

Prepared by Office of Procurement, Real Property and Risk Management

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A8.400

A8.400 Risk Management

August 2002

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A8.400 Risk Management Guidelines and Procedures

1. General

Under Executive Policy E8.207 which establishes the Risk Management Program for the University of Hawaii system, Vice Presidents and Chancellors are responsible for the determination, evaluation and treatment of liability risks within their respective jurisdictions. This Administrative Procedure provides systemwide and campus administrators with guidelines and procedures for implementing various categories of risk management measures. The Office of Procurement, Real Property and Risk Management (OPRPRM) will advise administrators on specific problems relating to risk management. This Procedure suggests indemnification, assumption of risk, and release clauses and forms for use when applicable, and describes existing policies provided for insuring automobiles and property and for processing tort claims.

2. Liability, Insurance and Indemnity Requirements

a. Indemnity/Insurance Clauses

- 1) All service, performer, consultant, and other agreements with inherent liability exposure where third party entities or individuals will be performing services for the University should include the following clauses:

INDEMNIFICATION

* _____ (hereinafter called "Indemnitor") shall indemnify, defend and hold harmless the University of Hawaii, its officers,

agents, employees or any person acting on its behalf from and against:

(1) any claim or demand for loss, liability or damage, including, but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any act or omission of Indemnitor, its officers, employees, agents, subcontractors or any person acting on its behalf in the performance of this agreement; and (2) all claims, suits, and damages by whomsoever brought, by reason of the non-observance or non-performance by Indemnitor, its officers, employees, agents, subcontractors, or any person acting on its behalf of any of the terms, covenants and conditions herein or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments. Furthermore, Indemnitor shall reimburse the University of Hawaii its officers, employees, agents, or any person acting on their behalf for all attorneys' fees, costs, and expenses incurred in connection with the defense of such claims.

Insurance

* _____ shall during the period of this agreement, at its own cost and expense, maintain liability insurance providing Combined Single Limit Coverage (bodily injury and property damage) in the minimum amount of \$ (insert amount) per occurrence; said policy shall name the University of Hawaii as additional insured and a copy thereof shall be deposited with OPRPRM.

(The name of the company or individual performing services for the University should be inserted in the spaces indicated with asterisks)

- 2) It is recommended that third party entities or individuals be required to maintain liability insurance in the minimum amount of \$1 million. However, activities presenting more inherent risks may require increased insurance coverage. Questions concerning appropriate liability insurance coverage for a particular agreement or activity should be directed to the OPRPRM.

- 3) If contract negotiations for the inclusion of the foregoing indemnity/insurance clauses in a particular agreement are unsuccessful and if the activity or project serves the best interest of the University, the appropriate Vice President, Chancellor, or their designee(s) under whose jurisdiction such activity or project is being conducted, may approve the modification and/or waiver of the clauses.
- 4) During contract negotiations, the University program should not agree to the inclusion of any clause requiring the University to indemnify, hold harmless, and/or defend a third party, even if that party has agreed to an indemnification clause in favor of the University.

b. University Sponsored Activities

- 1) Whenever potentially or inherently hazardous and dangerous conditions exist in any University sponsored activity, appropriate rules of conduct should be adopted, posted, and, if appropriate, issued to each participant. The acquisition of liability insurance for the University should be considered if the nature of the particular activity warrants it.
- 2) Generally, in courses requiring field trips or other off-campus activities, it is the responsibility and obligation of the students to arrange and/or provide transportation at their expense and risk in the same way as it is their responsibility to attend regular classes of instruction.

