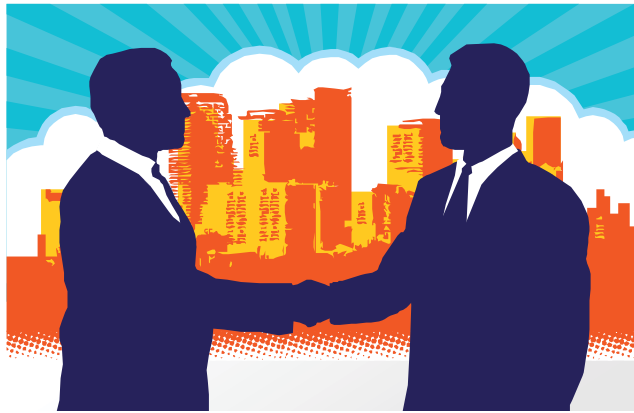


CONTRACT REVIEW ASSESSMENT KIT



COMPENDIUM TO CONTRACT RISK-SHIFTING AUDIT



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A Catholic Church Organization Serving the Church

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COMPENDIUM TO CONTRACT RISK-SHIFTING AUDIT

Introduction

In his first State of the Union Address in 1962, President John F. Kennedy said, “The time to repair the roof is when the sun is shining.” With this wisdom, President Kennedy was instructing the nation on his belief that in good weather we need to prepare for the rain; or, in good times we need to prepare for the bad times that, inevitably, will come. Contracts are drafted to govern expectations in a relationship and guard against surprises. The Compendium provides an overview of particular issues to examine-in the sunshine-when reviewing common contracts an organization may have with different vendors and/or outside parties.

A contract is an agreement between two or more parties to do, or not do something, for an agreed exchange of “consideration.” Contracts can be oral, but for the purposes of this Compendium, the focus is written contracts. Contracts can be labeled differently. A contract may be called an “agreement,” a “memorandum of understanding,” a “purchase order,” or it may not be labeled at all. While a contract can be as simple as an exchange of promises, most contracts will contain additional terms and conditions. It is within these terms and conditions that the risk-shifting provisions normally fall. To be a valid and enforceable contract, it does not need any risk-shifting provisions. These clauses only add clarity to the agreement between the parties under particular circumstances. Therefore, many contracts do not contain any of the language discussed in the Compendium. Moreover, there may be many other terms and conditions within a given contract that are not discussed in this Compendium. For the most part, parties can design a contract and add as many terms as they so choose. This Compendium is written only to address the risk-shifting terms of a contract like “indemnification,” “coverage,” and “insurance.”

However, specifically excluded from discussion in this Compendium are construction contracts and contracts involving the services of physicians. The construction and medical industries are highly regulated and very specific rules and laws can and do apply to contracts within both disciplines. Therefore, construction contracts and contracts with physicians need to be dealt with individually and according to the particular rules and laws that govern each industry.

This Compendium is designed for use with contracts similar to those listed in the chart on Page 6. Moreover, while this Compendium will provide a basic framework of what to look for within your contracts, it is certainly advisable that you consult with your own legal counsel and insurance professional to deal with all of the particulars of a specific contract, as well as all of the other terms and provisions within a contract that are not discussed within this Compendium.

Risk-shifting is not designed to put onerous responsibilities and burdens on others for the simple sake of protecting the more powerful party. Instead, the allocation of risk should be based upon the ability to control the risk. Thus, the party who has the greatest ability to control a risk-factor should assume responsibility for that risk. So, the company who owns the bus is in the best position to make sure the brakes work, the operator of the lawnmower is the best person to ensure he does not run over another’s

foot, and the elevator repair contractor is the best person to know whether she fixed the elevator. The contracts, then, with these vendors should state that the vendors assume the risks.

The focus of any review, for purposes of this audit, will be the language within a particular contract (or lack thereof) dealing with indemnification and coverage. The organization should be encouraged to have its own counsel and insurance professional review any contract before agreeing to the contract's terms to review all of the provisions within the contract. For the purposes of shifting risk within a contract, the promise to indemnify and defend the organization, and the promise to provide coverage to the particular circumstances of a given contract, some of the language and issues discussed below may need to be altered to comply with the needs of the parties and applicable law.

While one of the goals behind the use of this Compendium is to help protect the organization and its affiliated entities from the costs associated with liability risks, the overall effect of this auditing tool will help every organization provide the best possible services to those it serves, by protecting it and its affiliated entities from bearing the liability risks and costs of litigation. In the end, a careful review of the language within a contract with another party, before it is signed, will better protect the organization and its affiliated entities.

Instructions

1. Carefully read this Compendium in its entirety before reviewing any contracts.
2. Then, pull a random sampling of contracts. A non-exhaustive chart of common contracts is found on Page No. 6.
3. Next, thoroughly examine each contract provision, if they exist, by areas noted on the audit tool listed above.
4. Use the Compendium in conjunction with the Audit Tool to score each contract provision, one at a time.
5. Consult the Compendium for the specific scoring instructions in each individual category.
6. Record each score on the Audit Tool.
7. Using the Audit Tool, determine the overall score for your organization.
8. After determining your score, consult the scoring key for recommended follow-up action, specifically reviewing those areas that need the most improvement.
9. If your organization is having trouble shifting risk in its contracts, you should review all of your contracts to ascertain all of the risks the organization has accepted through contract and consult with an attorney and coverage professional to help formulate a strategy to improve your organization's ability to shift risk in the future.

I. Typical Contracts

Some contracts may be applicable to all types of organizations, while others will be very particular to specific organizations. For example, most organizations will have contracts with maintenance personnel to care for their facilities or grounds. Conversely, very few will have management agreements. Moreover, nursing homes will likely be the only type of organization engaging a physical therapist and/or nurse-staffing agency. Therefore, the chart below provides a generalized starting point for what types of contracts exist at the different organizations.

