

# Suggested Contract Language

## ***Indemnity***

All contracts should contain language obligating the consultant, contractor, lessee, or vendor to indemnify, defend, and hold harmless *Texas Tech University System and components* from and against any and all claims, losses, etc., arising from injury to persons or damage to property as a result of an act or omission of the consultant, contractor, lessee, or vendor. Hold harmless clauses come in many forms, categorized as broad, intermediate, or limited form. An explanation and example of each type of hold harmless clause is provided below for edification. *Texas Tech University System Office of Risk Management* recommends the **Broad Form** in most instances.

Contract negotiations, circumstances and guidance from General Counsel may require use of a different form. Check with TTUS Office of Risk Management or General Counsel before implementing changes to existing contract language.

## ***Hold Harmless and Indemnification Agreements and Non-Waiver***

### *a. Hold Harmless and Indemnification Agreement*

#### **Broad Form**

The indemnitor assumes an unqualified obligation to hold *TTUS* harmless for all liability associated with the subject matter of the agreement, regardless of which party was actually at fault (even if the damage, injury, or claim is due to the sole negligence of *TTUS*).

**Example** – To the fullest extent permitted by law, Tenant will indemnify and hold *TTUS* harmless from all claims arising from or in connection with (i) the conduct or management of the Premises or of any business therein, or any work or thing whatsoever done, or any condition in or about the Premises during the Term; (ii) any act, omission, or negligence of Tenant or any of Tenant's subtenants or licensees or the partners, directors, officers, agents, employees, invitees, or contractors of Tenant or of Tenant's subtenants or licensees; (iii) any accident, injury, or damage whatsoever occurring in or at the Premises. Tenant hereby expressly indemnifies *TTUS* for the consequences of any negligent act or omission of *TTUS* and its *Board of Regents*, officers, employees, agents, and volunteers, unless such act or omission constitutes gross negligence or intentional misconduct.

#### **Intermediate Form**

The indemnitor assumes all liabilities of *TTUS* relating to the subject matter of the agreement, except where the injury or damage is caused by *TTUS* sole negligence. Any amount of fault on the part of the indemnitor under an intermediate hold harmless agreement obligates the indemnitor to indemnify *TTUS* for the total amount of damages. The only instance in which the indemnitor is relieved of the contractual obligation to indemnify is when the loss is due solely to the fault of the *TTUS*.

**Example** – To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless *TTUS* and its *Board of Regents*, officers, employees, agents, and volunteers from and against all claims, damages, losses, and expenses, including but not limited to attorneys’ fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss, or expense (i) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom and (ii) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

**Limited Form**

This agreement obligates the indemnitor only to the extent of its own fault. This type is often referred to as a comparative fault indemnification agreement.

**Example** – To the fullest extent permitted by law, Indemnitor shall indemnify and hold harmless *TTUS* from and against claims, damages, losses, and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including loss of use resulting therefrom , but only to the extent caused in whole or in part by negligent acts or omissions of Indemnitor.

***b. Non-Waiver***

The parties hereto understand and agree that *TTUS* is relying on, and does not waive or intend to waive by any provision of this Contract, any monetary limitations or any other rights, immunities, and protections provided by the state of *[your state]*, as from time to time amended, or otherwise available to *TTUS* or its officers, employees, agents, or volunteers.

***Independent Contractor***

All consulting contracts should contain language that the consultant is an independent contractor with respect to the services to be performed under the contract and is not an employee of *TTUS* or any of the components. An example is shown below:

Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not agents of *TTUS*. Any provisions in this Contract that may appear to give *TTUS* the right to direct Contractor as to details of doing work or to exercise a measure of control over the work mean that Contractor shall follow the direction of *TTUS* as to end results of the work only.

As an independent contractor, Contractor is not entitled to Workers' Compensation benefits except as may be provided by the Contractor, nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract.

***Assignment***

All consulting contracts should expressly prohibit the consultant from subletting or assigning any services covered by the contract without written permission of *TTUS*. This provision does not extend to ancillary services, such as printing or photocopying, that are reimbursable under the contract.