In those circumstances where the nature of the trip, in the discretion of the faculty member in charge, makes it impractical or burdensome for students to provide their own transportation, the faculty member may select one of the following alternatives:

- a) The faculty member in charge may arrange transportation via the department's University-owned vehicles provided such vehicles are available; or

- b) The faculty member in charge may arrange at University expense, provided funds are available, transportation via chartered commercial carrier, with the approval of the appropriate dean or director.
- 3) Participants in such activities should complete the following forms:
- a) For field trips and other off-campus activities:

ASSUMPTION OF RISK AND RELEASE

(Field Trips and Other Off Campus Activities)

I, the undersigned, in full recognition and appreciation of the dangers and hazards inherent in the field trip/activity at _____, and during transportation to and from this off-campus location, to which I may be exposed during my enrollment and/or participation in the course entitled _____, during the _____ semester 20____, do hereby agree to assume all the risks and responsibilities surrounding my participation in this field trip/activity or any independent research or activities undertaken as an adjunct thereto; and, further, I do for myself, my heirs, executors, and administrators hereby defend, hold harmless, indemnify, and release, and forever discharge the University of Hawaii, its officers, agents and employees from and against any and all claims, demands, and actions, or causes of action, on account of damage to personal property, or personal injury or death which may result from my participation, and which result from causes beyond the control of, and without the fault or negligence of the University of Hawaii, its officers, agents or employees, during the period of my participation as aforesaid.

IN WITNESS WHEREOF, I have caused this
release to be executed this _____ day of ____
_____, 20__.

(Signature)
(Cosignature of parent or
guardian required if student
is under 18 years of age.)

- b) For laboratory, apprenticeship, practicums,
intramural athletics, etc.

ASSUMPTION OF RISK AND RELEASE

(Laboratory, Apprenticeship, Practicums,
Clinical, Intramural Athletics, etc.)

Name of Course/Activity: _____

Semester/Year: _____

I have read and fully understand the written
safety procedures and precautions that are
part of the requirements for my
participation in the above referenced
course/activity, as well as those explained
to me by my instructor(s), and I agree to
strictly observe them; and I do for myself,
my heirs, executors, and administrators
hereby accept full responsibility for and
indemnify, release, and discharge the
University of Hawaii, its officers, agents,
and employees from any and all claims or
actions for property damage and/or personal
injury which may result from my failure to
abide by these safety procedures and
precautions, or from any inherent risks in
the course/activity.

Date: _____

Student/Participant
(Cosignature of Parent or
Guardian required if
student/participant is
under 18 years of age.)

c) For medical consent:

MEDICAL CONSENT FORM

IMPORTANT - READ CAREFULLY (TO BE FILLED OUT BY THE UNIVERSITY HEALTH CENTER OR A PHYSICIAN)

(Participant's full name)

Is/Is not (circle one) physically fit for the following activities:

If Not, please explain in detail: _____

Doctor: _____ Phone: _____

Address: _____

IN CASE OF EMERGENCY:

First person to contact is _____

Phone: _____

Second person to contact is _____

Phone: _____

Third person to contact is _____

Phone: _____

PLEASE CHECK AND FILL OUT ONE OF THE FOLLOWING:

i) We (I), _____,
(Name of Participant
and/or Parents or
Guardian)

consent to and authorize any medical
doctor or dentist and others working
under their supervision to treat

(Participant's Full Name)

for any injury or illness.

c. Use of University Premises and Facilities by Organizations without University Affiliation

Nonaffiliated organizations requesting the use of or the right to sponsor events in University facilities shall be required to execute an agreement containing:

- 1) An indemnification statement similar to that specified in paragraph 2a; and
- 2) An insurance requirement in accordance with the same paragraph. However, the appropriate Vice President, Chancellor, or their designee(s) who has jurisdiction over the subject facilities may waive this insurance requirement, if necessary, when the activity serves the best interest of the University and there is an adequate showing of responsibility by the organization.

d. Intercollegiate Athletic Participants

Each student participant in intercollegiate athletics shall be covered by the appropriate University Intercollegiate Athletic Department for medical and hospital expenses for all intercollegiate athletic-related injuries at policy limits to be approved by the appropriate Vice President or Chancellor.

