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Managing Risk in Contracting

Jim Haisley
Associate General Counsel
University of Utah



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The Importance of Contracts



- Setting expectations
- Establishing obligations
- Appropriate allocation of risk



How Do We Manage Risk?

- Establish process for review
- Negotiate appropriate changes to contract
- Who has authority to sign?





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Contract Routing Form

[Insert Date]

**[INSERT NAME OF GOVERNMENT ENTITY]
CONTRACT ROUTING FORM**

Contract Title: _____

Parties to Contract: _____

Brief Description of Contract: _____

Please review the attached contract prepared for signature by the **[insert title of person with signature authority]**. When complete, please initial and date in the appropriate space, then forward this routing sheet and the attached agreement to the next individual on the list.

Service Director	_____ _____ Initials Date
Associate Administrator	_____ _____ Initials Date
Legal	_____ _____ Initials Date
Executive Director	_____ _____ Initials Date
Contract Database Coordinator*	_____ _____ Initials Date

* Upon entry of the appropriate contract information in the contract database, please retain the original fully signed contract in the **[insert name of entity]** Administration files and distribute copies to the responsible _____, _____ and _____.



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Government Entities are Unique

- Subject to GRAMA
- Subject to Governmental Immunity Act
- Insurance through State Risk
- Limitations on coverage available from State Risk





Common Problems

- Confidentiality
- Indemnification
- Insurance Requirements
- Limitations on Liability
- Choice of Law and Venue





Governmental Entity Addendum

GOVERNMENTAL ENTITY ADDENDUM

This Governmental Entity Addendum (the "Addendum") is entered into as of this ___ day of 20__ (the "Addendum Effective Date"), by and between [INSERT NAME OF STATE DEPARTMENT], a _____ of the State of Utah, (the "Department"), and _____ ("Vendor"), each a "Party" and collectively, the "Parties".

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- PRELIMINARY.** This Addendum amends and is an integral part of that certain agreement between the Parties attached hereto and incorporated herein by reference (the "Main Agreement"). In the event of any conflict, inconsistency or discrepancy between the Main Agreement and this Addendum, this Addendum shall govern. The Main Agreement, as amended by this Addendum, is hereinafter referred to as the "Agreement".
- DEPARTMENT A GOVERNMENTAL ENTITY.** Vendor acknowledges that the Department is a governmental entity subject to the Utah Government Records Access and Management Act, Utah Code Ann., Section 63G-2-101 et seq., as amended ("GRAMA"); that certain records within the Department's possession or control, including without limitation, the Agreement (but not including (i) proprietary software or (ii) materials to which access is limited by the laws of copyright or patent), may be subject to public disclosure; and that the Department's confidentiality obligations shall be subject in all respects to compliance with GRAMA. Pursuant to Section 63G-2-309 of GRAMA, any confidential information provided to the Department that Vendor believes should be protected from disclosure must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, the Department may disclose any information or record to the extent required by GRAMA or otherwise required by law, and to the Department's employees, attorneys, accountants, consultants and other representatives on a need to know basis; provided, that such representatives shall be subject to confidentiality obligations no less restrictive than those set forth in the Agreement. Vendor further acknowledges that the Department is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann., Section 63G-7-101 et seq., as amended (the "Act"). Nothing in the Agreement shall be construed as a waiver by the Department of any protections, rights, or defenses applicable to the Department under the Act, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. It is not the intent of the Department to incur by contract any liability for the operations, acts, or omissions of Vendor or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of the Department contained in the Agreement are subject to the Act and are further limited only to claims that arise directly and solely from the negligent acts or omissions of the Department. Any limitation or exclusion of liability or remedies in the Main Agreement for any damages other than special, indirect or consequential damages, shall be void and unenforceable. The Department carries insurance through the State Risk Manager of the State of Utah up to the limits required by the State Risk Manager and applicable law. Nothing in the Agreement shall require the Department to carry different or additional insurance, and any obligations of the Department

contained in the Agreement to name a party as additional insured shall be limited to naming such party as additional insured with respect to the Department's negligent acts or omissions. The Agreement will be governed by the laws of the State of Utah, without regard to conflicts of laws principles. Venue for any lawsuits, claims, or other proceedings between the Parties relating to or arising under the Agreement shall be exclusively in the State of Utah.

