

COVERAGE(S) AND LIABILITY LIMITS FOR INDEPENDENT CONTRACTORS

Minimum Recommendations for Independent Contractors, Vendors and Service Providers

Date: May 2021

Members should determine appropriate insurance requirements for independent contractors, vendors and service providers on a case-by-case basis dependent upon various factors, such as the scope of work and the potential risks involved. The following are MCIT's recommended *minimum* coverage(s) and liability limits for independent contractors. The recommendations are not all inclusive and are not mandates by nor requirements of MCIT.

The limits shown are not to be construed as adequate coverage. The information is intended to be used as an aid for members in establishing their requirements and does not constitute legal or coverage advice on any specific matter.

A member can discuss concerns with its MCIT risk management consultant for specific situations. Consultants can be reached toll-free at **1.866.547.6516**.

General Requirements

- Any insurance required to be carried by the contractor should be primary and not excess to any other coverage carried by the member.
- Coverage must be in force for the complete term of the contract. If insurance expires during the term of the contract, the member should receive a new certificate of insurance at least 10 days prior to the expiration date. This new insurance must meet the terms of the original contract.
- The member should be included as an additional insured on all liability policies. Professional liability and workers' compensation are the exception. The member should obtain a copy of the additional insured endorsement. The endorsement either lists the member as additional insured or adds all those as required by the contract.
- In the event the contractor fails to keep in effect at all times the specified insurance coverage, the member may terminate the contract upon the occurrence of such event, subject to the provisions of the contract, in addition to any other remedies the member may have.

Certificate of Insurance

- The contractor should furnish an original certificate of insurance as evidence of required coverage to the appropriate member representative with the contractor's bid and/or with the executed contract and before work commences.
- The certificate of insurance should identify the member as an additional insured for relevant coverages.
- The member should obtain a copy of the additional insured endorsement.

General Aggregate Limit

A contractor's insurance policy has both a per occurrence limit and a general aggregate limit. The per occurrence limit applies to one event. This is the most the insurance company will pay for that one incident. The general aggregate limit is an annual aggregate limit meaning the most the insurance company will pay in claims for the policy year. Once the general aggregate limit is met, the insurance coverage is exhausted. MCIT recommends members require a general aggregate limit that is at least twice the required per occurrence limit.

The required per occurrence limit cannot be met by the general aggregate limit. They are distinct limits, serving different purposes and are not interchangeable.

MCIT members have no general aggregate limit. MCIT does not limit the number of liability claims or the total claim dollars paid annually on a member's behalf. This provides members better coverage than if they had a general aggregate.

Insurance Requirements and Liability Limits for Independent Contractors

The contractor should procure and maintain the following coverages for the duration of the agreement. This is insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work detailed in the contract that is done by the contractor, its agents, representatives or employees.

Commercial General Liability Coverage

The minimum limits of liability should be:

- \$1.5 million each occurrence.
- \$3 million general aggregate.
- \$3 million products and completed operations aggregate.
- The policy should be written on an occurrence basis, not a claims-made, basis.
- The member should be included as an additional insured.
- An excess or umbrella liability policy may be used in conjunction with primary coverage limits to meet the minimum limit requirements.

Auto Liability Coverage

- The minimum limits of liability should be \$1.5 million on a combined single limit basis.
- Auto liability coverage should include any auto, including hired and nonowned.
- The member should be included as an additional insured.
- The policy should be written on an occurrence, not a claims-made, basis.
- The member should be listed as an additional insured.
- The policy should be written on an occurrence, not a claims-made, basis.
- An excess or umbrella liability policy may be used in conjunction with primary coverage limits to meet the minimum limit requirement.¹

Note: Auto coverage should be waived only when the contractor's work under the agreement clearly does not involve the use of a vehicle on the member's behalf.

Workers' Compensation and Employer's Liability Coverage

- Workers' compensation limits should follow statutory limits per applicable state and federal laws.
- Employer's liability coverage with minimum limits of:
 - Bodily injury by accident: \$500,000 each employee
 - Bodily injury by accident: \$1.5 million each accident
 - Bodily injury by disease: \$500,000 each employee
 - Bodily injury by disease: \$1.5 million policy limit

Professional Liability Coverage

- Professional liability coverage should be required for individuals who perform professional or semi-professional services. Some examples of professionals who should obtain this type of coverage include but are not limited to individuals who are

information technology consultants, medical service providers, architects, engineers, attorneys and other consultants.