e. Intramural Athletics

Required physical qualifications (i.e. physical examination) and standards of conduct for participants in intramural athletics shall be posted and/or otherwise provided to each participant. Each participant shall execute an Assumption of Risk and Release and a Medical Consent Form similar to those specified in paragraph 2b.

f. Contracts, Grants and Cooperative Agreements

All extramurally funded contracts, grants, and cooperative agreements entered into by the University shall be carefully examined prior to

acceptance and execution to determine if potential liability risks exist which exceed those normally associated with a particular program, project, or activity, and to determine if such risks can be prevented, reduced, and/or insured.

3. Claims for Loss of or Damage to University Property

- a. The State of Hawaii, through the Department of Accounting and General Services, administers the State Risk Management Revolving Fund under Chapter 41D, Hawaii Revised Statutes, to provide coverage for loss of or damage to State property, including property in its care, custody or control, resulting from theft, fire, and other casualties. The coverage provided by the Fund includes payment for losses incurred as a result of the dishonesty, nonfeasance, or misfeasance of any State officer or employee.
- b. The State Risk Management Revolving Fund which consists of a self-insured retention fund and excess insurance coverage finances claims for loss of or damage to State property as determined by the Risk Management Office of the Department of Accounting and General Services.
- c. Procedure In the Event of Loss or Damage
 - 1) The department shall notify the respective Campus Security Office and the Honolulu Police Department of all criminal acts resulting in the loss of or damage to University property.
 - 2) Whenever University funds are missing or misappropriated, the loss shall be reported to the Director of Financial Management and Controller.
 - 3) A completed Form RMP-001, Loss or Damage Report of State Property (**Attachment 400.1**), shall be submitted to the OPRPRM within ten (10) working days of discovery of the loss or damage.
 - a) Part 1 of the form should be prepared by the employee or the supervisor of the employee who discovered the loss or damage.

- b) Parts 2 and 3 of the form should be prepared by the immediate supervisor having authority or control over the lost or damaged property.
- 4) Further information may be requested to assist in the investigation and settlement of the claim.
- 5) The OPRPRM will review all forms and forward them to the Risk Management Office of the Department of Accounting and General Services for review and evaluation.
- 6) The department will be notified when the claim has been reviewed and if replacement or restoration of the property will be financed by the State Risk Management Revolving Fund.

4. Tort Claims Against the University

a. Pursuant to Chapter 41D, Hawaii Revised Statutes, the Department of Accounting and General Services is authorized to make informal resolution of claims against State agencies for property damage or personal injury up to \$10,000. All tort claims filed against the University of Hawaii are to be processed in accordance with the procedure below.

b. Procedure

- 1) Any incident involving University personnel, vehicles, or equipment, or occurring on real property belonging to the University, which may have resulted in physical harm or property damage should be reported to the OPRPRM within forty-eight (48) hours after a University department becomes aware of the incident. In addition, the department shall submit a completed Form RML-001, Incident/Accident Report (**Attachment 400.2**) to the OPRPRM within five (5) working days after reporting the incident.
 - a) Parts 1 and 2 of the form should be prepared by the University employee who first receives notice of an incident/accident.

- b) Parts 3 and 4 of the form should be prepared by the immediate supervisor having authority or control over the University personnel, vehicles, equipment, or premises involved in the incident/accident.
- 2) Claims against the University for property damage and/or personal injury shall be submitted to the OPRPRM by completion by the claimant of the Claim for Damage or Injury Form **(Attachment 400.3)**.
- 3) Submitted claims shall be forwarded to the Risk Management Office of the Department of Accounting and General Services for disposition.
- 4) The OPRPRM is responsible for directing an investigation on each claim submitted to assist the Department of Accounting and General Services in its review, evaluation, and resolution of each claim.
 - a) University programs involved in an incident resulting in a claim shall complete the Investigation Report Form **(Attachment 400.2)** and submit it to the OPRPRM. Other forms or information may be requested to assist in the investigation of the claim.
 - b) University personnel involved in an incident resulting in a claim or in the subsequent investigation should not discuss the claim with the claimant, his/her attorney, or other outside parties. All outside inquiries should be directed to the Risk Management Office of the Department of Accounting and General Services.
 - c) All written materials prepared during the investigation of a claim should remain confidential.
- 5) Based upon the investigation and evaluation of the claim, the Department of Accounting and General Services will either deny the claim or settle the claim for up to \$10,000. Payment of such settlements will be made from the State Risk Management Revolving Fund. If settlement cannot