	Maintenance and Cleaning	Landscaping and Snow Removal	Elevator	Premises Use Agreement	Physical Therapy and Nursing	Food Service	Transportation	Leases	Management Agreement	Financial Services
Nursing Homes	•	•	•	•	•	•	•	•	•	•
High Schools and Elementary Schools	•	•	•	•		•	•	•		•
Colleges and Universities	•	•	•	•	•	•	•	•		•
Retreat Centers and Camps	•	•	•	•		•	•	•		•
Religious Residences and Convents	•	•	•	•	•	•	•	•		•
Day Care Centers	•	•	•	•		•	•	•	•	•
Provincial Operations And Offices	•	•	•	•				•		•
Thrift Stores	•	•	•	•				•		•
Churches	•	•	•	•			•	•		•
Retirement Communities	•	•	•	•	•	•	•	•	•	•

II. What to Look For

While there are many things to look for in a contract, for the purposes of this Risk-Shifting Audit, the primary issues to look for in an organization's contract with another party are the provisions concerned with indemnification and insurance coverage. While more fully discussed below, these provisions will allow your organization to shift the risks involved in a given activity to the other party to the agreement.

I. **Indemnification**

Indemnification provides an avenue to contract your exposure to risk and claims to another party. In effect, when and if a party agrees to indemnify, defend, and hold you harmless, if a claim arises that fits within the parameters of the subject indemnification clause, you may tender the cost of the defense for such a claim to the other party, and, if when a settlement or judgment is reached, the other party will pay your proportional share.

There are several ways to draft and phrase an indemnification clause in order to shift risk. However, you should be looking for key components within these provisions that will ultimately allow your organization to shift the risk if a claim arises.

A. *Indemnified Parties*

Look to see which parties will be indemnified and which parties will provide indemnification. For the organization, the agreement should protect all affiliated entities, officers, directors, trustees, employees, servants, volunteers, and agents. Depending on the particular organization, specific mentions of other individuals is advisable. For example, if the organization is a school, the indemnification provision should also include teachers and coaches.

B. *Types of Claims*

When reviewing an indemnification clause, first look to see what types of claims and losses the provision covers. For the most part, you should find an agreement by the vendor to indemnify and defend the organization for any claims that arise based on the negligent and intentional conduct of the vendor or any employee, agent, or person under the control of the vendor.

You may also find language within the contract covering criminal conduct, which, arguably may be subsumed into negligent and/or intentional conduct. Of course, if your organization has been able to negotiate a very favorable contract, the indemnification provision may also protect your organization if a claim arises due to the organization's own conduct. Depending on the particular state, and the type of contract, agreeing to indemnify a party for its own conduct may be in violation of public policy. The organization should consult with its local contract attorney regarding these issues.

Finally, depending on the agreement, you should also look for language that would indemnify the organization if the third-party violates a law or local ordinance. For

example, to perform the duties of a nurse in most states, the nurse needs to be licensed to do so. In a contract for nursing services, the contract should have language protecting the organization in the event it is fined or penalized because a nurse from the agency let her license lapse.

C. *Indemnification and Defense*

You will want to make sure the indemnification clause not only protects the organization from any possible judgment or settlement, but also the cost of defending a claim, including the payment of attorneys' fees. Be on the look out for an indemnification provision that only provides indemnity, but not a defense. In those instances, the organization will need to pay for its own attorneys to defend the matter, and the clause would only become effective if the matter resolves with a monetary settlement or a verdict against the organization. While most indemnification provisions will also include an agreement to pay for a defense, there is no legal requirement to provide both.

D. *Mutual Indemnity*

In the event the organization has also agreed to indemnify the other party, make certain the organization has not agreed to indemnify the other party for its own conduct, whether it be negligent or intentional conduct. Moreover, if the organization has agreed to indemnify and defend another, make certain the provision does not provide that indemnified party can select its own counsel and control the defense of any claim. If the organization will be paying for the defense of a matter, the organization, through its coverage provider, should select appropriate counsel and make all decisions related to the litigation.

Below are examples of a "one-sided indemnification clause" and a "mutual indemnification clause." While you may not find the exact wording used below in the contracts you review, these provisions are intended as examples of what you may find. Moreover, your organization may use these examples as guideposts for future contract negotiations.

INDEMNIFICATION: VENDOR, INC., shall, during the term of this agreement, hold harmless, defend, and indemnify ORGANIZATION, and its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "ORGANIZATION") from and against all actions, causes of action, lawsuits, obligations, liabilities, losses, penalties, fines, costs, including damages for personal injury, including sickness, disease, death, property damage, economic losses, or a violation of law, and expenses, including reasonable attorneys' fees, all legal expenses, and fees incurred on appeal and interest thereon, accruing and resulting to any persons, firms, or any other legal entity as a result of any negligent actions or failure to act by VENDOR and/or its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "VENDOR"), and/or the ORGANIZATION, or as a result of any intentional, criminal, and/or reckless actions or failure to act by VENDOR, which ORGANIZATION may incur, be exposed to, become responsible for, or payout. VENDOR shall assume the investigation, defense, and expense of all

such claims and causes of action. Any and all costs, expenses, damages, and losses incurred in connection with this Paragraph shall be due and paid by VENDOR within fifteen (15) days of written demand thereof by ORGANIZATION. ORGANIZATION agrees to notify VENDOR of the existence of any such claims or causes of action as soon as ORGANIZATION is aware of the issue.

Depending on the relative degree of bargaining power, your organization may be able to negotiate the above on-sided indemnity provision. If your organization cannot insist on that provision, we recommend the following mutual indemnity clause:

MUTUAL INDEMNITY: VENDOR, INC., shall, during the term of this agreement, hold harmless, defend, and indemnify ORGANIZATION, and its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "ORGANIZATION") from and against all actions, causes of action, lawsuits, obligations, liabilities, losses, penalties, fines, costs, including damages for personal injury, including sickness, disease, death, property damage, economic losses, or a violation of law, and expenses, including reasonable attorneys' fees, all legal expenses, and fees incurred on appeal and interest thereon, accruing and resulting to any persons, firms, or any other legal entity as a result of any negligent actions or failure to act by VENDOR and/or its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "VENDOR"), which ORGANIZATION may incur, be exposed to, become responsible for, or pay out. VENDOR shall assume the investigation, defense, and expense of all such claims and causes of action. ORGANIZATION agrees to notify VENDOR of the existence of any such claims or causes of action as soon as organization is aware of the same.

