" insured, only employees of a "Named" Insured"

II. Automobile Liability

Combined Single Limit	\$1,000,000
Hired & Nonowned Auto Liability	Included
Covered Auto Symbols	1 or 2, 8, & 9

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III. Workers Compensation & Employers Liability

Workers Compensation	Per Statutory Benefits for All Employees
EL Limits – Each Accident	\$500,000
EL Limits – By Disease – Policy Limit	\$500,000
EL Limits – By Disease – Each Employee	\$500,000
Other Considerations:	Waiver of Subrogation in favor of our client

IV. Umbrella / Excess Liability

Each Occurrence	\$1,000,000 (minimum limit, higher if available)
General Liability	Included
Products/Completed Operations	Included
Automobile Liability	Included
Employers Liability	Included
Other Considerations:	Additional Insured required

V. Property Insured (under no circumstances will Our Client be liable for any loss or damage to any property)

- **Property Covered:** All owned and rented furnishings and equipment
- **Perils:** Special Form perils including Theft
- **Deductible cannot exceed:** \$5,000
- **Valuation:** Replacement Cost

VI. Sexual Abuse & Molestation

Limit Per Claim	\$1,000,000
Aggregate Limit	\$1,000,000

Other Considerations

- All tenants must comply with any statute governing their operations for training, background checks, mandatory reporting, etc.
- Require that all tenants provide documentation regarding their abuse/molestation prevention, training, and reporting procedures. Tenant shall follow their procedures or that of Our Client whichever is STRICTER.

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VII. Accident/Health

Accidental Medical Expense

\$5,000 per injury

Other Considerations

- Included for student and athletic medical expense if Tenant's operations include this exposure, and it is excluded under their general liability.

DISCLAIMER: These sample requirements are not adequate or appropriate for all situations and in all jurisdictions. Should you require legal advice, please consult an attorney.

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Part 3: Common Contract Mistakes

1. Not discussing the contractual insurance provisions until the last minute making it difficult to negotiate with the tenant
2. Agreeing to policy terms without seeking insurers approval in advance
3. No additional insured requirement
4. Inadequate / non-specific additional insured requirement
5. No requirement that Additional Insured status be primary and non-contributory to AI's own insurance
6. Not addressing how SIR's or Self-insurance are to impact AI coverage
7. Using incorrect or outdated terminology
8. Including requirements which may be attainable today, but not in the future (long term contracts)
9. Vague or undefined requirements
10. Failure to customize requirements
11. Failure to monitor compliance
12. Failure to put insurer(s) on notice of an incident or claim
13. Requiring a party's insurer(s) to waive subrogation, without actually waiving the party's right in the contract.
14. No or inadequate indemnity agreement
15. Requirement to insure the indemnity agreement
16. Not including "defense" requirement in indemnity agreement
17. Contract does not reflect intent of parties