



The **Carnivale** *of Risk*

Ch-ch-ch-changes in the Universe of
Insurance Requirements in Contracts
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48TH CONFERENCE & EXPO





Insurance Requirements in Contracts

Advanced Topics

PARMA

Mach 1, 2022

Proprietary & Confidential

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Our Goal

Provide you with information on the **changing landscape** and discuss **advanced topics**.

Or:

Avoiding black holes that suck the life out of an otherwise decent profession.

Terms and
Conditions
may Apply



Caveat

Consult with Legal/Risk Management before changing contract language.



Outline

IRIC Manual v.2022 Updates

I. Construction Risks

Are you as protected as you think?

II. Technology Risks

The changing landscape

III. Other Topics

Aviation, Marine, Special Events, Youth Activities,
Alternative Risk Financing & Emerging Risks

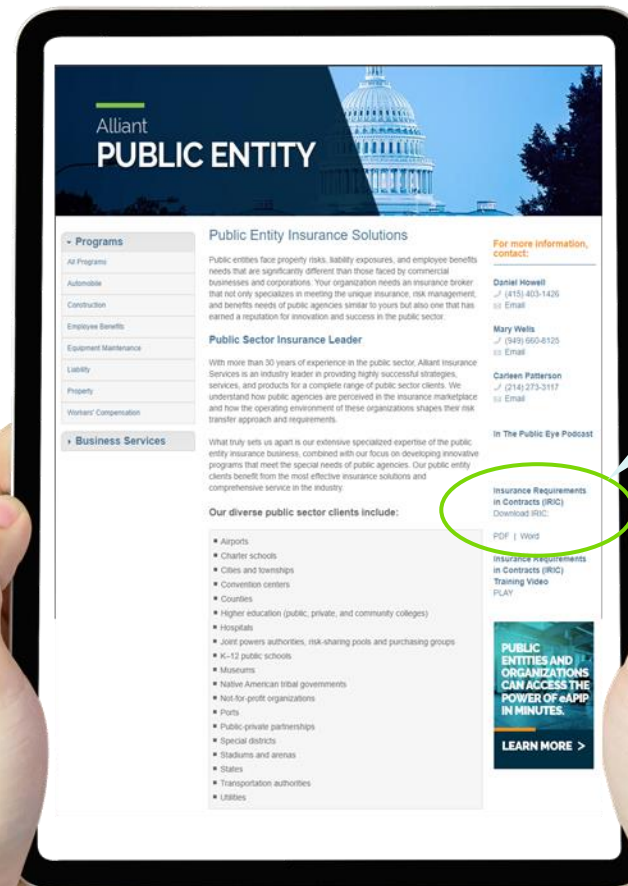


IRIC Manual v.2022 Updates

Insurance Requirements in Contracts (IRIC) Manual

How to Locate the IRIC Manual

[Alliant's Website](#)



Insurance Requirements in Contracts (IRIC) Download IRIC: [PDF](#) | [Word](#)