ORGANIZATION, shall, during the term of this agreement, hold harmless, defend, and indemnify VENDOR from and against all actions, causes of action, lawsuits, obligations, liabilities, losses, penalties, fines, costs, including damages for personal injury, including sickness, disease, death, property damage, economic losses, or a violation of law, and expenses, including reasonable attorneys' fees, all legal expenses, and fees incurred on appeal and interest thereon, accruing and resulting to any persons, firms, or any other legal entity as a result of any negligent actions or failure to act by ORGANIZATION, and/or its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "ORGANIZATION") which VENDOR may incur, be exposed to, become responsible for, or pay out. ORGANIZATION shall assume the investigation, defense, and expense of such claims and causes of action. VENDOR agrees to notify ORGANIZATION of the existence of any such claims or causes of action as soon as vendor is aware of same.

Examples:

The following examples are taken from real contracts, although the names have been changed to protect all confidences. While the language used above may not be ideal, most indemnification clauses within the contracts you will be reviewing probably will not be very similar. Therefore, the following examples are just a few ways a party may attempt to draft indemnity into a contract.

- **Bad Indemnity Language**

The first set of examples includes indemnity provisions that intend to shift the risk upon the purchaser, not the vendor hired to perform the subject work. These examples are frowned upon and, when possible, should be changed before an organization executes a contract.

University shall indemnify, defend and hold harmless Contractor from and against any and all losses, claims, liability, damages, demands, suits, actions, costs, expenses (including without limitation, settlement costs, attorney's fees and court costs and judgment recovered from or asserted against Contractor, on account of injury (including without limitation, death) to any person, whether or not that person is an employee and or student of the University, or damage to or loss (including, without limitation, theft) of any property, whether or not such claims are based upon Contractor's active or passive negligence (i) for any such injury, damage or loss arising out of, or caused, wholly or in part, by any act, omission, negligence or misconduct on the part of the University or any of its students, agents, servants, employees, contractors, licensees or invitees or (ii) when any such injury, damage or loss is the result, proximate or remote, of the violation by the University or any of its students, agents, servants, employees, contractors, licensees or invitees of any law, ordinance or governmental order of any kind of any term of the Agreement or (iii) when any such injury, damage or loss may in any other way arise from, out of, or in connection with the University's or any of its students' performance or failure to perform under this Agreement. The University expressly and specifically agrees that its obligation to indemnify, defend and save harmless Contractor, as provided in this Agreement, shall not in any way be affected or diminished by a statutory or constitutional immunity it enjoys from suits or from limitation of liability or recovery under the workers compensation laws of any state.

INDEMNITY CLAUSE

Purchaser shall indemnify, defend and save harmless Contractor from and against liabilities, losses and claims of any kind or nature imposed on, incurred by, or asserted against Contractor arising out of the concurrent, active or passive negligence of Contractor in any way connected with the services provided under this Agreement or the use or operation of the equipment. Purchaser hereby waives any and all rights of recovery, arising as a matter of law or otherwise, which Purchaser might now or hereafter have against Contractor.

As you can see from the two indemnity clauses noted above, the university and purchaser have agreed to indemnify and hold the contractor harmless not only against claims based on the university and purchaser's own negligence, but also for claims arising out of the contractors negligence. As discussed more fully above, if and when an organization is asked to indemnify another, it should never agree to indemnify the other party for that party's own negligence and/or wrongful conduct.

The indemnity clause that follows below appears to be "mutual," however, the contractor has promised to indemnify the client only for claims arising out of the "sole negligence" of the contractor. Conversely, the client has agreed to indemnify the contractor in connection with "any claims" arising out

of the negligence of the client. It is a subtle difference, but an important distinction. Specifically the client is responsible to indemnify the contractor, even if the client's conduct is only slightly responsible for the claim. On the other hand, the contractor will only be required to indemnify the client if the contractor's conduct is the **sole**, or only, reason for the claim.

6.3 Indemnification. CONTRACTOR agrees to indemnify and hold harmless CLIENT, its directors, officers, employees, and agents from and against any and all claims, actions, or liabilities which may be asserted against them by third parties in connection with the sole negligent performance of CONTRACTOR, its directors, officers, employees or agents in providing Services under this Agreement. CLIENT agrees to indemnify and hold harmless CONTRACTOR, and its directors, officers, shareholders, employees and agents, from and against any and all claims, actions, or liabilities which may be asserted against them by third parties in connection with the negligent performance of CLIENT, its directors, officers, employees, contractors or agents under this Agreement.

- Better Indemnity Language

The two indemnity provisions that follow on the next page are good examples of risk-shifting provisions to look for in a contract. While not necessarily the gold standard, these clauses are much better than the examples listed above.

The first indemnity clause provides that the contractor will indemnify and defend the client for any and all claims arising out of the contractor's intentional and/or negligent act or failure to act. The only language that would make this provision better would be an agreement to indemnify and defend the client against claims based on the client's actions. However, such language may be against the public policy in some states and/or situations. Again, your organization should consult with a local attorney regarding the legality of such language.

Contractors, and its officers, directors, trustees, affiliates, subsidiaries, employees, servants, and agents shall hold harmless, defend, and indemnify Client and its officers, directors, trustees, affiliates, employees, servants, volunteers, and agents from and against all actions, causes of action, obligations, expenses, liabilities, losses, penalties, fines, fees (including reasonable attorneys' fees), costs, claims, suits and damages, including damages for personal injury (including death), property damage, or violation of laws, as a result of any intentional and/or negligent act or negligent failure to act of Contractor and/or its employees, subcontractors, assignees, independent contractors, which Client may incur, be exposed to, become responsible for, or pay out. Contractor shall assume the investigation, defense, and expense of all such claims and causes of action. Client agrees to notify Contractor of the existence of any such claims or causes of action as soon as Client is aware of the same.

The following indemnity clause is very similar to the clause above, but it specifically excludes the manager's duty to provide indemnity and a defense if the claim is based on the community's negligent, reckless, and/or intentional actions or failure to act. It is likely that this language is included within the contractor to avoid the indemnity provision from being entirely void by law.

