ICRMA

January 2025
Safety Bulletin

Contractual Risk Transfer – AI in Agency Agreements

As Artificial Intelligence (AI) becomes more pronounced in our world it is critical that agencies become more aware of the potential impact by its use and through agency agreements with outside vendors. Agency personnel who are responsible for writing and/or reviewing contracts must remember the importance of evaluating the risks and not lose sight of a critical review of the contract to ensure there are no gaps in protecting the agency. This becomes critical when it comes to indemnity and exclusions a carrier may place in an insuring agreement and/or endorsements designed to protect the carrier.

Agencies need to carefully evaluate the use of AI by their vendors to ensure there is no unnecessary risk to the agency. Recently, a review of a Professional Services Agreement provided this type of limitation. Within the agreement there was a provision against the use of AI by the vendor unless disclosed and approved by the agency.

Prohibited Use Of Artificial Intelligence.
- Restriction on Artificial Intelligence Usage. CONSULTANT must not utilize, employ, or incorporate any form of artificial intelligence, machine learning, or other similar technologies (collectively, "AI") in the provision of professional services in this Agreement without CITY's express written consent.
- Exclusions. The AI prohibition set forth directly above will not apply to general business tools and software that may have AI components but are not directly involved in the execution or delivery of professional services that this Agreement covers, provided that such tools and software do not significantly impact the quality or nature of such services.
- Notification. CONSULTANT must promptly notify CITY, in writing, of any proposal to employ AI in connection with provision of services to the CITY under this Agreement. CITY will have the sole discretion to grant or deny such proposal.

The use of AI without adequate supervision poses fresh challenges and risk. This may require that agencies require AI Professional Indemnity (PI) insurance aside from the typical Professional Liability Insurance and Indemnity. Insureds are also increasingly raising questions about insurance coverage and probable future restrictions, and underwriters are concerned about potential new exposures.

Discussing how AI is employed, including the insured's policy, protocols, and controls, is imperative. This not only raises awareness of potential exposure but also highlights risk mitigation through discipline and effective technology utilization.

The [Association of Governmental Risk Pools (AGRiP)](#) is exploring the use of AI in risk sharing pools and its website contains presentations on how AI will affect your daily work, the insurance industry, and public entities. The City of [San Jose has a multitude of resources available on its website](#), including information about the GovAI Coalition which was established to give local government a voice in shaping the future of AI and to ensure that AI development is geared toward the benefit of society. Agencies should also consult their attorney for guidance as we navigate this new exposure.

Please consult the ICRMA 2024-25 Risk Control Plan for added trainings and webinars. If you have questions about either of these programs contact Bob May, Director of Loss Control. Phone – 760.221.8205 or biem47@outlook.com