Navigating the IRIC Manual

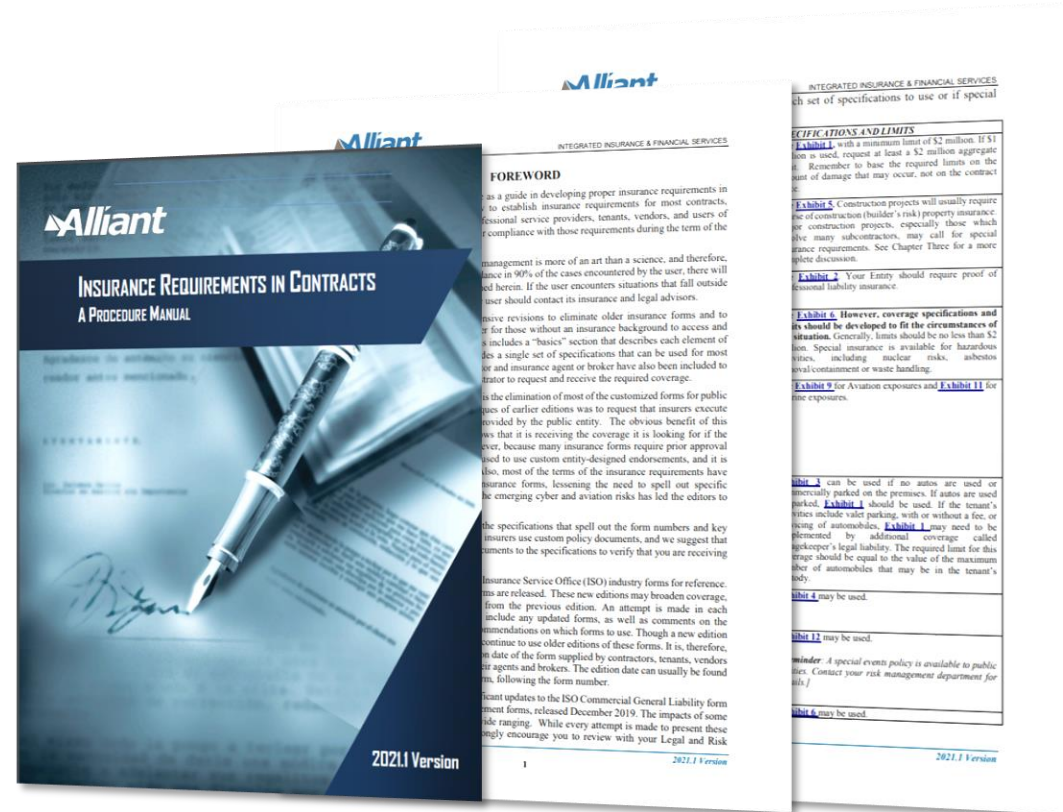




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INTEGRATED INSURANCE & FINANCIAL SERVICES

IRIC VERSION 2021.1

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Insurance Requirements in Contracts

ii

2021.1 Version

Nine Chapters & Fourteen Exhibits



Insurance Specs For:

1. Most Contracts – Exhibit 1
2. Professional Services
3. Lessees
4. Suppliers and/or Vendors
5. Construction Contracts
6. Environmental Contractors & Consultants
7. Information Technology - Cyber
8. Airports
9. Unmanned Aerial Vehicles (aka Drones)
10. Chartering Aircraft
11. Marine Related Risks
12. Short-term Rentals of Facilities
13. Instructors
14. Schools including Bus & Transportation Costs

Glossary of Terms & Appendices



Foreword

Emerging Trends

Frequently Asked Questions (FAQs)

Introduction – Why Bother?

Contractual Risk Transfer – The Basics

Appendix A

Risk Assessment

Appendix B

Common Insurance Industry Forms

Appendix C

Sample Hold Harmless Agreements

Appendix D

Sample Checklists

Appendix E

Resources

v.2022 Update

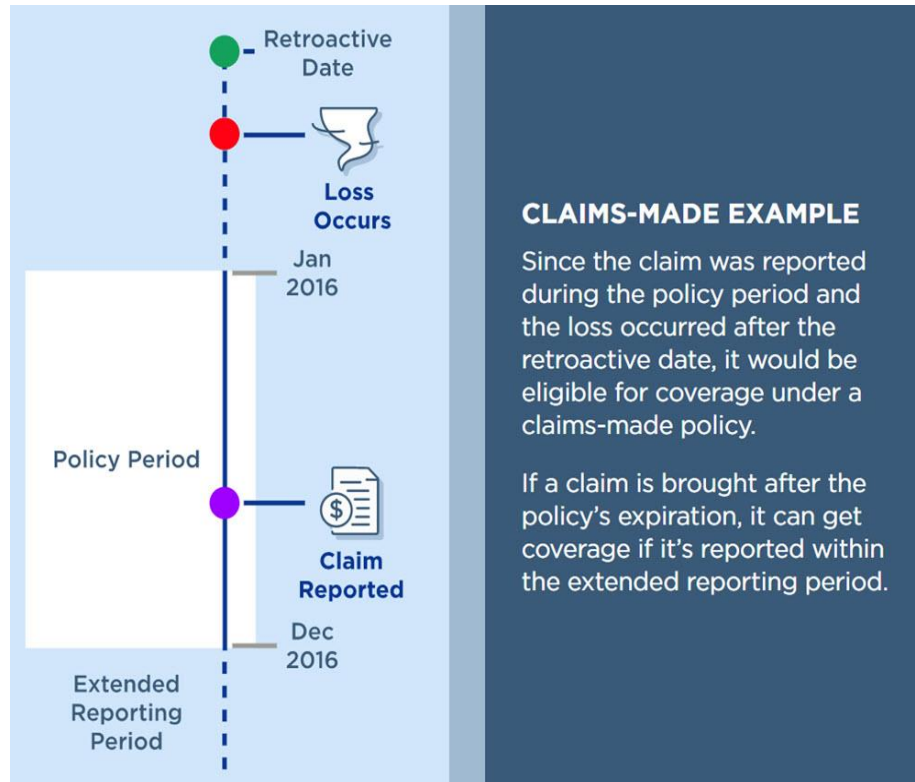
What's Changed?



