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Indemnification Agreements with Third Party Vendors or Nonprofit Program Funders

Many nonprofits contract with third party vendors to provide services essential to their operation as a business. These services run the gamut and typically include services such as janitorial, technological systems, building contractors, and transportation providers or something occasional like a bounce house provider for your fundraiser. A key to evaluating the risks of your nonprofit's operation is to assess responsibility for liabilities that may arise in the provision of services by third parties. For example, who is responsible for physical injuries to a janitor? Or for replacing a window broken by the building contractor? What about for a serious vehicular accident involving your transportation provider and your clients, or an injury to a participant if the bounce house is defective?

The key component in your nonprofit's risk management plan is to make sure that your nonprofit has appropriate and adequate insurance to cover all its operations. Additionally, in your agreements with vendors, it is essential to require that they are legally responsible for any claims or damages arising out of the work they perform. Vendors can be held legally responsible by way of an indemnification agreement in the contract for their services. The contract should also specify which type of insurance they must maintain and require that they provide satisfactory proof of insurance. For example, you would want to make sure that a transportation service has general liability, workers' compensation and sufficient auto insurance coverage to address any potential losses.

An indemnity agreement is a contractual promise by which one person or entity accepts full legal responsibility for losses related to certain specified activities. So if there is a claim or lawsuit arising from an injury or loss as a result of the vendor's activity, the vendor, typically through their insurance carrier, is responsible for any damages or liability, typically including attorney's fees. Indemnity agreements are an effective tool for transferring the risk associated with a particular activity and establishing clear responsibility in the event of a loss, and are strongly recommended to be in all of your contracts with third party vendors.

It's also important to review all your nonprofit's contracts with funders, typically governmental entities, for programs such as counseling, after-school care, education and outreach or job training. It is critical to evaluate the scope of any indemnification agreements in these program contracts whereby your nonprofit is accepting the risk of any losses in the operation of the program. These indemnification agreements are transferring what can be a substantial monetary liability to your nonprofit which should be evaluated before you sign the contract and discussed with your insurance broker to confirm that adequate insurance coverage is in place to address this additional risk. One of our nonprofit members is currently faced with a claim exceeding 2 million dollars because it agreed to an indemnification clause providing the "broadest possible coverage" to a county, even though the damages were primarily related to negligence by county workers. Nonprofits should review these indemnification agreements and negotiate the terms with their funders if they attempt to transfer a risk that is unacceptable or beyond the ability of your nonprofit to mitigate or control.

If your nonprofit is a member of the Nonprofits Insurance Alliance Group and you'd like to learn more about contractual liability and transference of risk, you can listen to a recorded webinar on [How Does the Liability Flow: A Discussion on Additional Insureds and Contractual Liability](#). Members of the Group also have access to sample insurance or indemnification language to include in nonprofit contracts, which you can find a sample of in our forms and templates library. Just login to the member secure website and access the [Sample Independent Contractor Agreement](#). For login help, email webmaster@insurancefornonprofits.org.

If your nonprofit is not a member of the Nonprofits Insurance Alliance Group and you'd like to learn more about joining our community, please check out our [list of coverages](#), as well as the [benefits of membership](#)!