6.3 Manager Indemnification. Manager is responsible for the day-to-day operation of the Community. Therefore, Manager shall defend, indemnify and hold Community, its affiliates, employees and agents, harmless from all such costs, taxes, damages, penalties and fines incurred by them in the defense of any claims relating to the Community or any action relating to the Community in which any of them is named as a party, (including, without limitation, any action brought by any person or entity for tortious interference with any prior contract to which Manager has been a party), including reasonable attorney fees, costs of investigation, court costs and other such expenses, unless such costs, taxes, damages, penalties or fines were caused by the negligent, reckless, and/or intentional actions or failure to act of Community and/or its affiliates, employees or agents. Community shall promptly notify Manager of any such claims made against Community. All expenses incurred by Community in the investigation or defense of any such claim or action shall be reimbursed to Community. This indemnification obligation shall survive termination of this Agreement, and is subject to the waiver of subrogation provisions of paragraph 6.1.

2. Coverage

An indemnification clause is a promise to protect and defend another in the event a particular set of circumstances, as outlined within the clause, occurs that leads to a loss, or potential loss, suffered by another party. Coverage—usually in the form of an insurance policy—provides the financial means to support and honor the promise to indemnify and defend.

A *Additional Insured*

The amounts and types of coverage necessary can be different for each specific circumstance. However, when looking through a contract, you should be looking for language that provides the organization with protection outside your own coverage provider. Specifically, the contract language should provide that the vendor will purchase and maintain coverage, in an agreeable amount, naming the organization as an “additional insured.” Also, to protect the organization and your coverage provider further, the language should provide that all coverage the vendor has agreed to provide will be primary with respect to claims made, and any similar or additional coverage maintained by the organization will be excess to any coverage carried by the vendor, including any excess coverage carried by the vendor. This way, the organization’s coverage will only be affected if and when the resources of the vendor’s coverage have been fully exhausted.

B *Proof of Coverage*

It is also advisable to include language within the coverage clause that the vendor will provide proof of coverage in the form of a “Certificate of Insurance,” naming the organization as an “additional insured.” The Certificate should be provided prior to any performance under the contract; however, if it is not given to the organization before work under the contract is performed, the language should provide that the organization has not waived its right to such protection. Moreover, if the vendor ultimately fails to procure the agreed upon coverage, the clause should provide that the organization will be entitled to pursue a claim against the vendor, including a claim for all attorneys’ fees and costs associated with such a claim.

C. *Timing*

Finally, documented on the Certificate of Insurance should be the relevant policy period for which the coverage will be effective. Typically, the policy period covers on calendar year. Therefore, depending on the term of the particular contract, the organization may need to request subsequent Certificates of Insurance evidencing coverage for the appropriate time period. Moreover, at the time the contract is usually executed, the organization should make certain the original Certificate of Insurance provides for coverage beginning on day one of the contract and for a reasonable time period thereafter. The organization needs to be aware of any lapses in coverage.

Below is an example of a coverage clause. While you may not find the exact wording used below in the contracts you review, this provision is intended as an example of what you may find. As with the

indemnification clause, we recommend following the one-sided coverage requirement. Therefore, if any claim or loss is asserted related to the Agreement, the vendor's carrier will defend and indemnify you against such a claim.

COVERAGE: Throughout the term of the Agreement, VENDOR shall purchase and maintain professional liability coverage with limits of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate. VENDOR shall purchase and maintain comprehensive general liability coverage for VENDOR and its parent companies/entities, affiliate company/entities, directors, trustees, officers, employees, servants, volunteers, and agents with limits of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate, adding ORGANIZATION as an additionally covered party for any and all claims arising out of, or in association with, this Agreement, including, but not limited to, the "services" provided by the VENDOR. All such coverage shall be primary with respect to claims made, and any similar or additional coverage maintained by ORGANIZATION shall be excess to any coverage carried by VENDOR, including any excess coverage carried by VENDOR. Before VENDOR is allowed on the ORGANIZATION'S premises, pursuant to this Agreement, VENDOR shall furnish a certificate from its carrier and all endorsements evidencing compliance with this Section, including a thirty (30) day written notice of cancellation or change of coverage. Any failure on the part of the ORGANIZATION to insist upon the receipt of the Certificate of Coverage and applicable endorsements is not a waiver of any rights that the ORGANIZATION has under this Paragraph. In the event VENDOR fails to purchase or procure this said coverage, as required above, the parties expressly agree that VENDOR shall be in default under this Agreement, and that the ORGANIZATION may recover all attorneys' fees and costs expended in pursuing a remedy, or reimbursement, at law or in equity, against VENDOR. Lastly, VENDOR shall purchase and maintain workers' compensation coverage in an amount not less than the limits required by law with employer's liability coverage.

Examples:

Like the examples above in the indemnification portion of this Compendium, the following examples are taken from real contracts, although some of the names have been changed to protect all confidences. While the language used above may not be ideal, most coverage clauses within the contracts you will be reviewing probably will not be exact. Therefore, the following examples are just a few ways a party may attempt to draft coverage requirements within a contract.

- Good Coverage Language

The first example provides good language requiring the manager to purchase and maintain coverage naming the community as an additional insured, along with many of the other areas discussed above, including the primary and non-contributory language.

2.6 **Manager's Insurance.** Manager shall procure and maintain, at Manager's expense policies of insurance to insure itself and its employees for medical malpractice liability, management errors and omissions liability, workers' compensation, employees dishonesty insurance, employment practice liability relating to Manager's employees, automobile liability, commercial general liability (including personal injury liability and contractual liability insurance) and excess liability, adding Community as an additionally covered party for any and all claims arising out of, or in association with, this Agreement. All such coverage shall be primary with respect to claims made, and any similar or additional coverage maintained by Community shall be excess to any coverage carried by Manager, including any excess coverage carried by Community. Before Manager is allowed on Community's premises pursuant to this Agreement, Manager shall furnish a certificate from its carrier and all endorsements evidencing compliance with this Section, including a thirty (30) day written notice of cancellation or change of coverage. Any failure on the part of Community to insist upon the receipt of a certificate of coverage and applicable endorsements is not a waiver of any rights that Community has under this Paragraph. In the event Manager fails to purchase or procure this said coverage, as required above, the parties expressly agree that Manager shall be in default under this Agreement, and that Community may recover all attorneys' fees and costs expended in pursuing a remedy, or reimbursement, at law or in equity, against Manager.