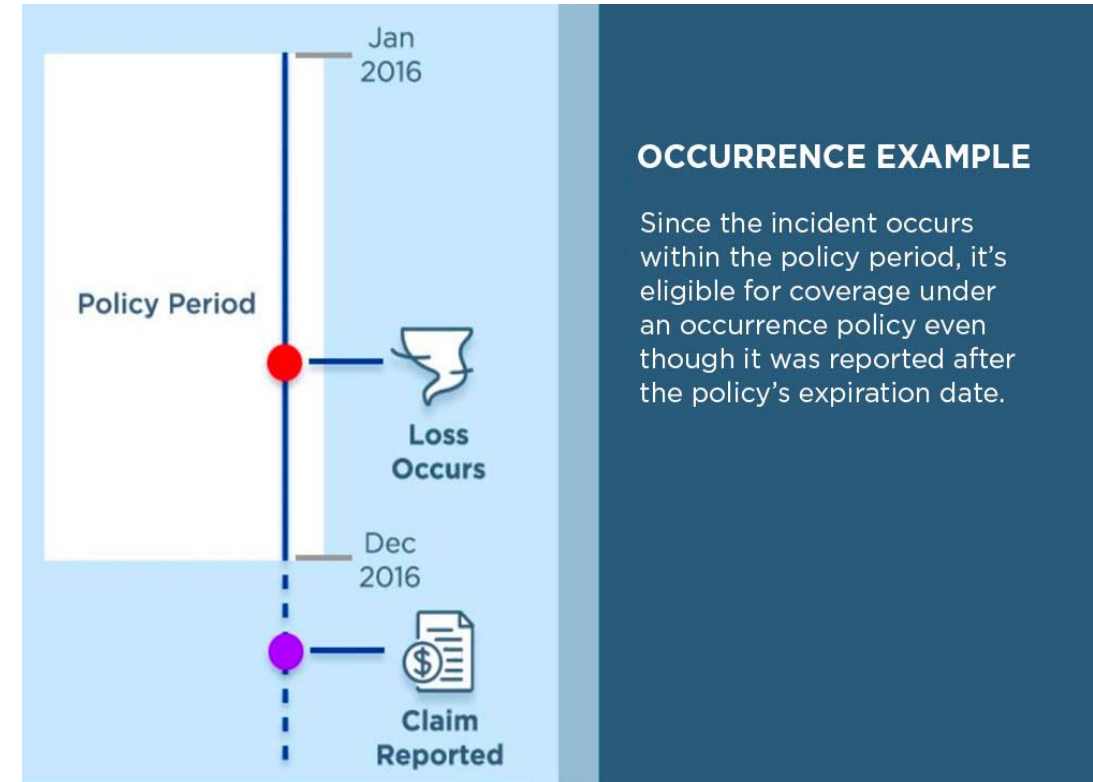
- › Updated Additional Insured Charts & Comparison of AI Endorsements
- › Further clarification on **The Myth of “Following Form” Coverage**
- › More detail on perils of contractor SIR coverage
- › Declarations Pages, Schedule of Endorsements and Prior Work Exclusions
- › Standard Limits for Airport tenants, vendors & users
- › Sample CA Workers’ Comp exemption

What is Claims Made Coverage?

