



# Contract Insurance Requirements and Other Contract Risk Considerations

## March 2024

Office of Risk Management and Compliance

# Why Have Insurance Requirements for Contracts?

- Part of an effective institutional financial risk mitigation strategy
- Contractually transfers some financial risks to the contracting party. Examples include:
  - Bodily injury claims related to negligent acts by the vendor
  - Property damage claims caused by the vendor or its products/services
  - Data breach of a vendor system or application
  - Injury to a vendor employee
  - Contractor errors and omissions when providing professional services



# Why Are We Focusing on Insurance Now?

- *Note: Insurance requirements for UAH contracts are not “new” – have been part of the Terms and Conditions for many years.*
- UAH is working to improve its contract risk management processes:
  - Closing gaps in university contract risk assessment processes
  - Enforcing insurance requirements when appropriate to the risk
  - Ensuring proper contract risk allocation going forward
  - Trends in litigation settlements driving need to better financial protections
    - Multi-million dollar judgements are increasing in frequency and dollar amounts



# When is Insurance Required for a Contract?

- Generally speaking, insurance requirements, with proof of coverage, are always preferred.
- Required coverages depend on nature and scope of contract – each contract should be assessed for inherent risk.
- Scopes of work with minimal inherent risk can possibly have requirements waived by ORMC after a review.
  - Some standing waivers are already in place for minimal risk activities such as:
    - Guest lecturer / panelist / speaker
    - External academic program reviewers
    - Solo / duo / ensemble performances (with specific limitations)
    - Event photographers



# What Types of Insurance are Required?

- Depends on nature and scope of contract – each contract should be assessed for inherent risk in the proposed work scope
- Coverages include, but are not limited to:
  - General Liability
  - Automobile Liability
  - Cyber Liability
  - Professional Liability
  - Workers' Compensation



# What are the UAH Insurance Minimum Requirements?

## Commercial General Liability (“CGL”)

Each Occurrence - Premises/Operations	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Products-Completed Operations Limit	\$1,000,000
General Aggregate	\$2,000,000

General Liability Insurance covers a wide range of claims against the insured, including:

- Property damage
- Bodily injury

which involve the covered contractor’s products, services, or operations.



# What are the UAH Insurance Minimum Requirements?

## Professional Liability (“PL”)

Each Occurrence

*\$1,000,000 per claim*

Professional liability insurance, sometimes referred to as errors and omissions (“E&O”) insurance, covers a wide range of claims against the insured, including:

- Work errors, omissions, and oversights
- Personal injury (e.g., medical malpractice)
- Defective product design or incomplete work
- Project delays and cost overruns
- Copyright infringement
- Breach of contract

Who should have professional liability insurance: advisors, architects, engineers, consultants, healthcare providers, attorneys, accountants, auditors, technical experts, researchers, IT professionals, advertising agencies, real estate agents, etc.



# What are the UAH Insurance Minimum Requirements?

## **Cyber Liability (aka Electronic Data Processing [“EDP”] Errors & Omissions / Data Breach Liability)**

Each Occurrence: *\$1,000,000 typically, but up to \$5,000,000 depending on data risk (data type, number of records involved, etc.)*

Cyber liability insurance covers a wide range of claims against the insured, including:

- Data breach
- Negligent acts resulting in data destruction, corruption, or other loss
- Defective IT system or application

Who should have cyber liability insurance: Any contractor / vendor that will have access to UAH data that contains PII, PHI, or other protected data types; access to UAH network resources; access to UAH data systems; etc.



# What are the UAH Insurance Minimum Requirements?

## **Automobile Liability**

Each Accident: *\$1,000,000 per occurrence  
except that bus charter companies are  
required to carry a minimum of \$5M*

Auto liability should cover all vehicle classifications to include:

- Contractor-owned
- Rented / leased / hired
- Non-owned (e.g., a contractor employee's vehicle used for work purposes)

Who should have auto liability insurance: Any contractor / vendor that will operate a motor vehicle on the UAH campus for the purposes of conducting its business in anything other than an incidental capacity. Examples requiring coverage include, but are not limited to: delivery services, food trucks, transportation services, repair and maintenance contractors, etc.



# What are the UAH Insurance Minimum Requirements?

## Workers' Compensation

Each Occurrence:

*Minimum statutory coverage amount governing the employer's operations. Varies by state.*

Workers' Compensation covers the contractor's employees who sustain injuries on the job.

- Not required for AL-based companies with fewer than five (5) employees, other states may be different.
- Requirements for companies based in other states vary by state of company residence.



# Contract Risk – Other Considerations

## Classification of Independent Contractor vs. Employee

IRS, Department of Labor, and other regulations/laws require UAH to properly classify independent contractors and employees for tax and other purposes.

Misclassification can result in substantial financial penalties and reputational harm to the university.

UAH is responsible for ensuring proper classification after reviewing all of the relevant facts in each situation.

US Department of Labor regulations changed effective January 2024.

- Determinations should be based on “a totality-of-the-circumstances analysis” where factors are determined in consideration of the “economic reality of the whole activity” (*source: US Department of Labor*)
- One integral factor is whether or not “the work performed is an integral part of a ... business rather than part of an integrated unit of production.” (*US Dept. of Labor*)



# Contract Risk – Other Considerations

## Classification of Independent Contractor vs. Employee (cont'd)

Six primary factors in determination:

- Opportunity for profit/loss by the contractor;
- Contractor investment in facilities and equipment;
- Degree of permanence of the work relationship;
- Nature and degree of control (e.g., setting work days / times, work location, etc.);
- Extent to which the work performed is an integral part of the employer's business
- Skill and initiative

Other factors may be considered if relevant to the question of economic dependence.

The factors are not weighted – they must be considered in the **totality** of the economic circumstances for each specific situation.

Checking a box on the Independent Contractor Request Form does not automatically make the relationship that of an independent contractor.



# Contract Risk – Other Considerations

## Clearly Defined Scopes of Work

Clearly defined scopes of work are important for contract risk management and are the foundation of a well-planned project:

- Set clear expectations for the project:
  - Detailed deliverable description
  - Clear timelines and milestones, including all deadlines
  - Intellectual property considerations (where applicable)
  - ITAR considerations (if applicable)
  - Immigration considerations (if applicable)
  - Clear payment terms
- Who is responsible for writing the scope of work?
  - The contracting UAH department/unit
- What to avoid?
  - Vague terms
  - Wording that would have appearance of creating an employment relationship



Questions?

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