3. MISCELLANEOUS. The Main Agreement, as amended by this Addendum, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written and all other communications relating to the subject matter hereof. The provisions of this Addendum will survive the expiration or earlier termination of the Agreement. This Addendum shall not be deemed to amend or modify the Agreement in any manner except as specifically provided herein. The Main Agreement, as amended by this Addendum, shall remain in full force and effect, and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their duly authorized representatives effective as of the Addendum Effective Date.

[INSERT NAME OF DEPARTMENT]

[INSERT VENDOR NAME]

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Please Print)

Name: _____
(Please Print)

Title: _____

Title: _____



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Description of Parties

This Governmental Entity Addendum (the “Addendum”) is entered into as of this ____ day of _____, 20__ (the “Addendum Effective Date”), by and between **[INSERT NAME OF GOVERNMENT ENTITY]**, a _____ of the State of Utah, (the “Department”), and _____ (“Vendor”), each a “Party” and collectively, the “Parties”.



Introductory Statement

1. PRELIMINARY. This Addendum amends and is an integral part of that certain _____ agreement between the Parties attached hereto and incorporated herein by reference (the “Main Agreement”). In the event of any conflict, inconsistency or discrepancy between the Main Agreement and this Addendum, this Addendum shall govern. The Main Agreement, as amended by this Addendum, is hereinafter referred to as the “Agreement”.



Confidentiality and GRAMA

2. DEPARTMENT A GOVERNMENTAL ENTITY. Vendor acknowledges that the Department is a governmental entity subject to the Utah Government Records Access and Management Act, Utah Code Ann., Section 63G-2-101 et seq., as amended (“GRAMA”); that certain records within the Department’s possession or control, including without limitation, the Agreement (but not including (i) proprietary software or (ii) materials to which access is limited by the laws of copyright or patent), may be subject to public disclosure; and that the Department’s confidentiality obligations shall be subject in all respects to compliance with GRAMA. Pursuant to Section 63G-2-309 of GRAMA, any confidential information provided to the Department that Vendor believes should be protected from disclosure must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, the Department may disclose any information or record to the extent required by GRAMA or otherwise required by law, and to the Department’s employees, attorneys, accountants, consultants and other representatives on a need to know basis; provided, that such representatives shall be subject to confidentiality obligations no less restrictive than those set forth in the Agreement.



Indemnification

Vendor further acknowledges that the Department is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann., Section 63G-7-101 et seq., as amended (the “Act”). Nothing in the Agreement shall be construed as a waiver by the Department of any protections, rights, or defenses applicable to the Department under the Act, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. It is not the intent of the Department to incur by contract any liability for the operations, acts, or omissions of Vendor or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of the Department contained in the Agreement are subject to the Act and are further limited only to claims that arise directly and solely from the negligent acts or omissions of the Department.



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Limitations of Liability

Any limitation or exclusion of liability or remedies in the Main Agreement for any damages other than special, indirect or consequential damages, shall be void and unenforceable.



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Insurance

The Department carries insurance through the State Risk Manager of the State of Utah up to the limits required by the State Risk Manager and applicable law. Nothing in the Agreement shall require the Department to carry different or additional insurance, and any obligations of the Department contained in the Agreement to name a party as additional insured shall be limited to naming such party as additional insured with respect to the Department's negligent acts or omissions.



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Choice of Law and Venue

The Agreement will be governed by the laws of the State of Utah, without regard to conflicts of laws principles. Venue for any lawsuits, claims, or other proceedings between the Parties relating to or arising under the Agreement shall be exclusively in the State of Utah.



General Comments

- When do you need addendum?
- What doesn't the addendum cover?
- Changes to addendum?
- How is addendum signed?

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Questions