be reached, the claim may be referred to the Office of the University General Counsel for further action.

- 6) Inquiries from claimants concerning the status or disposition of their claims should be directed to the Risk Management Office of the Department of Accounting and General Services.

5. State Automobile Fleet Liability Insurance Program

- a. The State of Hawaii, through the Department of Accounting and General Services, operates a liability insurance program which provides coverage for University automobiles and other motor vehicles while on authorized University business.

- 1) Scope of Liability Coverage

- a) The State Program provides no-fault coverage as required by State law for bodily injury and property damage resulting from accidents involving automobiles covered under the Program. Excess liability coverage is also provided at limits determined by the Risk Management Office of the Department of Accounting and General Services.
- b) The Program does not provide uninsured and underinsured motorist coverage.
- c) Coverage for physical damage to University automobiles from collision, fire, theft, or comprehensive loss is not provided unless the automobile has been specifically designated for such coverage and approved by the Risk Management Office of the Department of Accounting and General Services.
- d) Medical and income benefits will be provided under the State Workers' Compensation Law for injuries sustained by State employees in automobiles covered under the Program from accidents arising out of and in the course of their employment.

2) Automobiles Covered

- a) University automobiles and mobile equipment.
- b) Employee-owned automobiles while on authorized University business. Coverage is limited to excess liability over the employee's personal automobile insurance policy. Physical damage to employee-owned automobiles is not covered under the Program.
- c) Leased, hired, rented, and other non-owned automobiles when authorized by the University and operated under the name of the University.

3) Authorized Drivers

University employees, officers, Board members, volunteers, student employees or any other authorized individual (except independent contractors) licensed to operate an automobile are covered under this Program.

4) Reporting of Accidents

In the event of an accident involving an automobile covered under this Program, the following actions should be taken:

- a) The police should be notified at the time of the accident.
- b) Any injuries or major property damage should be reported by the driver to his/her supervisor as soon as possible. The supervisor should then notify the OPRPRM which in turn will notify the Risk Management Office of the Department of Accounting and General Services and/or its contracted claims administrator.
- c) The driver should use the Report of Accident Card (**Attachment 400.4**) found in University owned automobiles to describe the details of the accident at the scene. The completed

card should be given to his/her supervisor immediately after the accident.

- d) University employees should discuss the accident only with their supervisors, other State representatives, and the police. No admission of fault or responsibility should be made.
- e) The University department responsible for the automobile shall complete form RMA-001, Automobile Loss Notice, **(Attachment 400.5)** following an accident. The report form should be submitted to Transportation Services for a review for accuracy and then forwarded to the OPRPRM within five (5) working days of the accident.
- f) The OPRPRM will review each report form and forward them to the Risk Management Office of the Department of Accounting and General Services.