- Bad Coverage Language

This second example does not provide much protection to the organization in that the contractor has simply agreed to purchase and maintain coverage for its sole negligence. Moreover, the coverage language does not provide that the client will be named as an additional insured.

2.5 **Insurance.** CONTRACTOR will maintain (at its sole expense), or require the individuals it provides under this Agreement to maintain, a valid policy or insurance evidencing general and professional liability coverage of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, covering the sole negligent acts or omissions of Personnel occurring in connection with the provision of Services under this Agreement. CONTRACTOR or its sub-contractor will provide a certificate of insurance evidencing such coverage upon request by CLIENT. CONTRACTOR and any sub-contractor further agree to maintain any statutorily required worker's compensation insurance for all of its Personnel providing Services to CLIENT under this Agreement.

3. Certificates of Insurance

Along with the promise to indemnify and to purchase and maintain additional coverage naming the organization as an “additional insured,” the vendor should produce a Certificate of Insurance to the organization, evidencing the promised coverage, and should update the organization with new certificates if the coverage changes, or the policy period noted on the Certificate has ended. Moreover, the organization should request an endorsement from the insurance carrier, which should evidence the specific coverage afforded, along with any exceptions or limitations to coverage.

There should be a provision within the contract that requires the vendor to produce the Certificate of Insurance before the contract begins or before the vendor is allowed on the premises. However, within the same clause, the contract should provide that the organization does not waive any of its rights, including the right to coverage, if the vendor fails to produce the Certificate of Insurance in a timely manner.

Along with the actual contract, itself, the Certificate of Insurance should be kept by the organization in its records for at least ten (10) years after the subject contract has been completed. A claim may not arise until years after the relationship between the vendor and the organization has ended. While a Certificate of Insurance is not absolute proof of coverage and strong evidence that the vendor agreed to purchase and maintain such coverage on the organization’s behalf. Of course, along with the Certificate of Insurance, the contract should provide that the vendor will purchase insurance and maintain coverage for the organization. Without such contract language, even with a Certificate of Insurance, coverage would most likely not be provided.

The following documents demonstrate the differences between a Certificate of Insurance with additional insured language, a Certificate of Insurance simply naming your organization as a Certificate Holder, and a document simply designed to demonstrate proof of coverage. The first three examples, the Certificates of Insurance, are the types of documents that you should be looking for. However, in the second example, you will see that your organization is simply identified as a Certificate Holder, as opposed to the language you should be looking for and insisting upon from your vendors. The organization’s name should be found in the lower, left-hand corner of the document titled, “Certificate Holder.” Moreover, there should be some explanation as to what type of coverage is provided and any exceptions to the coverage, listed in the box directly above the box naming Certificate Holder. Like the language in the first example, you should be looking for language naming your organization as “additional insured,” and that the coverage provided will be primary as to any coverage carried by your organization. The third document merely provides evidence that the other party has insurance, not that its carrier will indemnify and defend the organization.

Certificate of Insurance-Naming Your Organization as an Additional Insured

PRODUCE		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE					
		COMPANIES AFFORDING COVERAGE					
INSURED Vendor 123 South Street		COMPANY A		ABC Insurance			
		COMPANY B		123 Insurance			
C O L	TYPE OF INSURANCE		POLICY NO#	EFFECTIVE DATE	EXPIRATION DATE	LIMITS	
	GENERAL LIABILITY		1068870604	08/01/06	08/01/07	GENERAL AGGREGATE Aggregate	\$1,000,000
	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL				PRODUCTS COMP/OP	\$1,000,000
		Claims Made <input checked="" type="checkbox"/> OCCU				PERSONAL & ADV	\$500,000
		OWNERS & CONTRACTORS	*The limits of liability shown reflect the limits at inception. Producer does not assume any responsibility for notification in the event of depletion of the aggregate.			EACH OCCURRENCE	\$1,000,000
						FIRE DAMAGE (Any One	\$50,000
						MED EXP (Any One Person)	\$5,000
		AUTOMOTIVE LIABILITY	1068870697	07/01/06	08/01/07	COMBINED SINGLE	\$1,000,000
	<input checked="" type="checkbox"/>	ANY AUTO	Physical Damage Deductibles: Comp: \$100 Coll: \$500			BODILY INJURY (Per	\$
		ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				BODILY INJURY (Per	\$
						PROPERTY DAMAGE Medical Payments	\$5,000
	<input type="checkbox"/>	EXCESS LIABILITY*	7976-03-98	08/01/06	08/01/07	EACH OCCURRENCE	\$5,000,000
	<input checked="" type="checkbox"/>	UMBRELLA FORM				AGGREGATE	\$5,000,000
		OTHER THAN UMBRELLA FORM					\$10,000
	<input type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	1072602313	08/01/06	08/01/07	<input checked="" type="checkbox"/> WC STATU TORY LIMITS	OTHER
		THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE:	107602313	08/01/06	08/01/07	EL EACH ACCIDENT	\$500,000
		INCL				EL DISEASE POLICY	\$500,000
		EXCL				EL DISEASE EA	\$500,000
	<input type="checkbox"/>	OTHER PROPERTY	1068887064	08/01/06	08/01/07	Blanket Limit: \$150,000	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS							
Your Organization is an additional insured with respect to the General Liability policy and the coverage is primary							
CERTIFICATE HOLDER				CANCELLATION			
Your Organization 555 Main Street Anywhere, IL 606005			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OF LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.				
			[Signature of Authorized Agent]				
ACCORD 25-S (3/83) if you have any questions, please call (630) 773-0800				EXCONGL5FRP ACORD			

Certificate of Insurance- Simply Identifying Your Organization as a Certificate Holder

PRODUCER	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE	
	COMPANIES AFFORDING COVERAGE	
INSURED Vendor 123 South Street Anywhere, IL 60611	COMPANY A	ABC Insurance
	COMPANY B	123 Insurance

