The Risk Manager's Toolkit:

Essential Resources for Contract Risk Management

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RIMS PALM BEACH CHAPTER

CONTRACT RISK ACADEMY

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- Co-founder of Contract Risk Academy
- Director of Contract Risk Management, Peoples First Insurance
- Compliance Coach, First Rule Contract Manager
- Former National Practice Leader for Contract Review at Marsh and Aon
- 25+ years of insurance industry experience & 20+ years of contract review consulting
- Bachelor's Degree – Contracts & Acquisitions Major, International Business Minor
- Developer of client-customized tools, templates, and training presentations designed to simplify and streamline contract review process and reduce contractual risk

Today's Agenda

1. Contract Review Process Checklist
2. Contract Review Cover Sheet
3. Contract Review Tracker
4. Indemnity vs. Additional Insured
5. Additional Insured (AI) Finder
6. Q&A

Contract Review Process Checklist

CONTRACT REVIEW PROCESS CHECKLIST

1. BEFORE STARTING ANY REVIEWS

☐	Decide **who within your team may assist with contract review requests**. Suggest assign detail-oriented, organized, careful team members with insurance experience. Experience requesting Certificates of Insurance and legal experience are also good.
☐	Set **expectations for contract review turnaround time**. Suggest 3 to 5 business days, or 1 to 2 business days for rushes.
☐	Find out if any **insurance requirements require pre-approval from upper management or legal,** such as agreeing to provide broad form Additional Insured coverage (that may provide additional insureds with coverage for their sole negligence) or requirements for your company to provide full umbrella/excess liability policy limits to Additional Insureds. Note for future reference.
☐	Understand your companies' **contractual risk transfer preferences <u>for contracts with upstream parties, such as project owners and GC's</u>**. What level of Additional Insured (AI) coverage is ok to provide to upstream parties - limited, partial, or broad? Note for future reference. **<u>Pro Tip! -</u>** Refer to **AI Finder tool** (in Starter Pack and in Tools section of **Contract Risk Academy** website) to see which ISO Commercial General Liability (CGL) AI forms may provide limited, partial, or broad coverage.

☐	Understand your companies' **contractual risk transfer preferences <u>for contracts with downstream parties, such as subcontractors</u>**. What level of Additional Insured coverage do you seek to require of downstream parties - limited, partial, or broad? Note for future reference. **<u>Pro Tip! -</u>** Refer to **AI Finder** tool (in Starter Pack and in Tools section of **Contract Risk Academy** website) to see which ISO Commercial General Liability (CGL) AI forms may provide limited, partial, or broad coverage.
☐	Obtain copies of your companies' **insurance policies and Insurance Summary** (if available) & file for future reference. Note policy renewal dates for future reference and obtain copies at each policy renewal.
☐	Provide **Contract Review Cover Sheet** (in Starter Pack and in Tools section of **Contract Risk Academy**) to your business procurement, risk management, and legal teams. Require a completed Cover Sheet with each contract review request to save time, provide desired level of review, and manage project risk.
☐	If your insurance agent/broker assists with contract review, then give them a **list of who at your company they may receive review requests from** and correspond with on contract reviews.
☐	**Identify and make a list of people who can help** with insurance, corporate risk management, and legal contract questions. Note for future reference.
☐	Request **full copy of contracts in Word format** (if possible) for each review, including all addenda, prime, & upstream contracts (if applicable).
☐	**Familiarize** yourself with your companies' insurance program.

