



# CONTRACT RISK MANAGEMENT

## GUIDELINES FOR MICHIGAN PUBLIC SCHOOLS

Transferring risk reduces district exposure against third party liability, helping to keep liability exposures where they belong, as well as helping to keep the district's premiums lower.

### TIPS FOR ALL CONTRACTS

- **Indemnify and hold harmless** language should be required from the vendor/contractor to protect the district from claims arising out of the contractors' & subcontractors' actions or inaction. Only use mutual indemnification language when dealing with another public body. (See *sample contract language on next page*).
- **Certificates of insurance** should be required from all vendors/contractors confirming commercial general liability insurance, workers' compensation insurance, and auto liability insurance. Request limits of no less than \$1 million for general liability and auto liability.
- **Additional insured status** by endorsement should be given to the district on all policies except workers' compensation. Require other party's insurance to be primary.
- **Remove language** from the contract that assumes the district will accept responsibility for claims that arise from the acts or omissions of vendor/contractor, or contracted staff.
- **Waiver of subrogation** language should be removed from all contracts.

### TIPS SPECIFIC TO STAFF CONTRACTS

- **The economic reality test** should be referenced to determine if the district acts as the employer of a contracted employee. Contracts should clearly state that temporary workers are independent contractors.
- **Contractor's policies** should be required to cover all persons performing contracted work for the district (whether W2 or 1099) for liability, workers' compensation and auto insurance.
- **Certificates of insurance** should be required from all independent contractors and staff contractors confirming employment practices liability, sexual molestation coverage, commercial general liability insurance, workers compensation insurance, and auto liability insurance. Request limits of no less than \$1 million.

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# Contract Risk Management continued...

## TIPS FOR INDEMNIFICATION LANGUAGE

- **Remove Unfavorable Indemnity language** from district contracts in Hold Harmless/Indemnification portions under the insurance section. Avoid language such as “Arising out of the gross negligence of CONTRACTOR or its officers and employees... .” This language does not protect the district as it limits responsibility of contractor.
- **District should not agree to indemnify other entities** because school districts are cloaked by Governmental Immunity. However, if there is a provision to indemnify, the provision should begin with: “To the extent allowed by Michigan law...”

## SAMPLE FAVORABLE INDEMNITY LANGUAGE

Agree to “indemnify and hold the DISTRICT and its officers, employees, agents, volunteers, and board members harmless against any and all liabilities, claims, losses, actions, causes of action, costs, expenses, and attorney fees, of any kind, whether relating to property of DISTRICT or any third party, or for personal injury or death, or for compensatory or economic damages, arising out of or in any way attributable to the acts or failure to act of CONTRACTOR or its officers, agents, employees, and independent contractors.”

## SAMPLE MUTUAL INDEMNITY LANGUAGE

Each district shall be solely and entirely responsible for its obligations under this Agreement and for the acts and omissions attributable to it, or its officers, employees or agents during the performance of this Agreement. To the extent permitted by law, each District shall indemnify and hold harmless the other District from any claims, suits, damages or causes of action, including a defense thereof, arising out of any action or inaction by the District, its officers, employees, agents or subcontractors with respect to the services or this Agreement.

## SAMPLE INDEPENDENT CONTRACTOR LANGUAGE

The parties understand and agree that \_\_\_\_\_ and \_\_\_\_\_’s employees are independent contractors. \_\_\_\_\_ and \_\_\_\_\_’s employees are not agents or employees of the district.

*This document provides information of a general nature. It is not intended to be fully comprehensive, nor to provide legal advice or opinions relative to specific facts, matters, situations or issues. A member school district is encouraged to seek legal advice for their specific purposes*