C O L	TYPE OF INSURANCE	POLICY NO#	EFFECTIVE DATE	EXPIRATION DATE	LIMITS			
		GENERAL LIABILITY	1068870604	08/01/06	08/01/07	GENERAL AGGREGATE Aggregate	\$1,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL				PRODUCTS COMP/OP	\$1,000,000		
	Claims Made <input checked="" type="checkbox"/> OCCU				PERSONAL & ADV	\$500,000		
	OWNERS & CONTRACTORS	*The limits of liability shown reflect the limits at inception. Producer does not assume any responsibility for notification in the event of depletion of the aggregate.			EACH OCCURRENCE	\$1,000,000		
					FIRE DAMAGE (Any One)	\$50,000		
					MED EXP (Any One Person)	\$5,000		
	AUTOMOTIVE LIABILITY	1068870697	07/01/06	08/01/07	COMBINED SINGLE	\$1,000,000		
	<input checked="" type="checkbox"/> ANY AUTO	Physical Damage Deductibles: Comp: \$100 Coll: \$500			BODILY INJURY (Per	\$		
	ALL OWNED AUTOS				BODILY INJURY (Per	\$		
	SCHEDULED AUTOS				PROPERTY DAMAGE	\$5,000		
	HIRED AUTOS NON-OWNED AUTOS				Medical Payments			
B	EXCESS LIABILITY*	7976-03-98	08/01/06	08/01/07	EACH OCCURRENCE	\$5,000,000		
	<input checked="" type="checkbox"/> UMBRELLA FORM				AGGREGATE	\$5,000,000		
	OTHER THAN UMBRELLA FORM					\$10,000		
A	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	1072602313	08/01/06	08/01/07	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER		
	THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE:	INCL	107602313	08/01/06	08/01/07	EL EACH ACCIDENT	\$500,000	
						EXCL	EL DISEASE POLICY	\$500,000
						EXCL	EL DISEASE EA	\$500,000
A	OTHER PROPERTY	1068887064	08/01/06	08/01/07	Blanket Limit: \$150,000			

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
Your Organization as a Certificate Holder with respect to the General Liability policy in conjunction with this Agreement.

CERTIFICATE HOLDER **CANCELLATION**

Your Organization 555 Main Street Anywhere, IL 606005	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OF LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. [Signature of Authorized Agent]
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ACCORD 25-S (3/83) if you have any questions, please call (630) 773-0800 **EXCONGL5FRP ACORD**

• Proof of Insurance

Budget ZZ153
Fund 068

Certificate of Proof of Liability Insurance
Licensed Personal Emergency Response System (PERS) Provider
Texas Department of State Health Services – Professional Licensing and Certification Unit

Mail this completed form to:

PERS Licensing Program	<u>Telephone</u>	(512) 834-6602
Texas Department of State Health Services	<u>Fax</u>	(512) 834-6677
1100 West 49th Street MC-1982	<u>E-mail</u>	pers@dshs.state.tx.us
Austin, Texas 78756-3183	<u>Website</u>	http://www.dshs.state.tx.us/pers

Name of Insured: _____
(Name of Insured must appear exactly as in the records of Texas Department of State Health Services or the license application form.)

Address of Insured: _____
(Address of Insured must appear exactly as in records of Texas Department of State Health Services or on license application form.)

PERS License Number of Insured (Put N/A if license not yet issued): _____

Name of Insurance Company: _____

Policy Number: _____ Effective Date: _____ Expiration Date: _____

Limits of Liability

Bodily Injury/Property Damage: _____

Personal Injury: _____

Aggregate: _____

Type of Insurance (Circle One): Commercial General Liability

The insurance company hereby states that it has issued to the insured named hereon a policy of insurance to meet the requirements of Texas Health and Safety Code, Chapter 781 (formerly Texas Occupations Code, §1702.124). It is understood that the provisions of that statute require a licensed PERS provider to maintain on file with the Texas Department of State Health Services a Certificate of Insurance as proof of a policy of public liability insurance executed by a local agent licensed in the state of Texas or a Certificate of insurance as proof of surplus lines coverage obtained under Article 1.14-2, Texas Insurance Code, through a licensed Texas surplus lines agent resident in Texas. The law provides that the insurance policy must contain minimum limits of \$100,000.00 per occurrence for bodily injury and property damage and \$50,000.00 for each occurrence for personal injury, with a minimum total aggregate amount of \$200,000 for all occurrences. There shall be no exclusions to any coverage required of State Health Services to determine fitness and qualifications for a license as a Personal Emergency Response System Provider in Texas. This certificate does not amend, extend, or alter the coverage afforded by the policies listed.

Insurance Agent's Printed Name: _____

Insurance Agent's Signature and Date: _____

Address: _____

City, State, Zip _____

Texas Insurance License Number: _____ Telephone Number: _____

NOTE: No other form or document will be accepted as proof of insurance.

With few exceptions, you have the right to request and be informed about information that the State of Texas collects about you. You are entitled to receive and review the information upon request. You also have the right to ask the state agency to correct any information that is determined to be inaccurate. See <http://www.dshs.state.tx.us> for more information on Privacy Notification. (Texas Government Code, Section 522.021, 522.023 and 559.004)

Paper Publications Number F02-12272
Electronic Publications Number EF02-12272

PERS Certificate of Proof of Liability Insurance
Texas Department of State Health Services
Eff. July 1, 2004, Rev. September 20, 2005

Therefore, while proof of insurance is certainly important, it is more important that the other party provide proof that the organization has also been named as an "Additional Insured" on the vendor's insurance policy. Proof of insurance simply demonstrates that the other party carries insurance, but does not evidence the organization's right to submit a claim to that carrier. Proof of insurance and proof that the organization has been identified as an "additional insured" provides evidence that the other party not only carries insurance, but that the insurance policy will protect the organization, as well.

4. Waiver of Subrogation

In some instances, the organization will be compelled to maintain coverage for another party. While certainly not advisable, this can happen when the organization occupies and controls another party's property, or if the negotiation process does not favor the organization. Therefore, in contracts that your organization has agreed to maintain coverage for both the organization and the vendor, it will be important to look for a term within the contract that would waive the organization's ability, through its coverage provider, to pursue a subrogation claim against the vendor.

In the event of a loss, if the organization has agreed to cover the other party, the organization's coverage provider will be forced to cover the loss, even if it was caused by the negligence of the other party. If the contract also contains a waiver of subrogation clause, the organization's coverage provider will have no recourse to recoup these funds from the at-fault party. However, without the waiver of subrogation clause, the organization's coverage provider would be free to pursue a claim against the at-fault party.