☐	Consider subscribing to **Contract Risk Academy** (https://contractriskacademy.com) for useful training presentations, contract review tools, blogs, and group coaching sessions for your risk management and legal team members.
☐	Set up **Contract Review Tracker** for use with tracking reviews. This tool is included in the Starter Pack and is available in the Tools folder of **Contract Risk Academy**.
☐	Obtain copies of any **contract templates** your company uses with downstream parties (such as subcontractors).
☐	If it has been more than 3 years since the insurance requirements in your contract templates were last updated or if the insurance requirements may be less than ideal, Contact Noelle McCall at nmccall@peoplesfirstinsurance.com if you would like her to provide updated **Insurance Requirement Templates** for your contract templates. These Templates provide best-in-class insurance requirements for use with downstream parties such as subcontractors or vendors. Two versions of each Template are provided: a working draft with coverage options in yellow for your consideration and a guidance version with internal-only guidance on each piece of the Template wording that provides contractual risk transfer strategies & tips, pushback strategies, what coverage options to require when and why, and commercially reasonable policy limits and limit ranges.
☐	Contact Noelle McCall at nmccall@peoplesfirstinsurance.com if you would like her to create an **Insurance Requirement Checklist** that will show what insurance coverage you have versus what is commonly required in contracts and contract risk management tips and strategies you can use. This tool will save you time and effort on contract reviews and help reduce your contractual risk.

2. PREPARE FOR EACH CONTRACT REVIEW

☐	Process contract reviews in order of due date on **Contract Review Tracker**.
☐	Request a completed **Contract Review Cover Sheet** if one is not received with each review request.
☐	Review info on **Contract Review Cover Sheet**. Request any missing information.
☐	Open **Contract Review Tracker**. Input contract information on tracker for next open tracker #.
☐	**Update beginning of subject line of e-mail** with review request to add tracker # from **Contract Review Tracker**. Example add "Contract Review 1" to start of subject line for the first review. This will help avoid confusion over which review you are corresponding with others on.
☐	**Briefly scan through entire contract and check contract table of contents** to be sure all contract pages and addenda have been received. Request any missing pages and addenda. Request any applicable upstream or prime contracts.
☐	**Note level of review desired** as noted on **Contract Review Cover Sheet**. Example – redlines only, no comments

3. PERFORM CONTRACT REVIEW

☐	Refer to **Insurance Requirement Checklist** tool for guidance on what to do with insurance requirements in **contracts with upstream parties, such as project owners or GC's**.
☐	Use **Insurance Requirement Templates** in **contracts with downstream parties**, such as subcontractors.
☐	**Find and review the following** sections: Insurance, Indemnity, Limitation of Liability (LOL), Waiver of Consequential Damages, Force Majeure, Risk of Loss, Definitions, Choice of Law / Jurisdiction, and Subcontractor flow down requirements (if any). **Pro Tip! -** use CTRL+F to help search for "indemni", "liability", "insurance", "sole", "negligence", "force majeure", etc.
☐	**Redline insurance requirements if needed. Add comments to review e-mail as needed** for: Insurance, Indemnity, Limitation of Liability (LOL), Waiver of Consequential Damages, Force Majeure, Risk of Loss, Definitions, Choice of Law / Jurisdiction, Subcontractor flow down requirements from prime contract (if any)
☐	**Note or highlight any wording you may not be familiar with** or that may require additional research.

☐	**Ask subject matter experts for help with questions or research answers.** Consider engaging Noelle McCall (nmccall@peoplesfirstinsurance.com) to provide contract review consulting services and check out **Contract Risk Academy** offerings which include **Group Coaching Sessions**. Your legal and risk management teams, Black's Law Dictionary, Reference Connect / Vertafore, IRMI, and general online searches can also help.
☐	**Request the following as needed:** insurance endorsements, quotes, binders & policies (for new policies), Certificates of Insurance (COI's), and bonds.
☐	Be sure to obtain **pricing info** from insurance agents/brokers and surety companies to include with your review so your business procurement team can factor costs into bids.
☐	Finish and **send your review of insurance and risk-related provisions to legal or business procurement teams.**
☐	**File** all review correspondence. Suggest file by **Calendar Year / Contract Review / Contract Review #.**

4. FOR INSURANCE MARKETING/RENEWAL

☐	Ask your insurance agent/broker to include information on your corporate contract risk management processes with renewal submissions to **showcase your client's contractual risk transfer strategies and efforts to reduce contractual risk** in a positive way, as this will highlight your companies' contractual risk mitigation strategies that lead to reduced risk for insurance carriers. This information will help your agent/broker to attract more quotes from competitive insurance markets offering better coverage terms and lower premiums for your best-in-class business.
☐	As soon as your insurance policies are received for policy renewals, Contact Noelle McCall at nmccall@peoplesfirstinsurance.com if you would like her to create or update your **Insurance Requirement Checklist for use in contracts with upstream parties such as project owners and GC's.**

Contract Review Cover Sheet

<u>Contract Review Cover Sheet</u>

Please send this form with each review request with Word version of <u>complete</u> contract, with all contract forms, exhibits, & addendums. Thank you.