6. Processing of Accident and Damage Claims on Rented Automobiles

a. General

This Procedure outlines the processing of rented automobile damage claims by University personnel and supplements Administrative Procedure A8.851 for acquisition of rented automobiles for authorized University business.

b. Background

- 1) When renting vehicles, the renter is generally given the option to pay extra charges for comprehensive liability and medical insurance as well as collision damage protection. University policy precludes employees and other authorized individuals from purchasing personal accident insurance when renting vehicles for University business.
- 2) Purchase of collision damage waiver coverage is permitted only in the following situations:

- a) Vehicle is being rented outside the State of Hawaii;
 - b) Purchase of such coverage is a condition for renting the vehicle where financial terms are advantageous;
 - c) Payment for such coverage is fully reimbursable to the University; or
 - d) Rental of the vehicle is covered by funds other than University funds.
- 3) For the rental of vehicles within the State of Hawaii, the rental agency should be advised that the State of Hawaii/University of Hawaii, instead of the driver, will be liable for collision damages. A copy of the State Insurance Policy Letter (**Attachment 400.6**) should be provided, and acceptance of this condition must be acknowledged by the rental agency prior to execution of the rental agreement. All rental agreements should name the State of Hawaii/University of Hawaii as the renter. Rental agencies which refuse to accept this condition should not be patronized.

c. Procedure

- 1) Each rental agency has its own procedure for reporting of accidents. Regardless of fault, the employee or other authorized individual will be given an estimated loss statement. The agency should be instructed to bill the actual cost of the damage to the following address of the State's Claims Administrator (a collect telephone call is authorized to be made if confirmation is required):

Department of Accounting & General
Services
Risk Management Office
P O Box 119
Honolulu, HI 96810-0119
Telephone No: (808) 586-0547

- 2) The individual responsible for renting the vehicle will complete the standard accident report form (**Attachment 400.5**) and forward it to the OPRPRM within five (5) working days of the accident.
- 3) The report form will then be forwarded to the State's Claims Administrator which will conduct its own investigation of the accident to determine fault or liability. Therefore, all information concerning the accident should be recorded as accurately as possible.

7. Purchase of Insurance

Although Vice Presidents and Chancellors are responsible for determining the nature and extent of insurance coverage necessary for their respective programs, the OPRPRM is responsible for processing the purchase of all insurance policies for compliance with University purchasing requirements. Therefore, all purchase orders and/or payment documents along with the original policy and/or rental certificate are to be routed through the OPRPRM.

8. Indemnification and Insurance for Acquisition of Transportation Services

- a. From time to time, departments or programs may need to rent watercraft, aircraft, helicopter or bus services. When preparing the request for quotation for these services, the following indemnification and insurance clauses shall be included with the terms and conditions of the request:

INDEMNIFICATION

Vendor shall indemnify, defend and hold harmless the University of Hawaii, its officers, agents, employees or any person acting on its behalf from and against:

- (1) any claim or demand for loss, liability or damage, including, but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any act or omission of Vendor, its officers, employees, agents, subcontractors or any person acting on its behalf in

the performance of this agreement; and (2) all claims, suits, and damages by whomsoever brought, by reason of the non-observance or non-performance by Vendor, its officers, employees, agents, subcontractors, or any person acting on its behalf of any of the terms, covenants and conditions herein or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments. Furthermore, Vendor shall reimburse the University of Hawaii, its officers, employees, agents, or any person acting on their behalf for all attorneys' fees, costs, and expenses incurred in connection with the defense of such claims.

Insurance

Vendor shall during the period of this agreement, at its own cost and expense, maintain liability insurance providing Combined Single Limit Coverage (bodily injury and property damage) in the amount of \$ (insert amount) per occurrence; said policy shall name the University of Hawaii as additional insured and a copy thereof shall be deposited with OPRPRM.

Insurance shall be in force the first day of the term of this contract.

Each insurance policy required by this contract shall contain the following three clauses:

- 1) "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days' written notice has been given to the University of Hawaii, Director of Office of Procurement, Real Property and Risk Management."
- 2) "It is agreed that any insurance maintained by the University of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."
- 3) "The University of Hawaii is added as an insured with respect to operations performed for the University of Hawaii."

- b. It is recommended that liability insurance in the minimum amount of \$5 million be required for the acquisition of transportation services. Questions concerning appropriate liability insurance coverage for a particular service should be directed to the OPRPRM.