The following is an example of a Waiver of Subrogation Clause. This provision provides that the organization will have the right to pursue subrogation if its coverage is affected, but the vendor will not have the same opportunity. Very often, vendors will not agree to such language. Therefore, we normally would recommend striking these provisions, unless, of course, there is little to no chance that your coverage provider will offer coverage under the given circumstances. **If, on the other hand, the organization's coverage may be affected, it is best to simply strike any waiver of subrogation provision within the contract.** The following is an example of a stricken Waiver of Subrogation Clause:

~~To the extent damages are covered by insurance during the course of this agreement, the Owner and the Vendor waive all rights against each other and against the employees and agents of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in this agreement. The Owner or Vendor, as appropriate, shall require similar waivers in favor of the other parties enumerated herein from any and all parties affiliated with them.~~

The waiver of subrogation clause below provides the vendor (Third-Party, Inc.) will waive its rights to pursue subrogation against your organization for damages covered by the insurance. This clause is beneficial if the insurance provision in the agreement requires the vendor to purchase and maintain coverage naming your organization as an additional insured. In the event of a loss, the insurance purchased by the vendor would cover the loss and the carrier would not be able to pursue a subrogation claim against your organization, even if the loss was caused by your wrongful conduct.

Waiver of Subrogation: Third-Party, Inc., waives all rights against the Organization for damages caused by any peril to the extent covered by insurance provided under the insurance requirements of this Agreement. Third-Party, Inc., shall require similar waivers by Subcontractors and Sub-Subcontractors. All insurance policies required hereunder shall permit and recognize such waivers of subrogation.

The last example of a waiver of subrogation clause provides that neither party, including that party's coverage provider, may pursue the other party if there is insurance to cover a claimed loss. As noted above, we only recommend the following language if the organization's coverage provider is not at risk for covering any losses under contract.

6.1 **Insurance Subrogation.** No indemnity shall be paid to the other Party under this Agreement where the claim, damage, liability, loss or expense incurred would have been covered by insurance proceeds if the incident was or was required to be insured against by such other Party for whose benefit such indemnity would run and such Party failed to maintain such insurance. Community and Manager shall exercise their commercially reasonable efforts to cause any insurance policies obtained by the Parties pursuant to this Agreement to have the effect of waiving any right of subrogation by the insurer of one party against the other Party or its insurer. Each Party hereby releases the other from any claims to the extent covered by collected insurance proceeds obtained by the Parties pursuant to this Agreement.

III. Conclusion

Using this Compendium, in addition to the other materials in the Contract Assessment Kit, all interested parties will be able to accurately assess their exposure to contractual indemnity claims and better prepare its organizations to contract the risks involved in the selected contracts to the other party, into the future. In other words, a careful review of your contracts today, while the sun is still shining, will help you evaluate your organization's risk for when the storm clouds gather. Moreover, this Compendium should aid in future negotiations, providing you the tools to shift the risk of loss to the other party.

Lastly, you are encouraged to have all of your contracts, including all risk-shifting provisions within the contract, reviewed by your own attorneys as well as your coverage provider.

Questions or Concerns?

If you need assistance using this Compendium and/or Audit Kit, or have any questions or concerns, please contact one of the following individuals:

Michael A. Airdo, Esq.
Kopon Airdo, LLC
233 S. Wacker Drive, Suite 4450
Chicago, IL 60606
312-506-4450
www.koponairdo.com

Roger Duffield, CPCU, ARM
Jeffery S. Harrison
Christian Brothers Services
1205 Windham Parkway
Romeoville, Illinois 60446-1679
630-378-2900
www.cbsservices.org



Christian Brothers Services
A Catholic Church Organization Serving the Church

APPENDIX A

- I. ONE-SIDED INDEMNIFICATION PROVISION HANDOUT**
- II. MUTUAL INDEMNIFICATION PROVISION HANDOUT**
- III. COVERAGE PROVISION HANDOUT**

One-Sided Indemnification Provision

I. INDEMNIFICATION: VENDOR, INC., shall, during the term of this agreement, hold harmless, defend, and indemnify ORGANIZATION, and its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "ORGANIZATION") from and against all actions, causes of action, lawsuits, obligations, liabilities, losses, penalties, fines, costs, including damages for personal injury, including sickness, disease, death, property damage, economic losses, or a violation of law, and expenses, including reasonable attorneys' fees, all legal expenses, and fees incurred on appeal and interest thereon, accruing and resulting to any persons, firms, or any other legal entity as a result of any negligent actions or failure to act by VENDOR and/or its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "VENDOR"), and/ or the ORGANIZATION, or as a result of any intentional, criminal, and/or reckless actions or failure to act by VENDOR, which ORGANIZATION may incur, be exposed to, become responsible for, or payout. THIRD-PARTY shall assume the investigation, defense, and expense of all such claims and causes of action. Any and all costs, expenses, damages, and losses incurred in connection with this Paragraph shall be due and paid by VENDOR within fifteen (15) days of written demand thereof by ORGANIZATION. ORGANIZATION agrees to notify VENDOR of the existence of any such claims or causes of action as soon as ORGANIZATION is aware of the issue.

Mutual Indemnity Provision

II. MUTUAL INDEMNITY: VENDOR, INC., shall, during the term of this agreement, hold harmless, defend, and indemnify ORGANIZATION, and its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "ORGANIZATION") from and against all actions, causes of action, lawsuits, obligations, liabilities, losses, penalties, fines, costs, including damages for personal injury, including sickness, disease, death, property damage, economic losses, or a violation of law, and expenses, including reasonable attorneys' fees, all legal expenses, and fees incurred on appeal and interest thereon, accruing and resulting to any persons, firms, or any other legal entity as a result of any negligent actions or failure to act by VENDOR and/or its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "VENDOR"), which ORGANIZATION may incur, be exposed to, become responsible for, or pay out. VENDOR shall assume the investigation, defense, and expense of all such claims and causes of action. ORGANIZATION agrees to notify VENDOR of the existence of any such claims or causes of action as soon as organization is aware of the same.