Requestor's Name:	Click or tap here to enter text.	Date:	Click or tap to enter a date.
Phone Number:	Click or tap here to enter text.	E-mail Address:	Click or tap here to enter text.

Client reference in contract. Ex. client = Company	Click or tap here to enter text.
Other party reference. Ex. other party = Contractor	Click or tap here to enter text.
Is this a Joint Venture?	Y ☐ N ☐ If yes, who else is a party to the agreement? Click or tap here to enter text.
Estimated Bid Due Date:	Click or tap to enter a date.
Contract Review Due Date:	Click or tap to enter a date.
Level of Requested Redlines:	☐ No markup. Customer won't accept any changes.
	☐ Limited Redlines. Customer may allow some changes.
	☐ Full Redlines. Customer is open to changes.

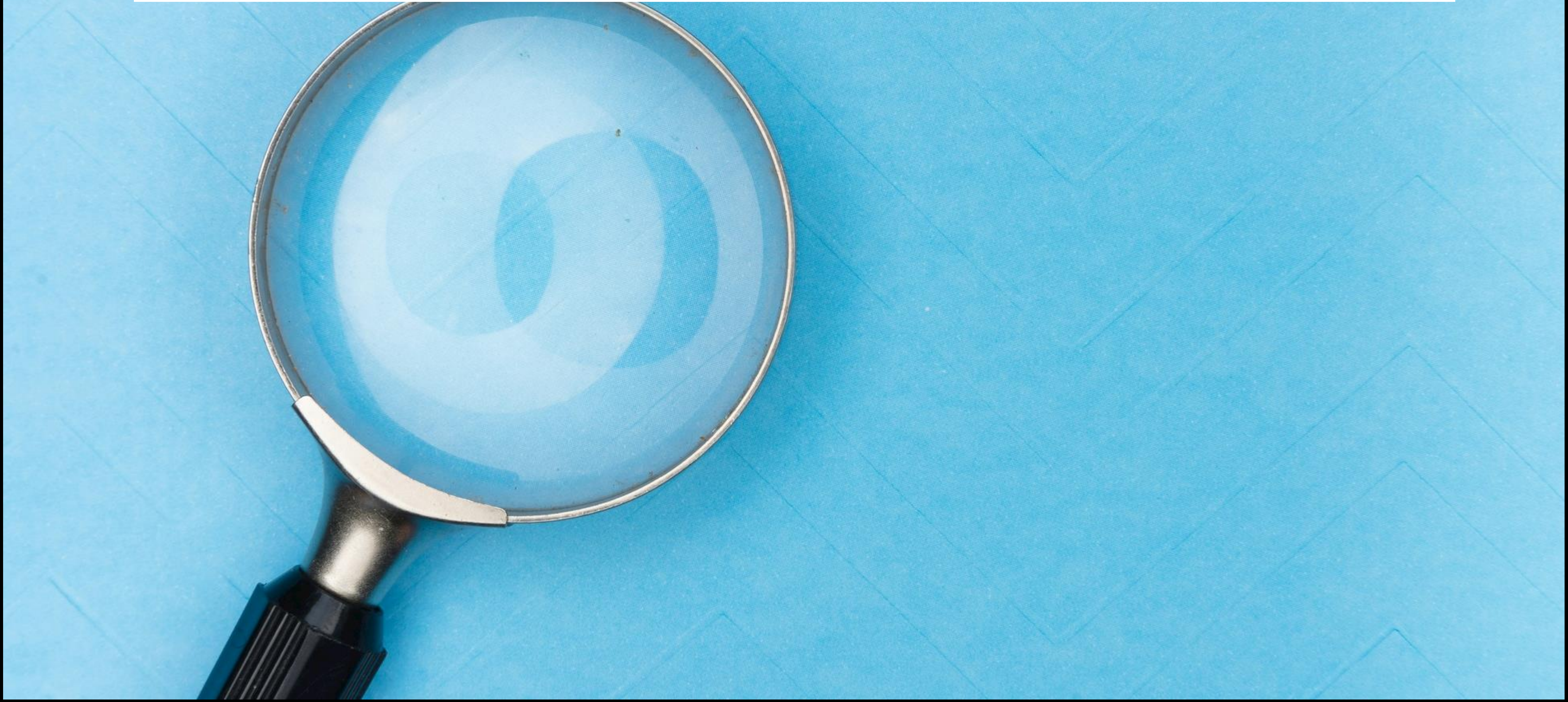
	☐ Full Readiness: Customer is open to changes.
Estimated Project Value:	Est. Contract Value (a) $Click or tap here to enter text.
	Est. Owner Supplied Materials (if any) (b) $Click or tap here to enter text.
	Total Estimated Project Value (a) + (b) $Click or tap here to enter text.
Project Location / Address:	Click or tap here to enter text.
Estimated Project Term:	Click or tap here to enter text.
Estimated Project Start Date:	Click or tap here to enter text.
Estimated Project End Date:	Click or tap here to enter text.
Contract Type? Ex. Construction	Click or tap here to enter text.
Brief Description Scope of Work:	Click or tap here to enter text.
Prior Claims or Risk Concerns?	Click or tap here to enter text.