Claims Made – “trigger” of coverage is when claim is reported. Loss is covered if occurred after retro date and reported within policy or extended reporting period.



Occurrence – “trigger of coverage is when loss occurs, regardless of when reported (can be years later).





I. Construction Risks

Are you as protected as you think?

Construction Risks

Are you as covered as you think?



CG 21 54 12 19 – the first update to the ISO form for “controlled insurance programs” (OCIPS, CCIPS aka “wrap-up”) since 01 96!

- › Solves the problem for unenrolled trades and enrolled trades with offsite exposures
- › The wrap-up exclusion of the CGL only applies to parties enrolled in a wrap-up

Construction Risks

Are you as covered as you think?



Impact of the Hard Market

- › Contractors and especially subs are impacted by hardening market. Responses include:
 - › Purchasing Lower limits
 - › Increasing retentions or using SIR programs
 - › Buying less expensive policies with coverage gaps
 - › Prior work exclusion
 - › Project delays and costly extensions of coverage
- = **Need for additional diligence**

Construction Risks

Are you as covered as you think?



Other significant recent changes:

- › **Automatic Additional Insured:** Old CG 2010, 2026 and 2027 required scheduled AI, **new** CG 2033 (ongoing ops) and CG 2039 (completed ops) provide automatic coverage where required in written agreement.
- › **Privity of contract issues:** **newish** CG 2038 (ongoing ops) and CG 2040 (completed ops) solves the problem for downstream contractors not in direct contract with the public entity
- › **Waiver of Subrogation:** **new** CG 2453 provides automatic waiver where required in a written agreement

Additional Insured (AI) Endorsements

Based on Insured Relationship to AI

AI Relationship to Insured	No Contract with AI Required (Privity) & Doing Work For AI		Privity & Work For AI	No Privity & No Work For AI
	Scheduled	Automatic*	Automatic*	Automatic*
Type of Endorsement				
Ongoing Ops Form #	20 10	20 38	20 33	20 42+ or 20 43
Completed Ops Form #	20 37	20 40	20 39	NONE

* ONLY if required in written contract or agreement

+ For Designated Operations

For Automatic Status, Form Numbers 20 38 and 20 40 should be required rather than the 20 33 and 20 39

Use form 20 33 and 20 39 ONLY when you are SURE there are no subs being used that have NO contract "With You"



II. Technology Risks

The Changing Landscape

Technology Risks

The changing landscape



Just like the public entities, contractors are facing a hard cyber market. New developments include:

- › End of life software limitations or exclusions
- › Timely patching requirements
- › Biometric data exclusions
- › Known Software Vulnerability Exclusions
- › Viability of contractor
- › Property Damage Exclusion for Cyber event
- › Coinsurance on extortion and business interruption caused by cyber security breach

Technology Risks

The changing landscape



IRIC Manual Chapter 4 discusses essential terms:

- › Personally Identifiable Information, Protected Health Information and Payment Card Information
- › Confidentiality
- › Data Protection Standard of Care
- › Notification of Information Security Incident
- › Compliance with Data Security Laws (numerous)
 - › New: PRC's new DSL and Personal Information Protection Law (PIPL) joins EU's GDPR and US laws
- › Access to Systems privileges, data storage & data destruction
- › Audit rights
- › Warranties and Remedies



III. Other Topics

Aviation, Marine, Special Events, Youth Activities,
Alternative Risk Financing, and Emerging Risks

Aviation

Other Topics



Not just droning on about drones... but sort of.