ORGANIZATION, shall, during the term of this agreement, hold harmless, defend, and indemnify VENDOR from and against all actions, causes of action, lawsuits, obligations, liabilities, losses, penalties, fines, costs, including damages for personal injury, including sickness, disease, death, property damage, economic losses, or a violation of law, and expenses, including reasonable attorneys' fees, all legal expenses, and fees incurred on appeal and interest thereon, accruing and resulting to any persons, firms, or any other legal entity as a result of any negligent actions or failure to act by ORGANIZATION, and/or its parent companies/entities, subsidiary companies/entities, affiliate companies/entities, directors, trustees, officers, employees, servants, volunteers, and agents (hereinafter collectively known as "ORGANIZATION") which VENDOR may incur, be exposed to, become responsible for, or pay out. ORGANIZATION shall assume the investigation, defense, and expense of such claims and causes of action. VENDOR agrees to notify ORGANIZATION of the existence of any such claims or causes of action as soon as vendor is aware of same.

Coverage Provision

III. COVERAGE: Throughout the term of the Agreement, VENDOR shall purchase and maintain professional liability coverage with limits of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate. VENDOR shall purchase and maintain comprehensive general liability coverage for VENDOR and its parent companies/entities, affiliate company/entities, directors, trustees, officers, employees, servants, volunteers, and agents with limits of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate, adding ORGANIZATION as an additionally covered party for any and all claims arising out of, or in association with, this Agreement, including, but not limited to, the “services” provided by the VENDOR. All such coverage shall be primary with respect to claims made, and any similar or additional coverage maintained by ORGANIZATION shall be excess to any coverage carried by VENDOR, including any excess coverage carried by VENDOR. Before VENDOR is allowed on the ORGANIZATION’S premises, pursuant to this Agreement, VENDOR shall furnish a certificate from its carrier and all endorsements evidencing compliance with this Section, including a thirty (30) day written notice of cancellation or change of coverage. Any failure on the part of the ORGANIZATION to insist upon the receipt of the Certificate of Coverage and applicable endorsements is not a waiver of any rights that the ORGANIZATION has under this Paragraph. In the event VENDOR fails to purchase or procure this said coverage, as required above, the parties expressly agree that VENDOR shall be in default under this Agreement, and that the ORGANIZATION may recover all attorneys’ fees and costs expended in pursuing a remedy, or reimbursement, at law or in equity, against VENDOR. Lastly, VENDOR shall purchase and maintain workers’ compensation coverage in an amount not less than the limits required by law with employer’s liability coverage.

APPENDIX B

In order to better protect your organization into the future, we recommend using the following chart to help monitor all of your contracts with outside vendors and/or organizations. This chart will help you maintain a running inventory of pending contracts, as well as set reminders regarding renewal dates and the expiration of policy period for applicable certificates of insurance. This chart is simply a model and your organization should implement whatever monitoring tools best serve you. However, we do recommend using some sort of system to keep track of all your contracts.

	Maintenance and Cleaning	Landscaping and Snow and Ice Removal	Elevator	Premises Use Agreement	Physical Therapy and Nursing	Food Service	Transportation	Lease
	Marge's Maid Service	Jones' Landscaping and Snow Removal	Lift Services, Inc.	Coach Smith's Baseball Camp	Florence Nightingale Services	Burgers and Fries, Inc.	Bus Company, Inc.	Property Management, Inc.
Contract Term	5/1/08-4/30/09	1/1/08-12/31/08	3/1/08-3/1/11	5/1/08-8/31/08	5/1/08-4/30/09	9/1/08-5/31/09	8/1/08-7/31/10	9/1/08-8/31/18
Certificate of Insurance	Yes	Yes	No	No	Yes	Yes	Yes	No
Applicable Policy Period	1/1/08-12/31/08	8/1/07-8/1/08	NA	NA	7/1/07-6/30/08	9/1/08-8/31/09	6/1/08-5/31/09	NA
Termination Provision-For Cause Only	No	No	Yes	No	No	Yes	No	Yes
Termination Provision-At Will	Yes	Yes	No	Yes	Yes	No	Yes	No
Notice Requirements	90 Days	30 Days	120 Days	No Notice Required	No Notice Required	30 Days	60 Days	90 Days
Six Months Before Contract Termination	10/31/08	6/30/08	9/1/10	NA	10/31/08	11/30/08	1/31/10	2/28/18
Ninety Days Before Contract Termination	1/31/09	9/30/08	12/1/10	5/31/08	1/31/09	2/28/09	4/30/10	5/31/18
Sixty Days Before Contract Termination	2/28/09	10/31/08	1/1/11	6/30/08	2/28/09	3/31/09	5/31/10	3/31/18
Thirty Days Before Contract Termination	3/31/09	11/30/08	2/1/11	7/31/08	3/31/09	4/30/09	6/30/10	7/31/18

CONTRACT REVIEW ASSESSMENT KIT



CONTRACT RISK-SHIFTING AUDIT



Christian Brothers Services

A Catholic Church Organization Serving the Church

Michael A. Airdo, Esq.
Kopon Airdo, LLC
233 S. Wacker Drive
Chicago, IL 60606
(312) 506-4450
www.koponairdo.com

For each contract reviewed, you should have come up with a number between 0 and 18. The following key provides a system of scoring to help you and the organization interpret what each score means. The scoring system below is intended for individual contracts. However, if you add up the scores of each contract reviewed and divide that number by the number of contracts, you would come up with an overall score based on the organization's risk-shifting proficiency over several contracts. For example, if you reviewed 5 contracts with scores of 4, 14, 12, 9, and 16, the overall score for the organization would be 55 divided by 5, which equals 11.

Scoring Key:

- | | |
|--------------|---|
| 0-5 | Organization should review all contracts to ascertain all of the risks it has accepted through contract |
| 6-10 | Organization should be wary of the fact that they may be accepting more risk than necessary |
| 11-14 | Organization is doing a fine job shifting risk and protecting itself, but has some room to improve |
| 15-18 | Organization should continue whatever steps it has in place to negotiate and execute good contracts |

Questions or Concerns?

If you need assistance using this Compendium and/or Audit Kit, or have any questions or concerns, please contact one of the following individuals:

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