- Minimum liability limits for independent contractors should be:
 - \$2 million per wrongful act or occurrence.
 - \$4 million annual aggregate

Cyber-liability Coverage

- For contracts with individuals or companies that are accessing, collecting, maintaining, manipulating or storing member data in any format, cyber-liability coverage should be required.
- Some examples of service providers who should obtain this type of coverage are IT consultants, social services providers and partners, public health vendors and payroll service companies.
- Cyber-coverage varies greatly from policy to policy; therefore, this language is recommended: *Contractor shall procure and maintain for the duration of the contract insurance covering claims arising out of its services and including, but not limited to, loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.*
- Minimum liability limits:
 - \$2 million per occurrence or claim
 - \$4 million aggregate
- Coverage must be sufficiently broad to respond to the duties and obligations undertaken by the contractor in the agreement and should include but not be limited to claims involving infringement of intellectual property, including infringement of copyright, trademark or trade dress; invasion of privacy violations; information theft; damage to or destruction of electronic information; release of private information; alteration of electronic information; extortion and network security.
- The policy should provide coverage for breach response costs, as well as regulatory fines and penalties, and credit monitoring expenses. Limits should be sufficient to respond to these obligations.
- The policy must include the member, its officers, agents and employees as additional insureds.

Hold Harmless and Indemnification Agreement

- A hold harmless and indemnification provision favorable to the member should be included in the contract.
- Following is sample language that will need to be modified or tailored to fit each individual situation:

The vendor agrees to defend, indemnify, and hold (Member name), its employees and officials harmless from any claims, demands, actions or causes of action, including reasonable attorney's fees and expenses arising out of any act or omission on the part of the vendor, or its subcontractors, partners or independent contractors or any of their agents or employees in the performance of or with relation to any of the work or services to be performed or furnished by the vendor or the subcontractors, partners, or independent contractors or any of their agents or employees under the agreement.

Additional Insured Status

Additional insured status is intended to provide extra protection to members in the event of a claim. Additional insured refers to an entity that is covered by the insurance policy of another organization. This status is provided by an endorsement or written amendment to the contractor's policy.

Like primary insurance, additional insured coverage typically provides both defense and indemnity to the additional insured. This protection is owed to the additional insured for a short time even when the contractor has failed to pay the premium. When an insurance company cancels the contractor's insurance for not paying the premium, the additional insured will likely have coverage for up to 10 days after cancellation. Rules may differ from policy to policy, but most insurance companies offer an additional insured endorsement.

Regardless of whether the member is eventually found to be responsible or even partially responsible for a third-party liability claim resulting from the contract or project, the member will likely be involved in a costly and time-consuming claim process. Therefore, MCIT recommends that members require additional insured status with respect to the contractor's general liability, auto and excess/umbrella policies.

Member agreements should require the contractor to name the member as an additional insured on the contractor's liability policies. Members should obtain a copy of the additional insured endorsement from the contractor's policy. This is the only way to ensure that the member is an additional insured. Additional insured status is typically not granted under workers' compensation or professional liability policies.

Recommended Additional Coverages: Consider on a Case-by-case Basis

Pollution Liability

Contractor should maintain pollution liability, covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under the contract. Coverage should be provided for both work performed on site, as well as during the transport of hazardous materials.

Recommended minimum limits of liability:

- \$3 million per occurrence
- \$6 million annual aggregate

The policy must include the member, its officers, agents and employees as additional insureds, but only insofar as operations under the contract are concerned.

Builder's Risk/Installation Floater (Construction Projects)

During the term of the contract, the contractor should maintain in force and at its own expense, builder's risk and/or installation floater insurance that covers labor, materials and equipment to be used for completion of the work performed under the contract. The insurance should cover all risks of direct physical loss at an amount equal to the full value of the contract improvements.

Fidelity Bond/Crime Insurance

The contractor should maintain employee dishonesty and, when applicable, inside/outside money and securities coverages for member-owned property in the care, custody and control of the contractor. Coverage limits should not be less than the amount shown in the contract.

Performance/Payment Bond

A performance or payment bond might be required by statute. A performance bond provides a financial guarantee that the contractor will perform the work specified in the contract within the timeframe noted in the contract.

A payment bond provides a financial guarantee that the contractor will pay all costs incurred, avoiding potential liens against the property or project.

A best practice is for the member to verify bond issuance directly with the issuing company or agent before relying on the bond.

1 Excess or umbrella coverage typically does not cover professional, cyber- or pollution liability.

The information contained in this document is intended for general information purposes only and does not constitute legal or coverage advice on any specific matter.

