

Frequently Asked Questions

Contracts

Healthcare organizations often solicit clinical as well as non-clinical related services or products from external parties, such as other businesses, organizations, individuals, suppliers, etc. Such arrangements can pose various risks associated with insurance and liability. Prior to procuring any services or products from the external parties, the healthcare organizations should initiate a formal agreement or contract with them. This document provides answers to frequently asked questions related to formal agreements and contracts.

Q What is a contract?

A A contract is a legally enforceable verbal or written agreement. A contract creates a legal relationship whereby two or more competent contracting parties assume certain rights and duties. Breaking a contract can result in damages consisting of the payment of money, specific performance, or an injunction. Specific performance is the remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. The rationale behind specific performance is that when monetary damages would be inadequate compensation for a contractual breach, then the breaching party will be compelled to perform specifically what was agreed upon. This remedy most often is used in land transactions since land is a unique commodity. There are various exceptions to enforcing specific performance as a remedy and most often courts, for public policy reasons, will not force a party to perform. An injunction is an order issued by a court to prohibit a party from doing certain acts, e.g. publication bans and restraining orders in domestic abuse situations.

Q Does HIROC cover contracts?

A The HIROC Policy excludes contracts, however, it does cover liabilities arising from certain types of Subscriber contracts. These include lease agreements, elevator maintenance agreements or any other agreement specifically endorsed to the policy.

Please note, for contractual assumption of liability, HIROC will only cover liability assumed under the types of contracts specified in your Policy wording. Unless advance agreement is secured by Insurance Operations, we do not cover our Subscribers for any other contractual assumptions of liability. If you have any questions concerning contractual liabilities, you should consult with our Insurance Operations Group.

Q Does the Cause of Action need to be filed in Canada?

A Yes. HIROC's coverage is triggered when a cause of action is filed in Canada. The rationale behind this is to prevent lawsuits from being filed in other countries, where the laws of those countries would apply and where the awards may be much larger.

Q What are the clauses that should be in a contract?

A Each contract is unique, however, the most common clauses are listed below. HIROC recommends that every Subscriber's contract contain the clauses bolded below.

- Introduction
- Scope of work
- **Term of Contract**
- Dispute resolution
- **Indemnification**
- **Hold harmless**
- Right to audit
- Force Majeure
- Ownership/Intellectual property rights
- Payment terms
- **Termination**
- **Governing law**
- **Severability**
- **Confidentiality**

Q Do I need a hold harmless and indemnification clause?

A Yes. Hold harmless language is important because it states that the parties agree not to hold the other party responsible for any loss, damage, or legal liability. Indemnification language is important because it means that the parties will reimburse the other party for any loss or damage suffered as a result of the contract.

There should be language in the contract stating that each party will provide proof of insurance to ensure there are sufficient financial resources to support the promises made in the indemnification. Sample language is included below:

***(Healthcare Organization)** agrees to indemnify and save **(the other party)** harmless from all loss, cost, expense, judgment or damage on account of injury to persons including death or damage to property, in any way caused by the negligence of the Healthcare Organization, its servants, agents or employees related to or arising out of programs or other matters to which this agreement pertains, together with all legal expenses and costs incurred by **(the other party)** in defending any legal action pertaining to the above.*

***(Name of the other party)** agrees to indemnify and save the Healthcare Organization harmless from all loss, cost, expense, judgment or damage on account of injury to persons including death or damage to property, in any way caused by the negligence of **(the other party)**, its servants, agents, or employees related to or arising out of programs or other matters to which this agreement pertains, together with all legal expenses and costs incurred by the Healthcare Organization in defending any legal action pertaining to the above.*

Q Do I need a governing law clause?

- A Yes. Since HIROC's coverage only triggers when a cause of action is filed in Canada, it's important to have a Canadian jurisdictional clause in your contract. Sample language is included below:

*This Agreement shall be interpreted and the rights and obligations of the parties determined under the laws of the Province of **(name of the Province)**. The **(name of the Province)** courts shall have exclusive jurisdiction for any dispute arising under, or pertaining to, this Agreement.*

Q Do I need a severability clause?

- A Yes. A severability clause is important so that if any provision of the contract is deemed null and void, it won't affect other provisions of the contract. Sample language is included below:

If any clause or provision of this Agreement is invalid or unenforceable, the validity or enforceability of the remaining clauses or provisions will not be affected or deemed null and void.

Q Will HIROC review contracts for a Subscriber?

- A Yes. HIROC will review contracts for Subscribers from both a risk management and insurance perspective. Additionally, when we review contracts, we will confirm coverage.

Please send your requests to inquiries@hiroc.com.

Glossary

Term of Contract:

A clause which specifies the contract's duration. For example, will the contract expire upon delivery or completion of the goods or services, or one year from the date of signing? Automatic renewal provisions for extended periods should be avoided.

Dispute Resolution:

A clause which details the obligations of parties if a dispute arises during the contract term. Time frames and methods of escalation should be addressed, in addition to possible alternative dispute resolution methods such as negotiation, mediation or arbitration.

Force Majeure:

A clause which discharges liability for natural and unavoidable catastrophic events (e.g. earthquakes, floods, and other acts of God) which cause parties from fulfilling their contractual obligations.

Termination:

A clause which stipulates that when a contract is ended, the parties are relieved from further unperformed obligations in accordance with the agreed terms and conditions. Concurrent to entering into any contract, a party must think of how to exit out of one. Some preferable termination provisions consist of terminating with no penalty by providing written notice with a specific time period.