- › Airport liability –commercial and general is a specialty
 - › IRIC’s new details on requirements including Fixed Base Operators, hangarkeeper’s
 - › **See Exhibits 9, 10 & 11**
 - › Some of your tenants have valuable contents – aka private jets
 - › Indemnification for health injuries
- › PFAS Exclusions
- › Unmanned Aerial Systems – owned and contracted
- › Autonomous Personal Aerial Vehicle – demo’s

Marine

Other Topics



Old legal theories applied to modern risks:

- › **Maintenance & Cure and Covid** – Covid is not the first pandemic facing seafarers. Maintenance (living expenses) & cure (medical expenses) and return home.
- › **Specialty Coverage Terms:** Wharfinger's Liability (berthing), Charterer's Liability, Marina Operator's Liability, Stevedores Liability (cargo loading and stowage), Tower's Liability, Bumbershoot (umbrella), Maritime Employers Liability (esp. for divers)
- › Pollution Exposures
- › Contingent United States Longshore and Harborworkers applicable to navigable waterways

Special Events

Other Topics



Just how special is that event?

- › Health security requirements
 - › Verification of vaccination/testing status
 - › Enforcement of masking requirements
 - › Indemnification for health injuries
- › Per event policies with 1x aggregate limit vs ongoing operations CGL with 2x aggregate
- › If the quoted special event premium is high, **THERE IS A REASON!**
- › Avoidance – that overlooked tool in the risk manager’s toolkit

Youth Activities

Other Topics



Youth Activities are not just associated with K-12 schools & rising value of abuse claims

- › Youth are most vulnerable when outside the normal controlled environments of classrooms and organized activities
- › Sexual Abuse and Molestation (SAM) coverage is expensive and difficult for some contractors to obtain
- › IRIC Manual Chapter 8 has a general discussion and sample insurance requirements in Exhibits 12 (Facility Use, 13 (Instructors) & 14 (Transport)
- › Sample Checklists – IRIC Manual Appendix D
- › AB 218 deadline approaching – Dec. 31, 2022

Alternative Risk Financing

Other Topics



The hard market is pushing organizations to alternative risk transfer (ART) to finance risk

- › Evaluating Self-Insurance Programs
 - › Private entities differ from public entities
 - › Willingness to disclose information
 - › Third-party satisfaction of SIR
- › Captive Insurers
- › When your entity is the contractor
 - › Modifying the contract to allow for self-insurance, pooling, captives and other ART techniques

Emerging Risks

Other Topics



The only thing constant is change in risks:

- › Cyber, Cyber, Cyber, Cyber
- › Into the pandemic, out of the pandemic
 - › What about parklets and other accommodations?
- › Evolution of reaction to public safety use of force
- › Planning for new weather event severity
 - › Wildfire and vegetation management in CA
- › Remote Working
- › Micromobility
- › Parametric Products
- › Dynamic Premiums – usage and gig economy
- › Litigation financing turns the tables

Annotated Sample Certificate in the IRIC Manual

Appendix B

Couldn't resist – favorite IRIC 101 Training exhibit!

2 This notice confirms the provisions of the California Insurance Code, §384. Other states have similar provisions. It states that the policy, not the certificate governs coverage.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS IS NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES OR PRODUCER, AND THE CERTIFICATE HOLDER.

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the benefit of such endorsement(s).

1 This block identifies the Agent or Broker.

3 The insurer will be identified here. The insurer letter appears again near the left margin at "3" to show which insurer provides which coverage.

4 The insured is your entity's contractor or lessee.

5 This notice again states that the policy supersedes the certificate form.

6 These sections show the type of coverage provided through the agent or broker identified in "1" above. If the insured uses more than one broker, this certificate will not identify all existing.

7 These two columns show inception and expiration dates for policies identified. Pay special attention that coverage does not expire before or during your project or lease.

8 This column identifies limits per occurrence and aggregate for each type of coverage afforded. Pay special attention to low aggregate limits for public works-type contractors. Losses on other jobs may reduce your coverage.

9 This section will usually be used to restrict coverage to a specific job or lease. Watch for restrictions that would omit the coverage required by your specifications.

10 Certificate holder is your entity.

11 Cancellation provisions

12 The authorized representative of the insurer should be an employee, unless the agent or broker is specifically authorized to sign on behalf of the company.

ACORD 25 (2010/05)

Questions?



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