The following examples of "Risk Responsibility" or "Indemnification Clause" are suggested to be used in the Contract depending on the type of the contract:

Example 1 - Strict or Type I Indemnity Language

Contractor shall indemnify, defend, and hold harmless the State of California, the Trustees of the California State University, California State Polytechnic University Pomona (University), Cal Poly Pomona Philanthropic Foundation (Foundation), their officers, representatives and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the University and the Foundation.

In the first example, the contractor promises the University and the Foundation to assume all risk of loss resulting from the project, including losses caused by the joint negligence of the University and the Foundation and the contractor or its subcontractors. Caution: While this type of agreement provides the broadest protection for the University and the Foundation, it would be subject to challenge under Civil Code Section 2782(b) because it purports to indemnify the University and the Foundation for losses for its active negligence. If you have a construction contract (defined in Civil Code Section 2783), Example (below) should be used instead.

Example 2 - Intermediate Form (It should be used for Construction Contract)

Contractor shall indemnify and hold harmless the State of California, the Trustees of the California State University, California State Polytechnic University Pomona (University), Cal Poly Pomona Philanthropic Foundation (Foundation), their officers, representatives and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the
performance of the work described herein, 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, except where caused by the active negligence, sole negligence, or willful misconduct of California State Polytechnic University Pomona, Cal Poly Pomona Philanthropic Foundation and their officers, representatives, and volunteers.

**Example 3 - Limited Form**

Contractor agrees to protect, indemnify and save harmless the State of California, the Trustees of the California State University, California State Polytechnic University Pomona, Cal Poly Pomona Philanthropic Foundation, their officers, representatives and volunteers from and against all claims, demands and causes of action arising out of or in connection with the work to be performed by contractor and resulting from the negligent act or omissions of contractor and contractor's agents, consultants, suppliers or subcontractors.

This example is the most limited type of indemnity agreement because it only provides indemnity to the extent of the contractor's negligence, or negligence of subcontractors. Under this type of agreement, any negligence on the part of the University and the Foundation, either active or passive will bar indemnification under the contract, even if the contractor was also negligent. This type of clause is **not recommended** because it does not provide protection to the Campus.