Does scope of work include potential use of or exposure to the following? Check box if yes.

Use of aircraft	☐	Heavy equipment	☐
Use of, selling, or serving alcohol	☐	3rd party logistics (transporting or storing property of others)	☐
Armed guards or use of armored vehicles	☐	Providing computer hardware or software	☐
Security guard services	☐	Work on, over, in, or next to water	☐
Work with natural gas	☐	Professional services	☐
Design engineering or architectural services	☐	Plumbing services	☐
Work involving utilities / provision of service	☐	Any pollution or environmental exposure	☐
Blasting, caustics, flammables, or explosives	☐	Access to PII, PHI, clients' or customers' confidential data, intranet, or computer systems	☐
Work with or around children	☐	Transporting 3rd Parties (other people)	☐
Collapse of structure	☐	Use of vehicles in scope of work	☐
Cranes or rigging services	☐	Work involving watercraft	

Crowd exposures	☐	High wildfire risk	
Cyber-related exposures	☐	Work at heights	☐
Use of drones	☐	Work involving vehicles	☐
Earthquakes	☐	Work within 50 feet of railroads	☐
Hurricanes / named windstorms	☐	Work near water, docks, or wharves	☐
Legal services	☐	Underground work or excavation	☐
Maintenance or inspection services	☐	Handling of funds or assets	☐
Construction management	☐	Work near roads	☐
Electrical work	☐	Work near airports	☐
Surveys, soil engineering, topographical surveys	☐	Zoning or planning services	☐
Work involving boilers, pressure vessels, or turbines	☐	Media services	☐
Pharmaceutical products	☐	Aircraft products	☐
Food products	☐	Children’s products	☐
Medical products or devices	☐	Automotive products	☐

Contract Review Tracker



Client Name:

Calendar Year:

Last updated				Review Dates & Hours							
Tracker #	Review Request Received Date	Review Due Date	Bid Due Date	1st Review Completed	1st Review Hours	2nd Review Completed	2nd Review Hours	3rd Review Completed	3rd Review Hours	Reviewer's Name	Client Company Name on Contract
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											
15											

Type of Contract	Estimated Contract Value	Estimated Contract Start Date	Estimated Contract End Date	Scope of Work (Brief Description)	Project State(s)	Comments

