

*System Office of Risk Services*  
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UNIVERSITY  
*of* ALASKA  

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*Many Traditions One Alaska*

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October 14, 2014

**Notice to UA Contract Administrators**

From: Nancy Spink  
Chief Risk Officer

RE: Contracting with the State of Alaska: Insurance and Indemnification Provisions

This Notice supersedes the prior Notice on this topic issued May 17, 2011. The State of Alaska's Director of Risk Management, Scott Jordan, and I have reviewed and agreed to continue our formalized agreement on indemnification and insurance provisions in contracts where the State and the University are the only parties. This agreement originated in 2007 and has provided benefit to both the state and the university in streamlining our contracting processes.

The state and university agree to continue to waive proof of insurance and, with the approval of our legal counsel, agree to remove indemnification provisions. There are some exceptions (e.g. construction contracts, state awarded grants, and hazardous materials indemnification) and you should refer to the October 14, 2014, Agreement for complete details.

Should you receive a contract wherein the agreed upon steps to eliminate the requirement for proof of insurance and indemnification have not been taken, you may provide a copy of the Agreement to the state agency. If that does not resolve the issue, both parties should contact their risk services offices. The agreement is maintained on our Risk Services web site for your convenience: <http://www.alaska.edu/risksafety/ua-only/>. Please disseminate this information to others who may benefit from this contracting agreement.

cc: CFO  
General Counsel Office  
Grants & Contracts (all universities)  
Land Management  
Procurement (all universities)  
Risk Services Staff:  
Vice Chancellor for Administration (all universities)



**Department of Administration**

DIVISION OF RISK MANAGEMENT

**System Office of Risk Services**

**INSURANCE AND INDEMNITY AGREEMENT  
BETWEEN THE STATE OF ALASKA AND THE UNIVERSITY OF ALASKA**

The **STATE OF ALASKA**, through its Risk Management Division Director, Scott Jordan ("State") and the **UNIVERSITY OF ALASKA** through its Chief Risk Officer, Nancy Spink ("University") agree that in most instances it is not necessary or productive to require insurance and indemnity provisions in contracts between the State and the University.

Scott Jordan has discussed the proposal to eliminate insurance and indemnity provisions in most contracts between the State and the University with the Attorney General's Office and the Attorney General for the State of Alaska has approved this Agreement. Nancy Spink has discussed this proposal with the University's General Counsel's Office and the General Counsel for the University has approved this Agreement as well.

**THEREFORE**, the State and the University agree as follows:

1. **PROOF OF INSURANCE.** In contracts where the State and the University are the only parties, neither party will insist or require the other to provide proof of insurance ("certificates of Insurance") unless the contract involves special risk coverage, such as student professional liability insurance. Basic insurance coverage, i.e., general liability, workers' compensation, auto liability, property, aviation, and marine, will not require written proof of insurance.
2. **INDEMNITY PROVISIONS.** In contracts where the State and the University are the only parties, the parties agree to remove indemnity provisions and to not require the State to indemnify the University or the University to indemnify the State.
3. **EXCEPTIONS.** The following are exceptions to this Agreement:
  - A. The State and the University agree that either party may require an indemnity provision in construction contracts, real property purchase agreements, or where Alaska statutes or regulations specifically require indemnity.
  - B. When the State awards grants to the University, the parties agree that an indemnification provision is appropriate. They also agree that in these grants they will use the following indemnity provision that the Attorney General's Office and the General Counsel's Office have approved:

The University shall indemnify, hold harmless, and defend the State of Alaska from and against any claim of, or liability for error, omission or negligent act of the University under this Agreement. The University shall not be required to indemnify, hold harmless, or defend, the State of Alaska for a claim of, or liability for, the independent negligence of the State. If there is a claim of, or liability for, the joint negligent error or omission of the University and the independent negligence of the State of Alaska, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "University" and "the State of Alaska", as used within this article, include the employees, agents and other contractors, or grantees who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the State of Alaska's selection, administration, monitoring, or controlling of the University and in approving or accepting the University's work.

- C. In land and facility-use agreements for a term greater than 180 days (for example, permits, leases and licenses), the parties agree that a standard indemnity provision will not be required by either party but that the land owner may include the following hazardous materials indemnification:

[Non-Land Owner] shall indemnify, defend, and hold the [Land Owner], its [Board of Regents,] officers, agents, and employees harmless from all claims, judgments, damages, penalties, fees, costs, liabilities, or losses that arise out of or in connection with the presence or release of hazardous material caused or negligently permitted by the [Non-Land Owner] on the land, in, on or under the facility or on adjoining property. This indemnification of the [Land Owner] by the [Non-Land Owner] includes, without limitation, reasonable costs incurred in connection with defense or enforcement of any provisions of this [Agreement], any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any state or federal environmental regulatory agency pursuant to Environmental Law because of Hazardous Material present in the soil or groundwater on the land, the facility or on adjoining property. The [Non-Land Owner] shall seek the [Land Owner's] approval for all such remedial actions, and the [Land Owner] shall not unreasonably withhold approval so long as the remedial actions would not potentially have any material adverse long-term or short-term effect on the land, in, on or under the facility or land or the adjoining property owned by the [Land Owner].

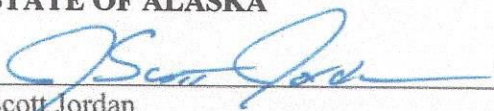
The term "Environmental Law" as used in this Agreement includes any liability arising under common law and any applicable federal, state, or local statute, law, regulation, ordinance, code, or permit, or orders of any governmental entity relating to environmental (air, water, groundwater, soil, noise, and odor) matters, including by way of illustration and not by way of limitation, the Clean Air Act, the Federal

Water Pollution Control Act, RCRA, CERCLA, the Clean Water Act, the hazardous Materials Transportation Act, the Toxic Substances Control Act and all other applicable federal, state, and local environmental requirements.

The term "hazardous material" as used in this Agreement includes any hazardous or toxic substance, material, or waste, that is or becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.

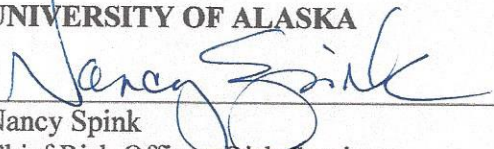
- D. In those rare circumstances where the subject of the contract is uncommon, where the risks are high and weigh primarily against one party, and where the potential damages are unusually large, an indemnity provision may be appropriate. In this situation, the parties agree that the University's risk manager, after consultation with the University's General Counsel, and the State's risk manager will first attempt to resolve mutually acceptable terms and if unable to do so they will refer the contract to the Attorney General's office and the General Counsel's office to negotiate an indemnity provision if appropriate and necessary.
4. **TERMINATION.** Either party may terminate this agreement by giving sixty (60) days written notice of its intent to terminate to the risk manager of the other party. However, both parties commit to attempt informal resolution of issues in the spirit of avoiding termination of this Agreement.
5. **NOTICE.** Notice of this agreement has been given to all departments and agencies of the State with a request to implement it, and notice has been given to all departments, units and offices of the University with a request to implement it.

**STATE OF ALASKA**

  
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Scott Jordan  
Director, Division of Risk Management  
(907) 465-5723

10/20/14  
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Date

**UNIVERSITY OF ALASKA**

  
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Nancy Spink  
Chief Risk Officer, Risk Services  
(907) 450-8153

10/17/14  
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Date