Indemnity vs. Additional Insured

Indemnity – Sample Nexus Wording

Indemnity vs. Additional Insured Scope Comparison

Scope	Indemnity	Additional Insured Coverage
Comparative Indemnity	**Each party is responsible for** acts caused by **their own fault or negligence.** **Neither party provides** indemnity to the other party **for the <u>other party's</u> fault or negligence.**	N/A
Limited	**One party indemnifies the other party but only to the extent caused by or resulting from the 1st party's fault or negligence.** <u>**Does not provide any** indemnity</u> for **other party's fault or negligence.**	Provides coverage for the **named insured's fault or negligence**. **Does not provide** any coverage **for the <u>additional insured's</u> fault or negligence.**

Indemnity & Additional Insured Sample Wording

Sample Wording	Indemnity	Additional Insured Coverage
Comparative (Mutual) Indemnity	Contractor and Owner hereby agree to indemnify, defend, and hold each other harmless, from and against claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees, **solely to the extent of each party's comparative fault or negligence**, with respect to this Agreement.	N/A
Limited	Contractor shall indemnify, defend, and hold harmless Owner ("Indemnitee") from and against claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees (hereinafter "Losses"), **to the extent such Losses were directly caused by or resulted from** Contractor's operations under this Agreement.	Owner shall be included as an additional insured **as per ISO forms CG 20 38 12 19 and CG 20 40 12 19 on a vicarious liability basis**, with regards to Contractor's Commercial General Liability insurance, with respect to liability for bodily injury and property damage. Such coverage shall apply **only to the extent caused by or resulting from** Contractor's ongoing and completed operations under this Agreement.

Indemnity vs. Additional Insured Scope Comparison

Scope	Indemnity	Additional Insured Coverage
Partial / Intermediate	One party indemnifies the other party for the **1st party's fault or negligence and the other party's partial fault or negligence.** **Does not provide** indemnity for other party's **sole negligence.**	Provides coverage for the **named insured's fault or negligence.** **Can provide** coverage **for additional insured's fault or negligence, provided the named insured** is at least **partly at fault.** **Does not cover sole negligence** of additional insured.

Indemnity & Additional Insured Sample Wording

Sample Wording	Indemnity	Additional Insured Coverage
Partial / Intermediate	To the extent allowed by law, Contractor shall indemnify, hold harmless, and defend Owner ("Indemnitee") from and against **any and all** claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees (hereinafter "Losses"), **arising out of** or resulting from performance of Work under this Agreement, **except such obligations shall not apply with respect to Indemnitee's sole negligence or willful misconduct.**	Owner shall be included as an additional insured **as per ISO forms CG 20 38 12 19 and CG 20 40 12 19** with regards to Contractor's Commercial General Liability insurance, with respect to liability for bodily injury and property damage **caused, in whole or in part, by** Contractor's ongoing and completed operations under this Agreement.

Indemnity vs. Additional Insured Scope Comparison

Scope	Indemnity	Additional Insured Coverage
Full / Broad	One party indemnifies the other party **regardless of who is at fault or negligent.** **May provide** indemnity for **indemnitee's sole negligence.**	Provides coverage for the **named insured's fault or negligence.** **Can provide** coverage for the additional insured's fault or negligence, **even if the named insured is not at fault or negligent**. **Can provide** coverage for **additional insured's sole negligence.**

Indemnity & Additional Insured Sample Wording

Sample Wording	Indemnity	Additional Insured Coverage
Full / Broad	**To the fullest extent allowed by law**, Contractor shall indemnify, hold harmless, and defend Owner ("Indemnitee") against **any and all** claims, damages, losses, and expenses, including but not limited to attorney’s fees (hereinafter "Losses"), **directly, indirectly, or alledgedly arising out of** or resulting from performance of Work under this Agreement, and this obligation shall also apply to **Indemnitee's sole negligence.**	Owner shall be included as an additional insured **as per ISO form CG 20 10 11 85** with regards to Contractor's Commercial General Liability insurance, with respect to liability for bodily injury and property damage **arising out of** or in connection with Contractor's ongoing and completed operations under this Agreement.

Contact Information

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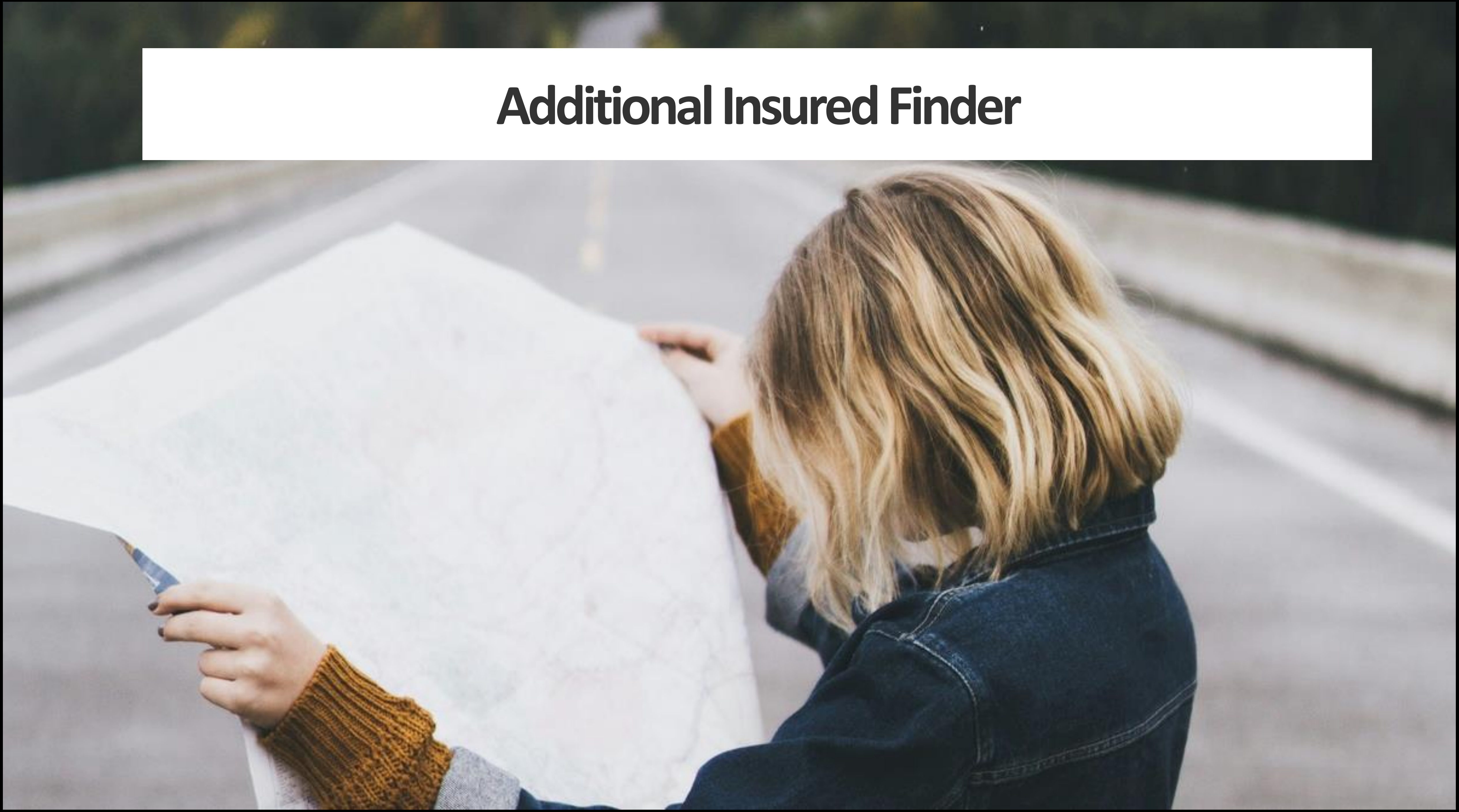
Additional Insured Finder



Questions & Answers