

Contract Review: A Guide for HIROC Subscribers

Contracts are the foundation of all business relationships and should be judged by how effectively they communicate information in a clear and precise manner. Well-written contracts reduce ambiguities and inconsistencies that may lead to business interruption, unnecessary conflict, and lengthy litigation.

This resource consolidates HIROC's Risk Notes on contracts and is intended to assist Subscribers in reviewing contracts and insurance requirements. The Risk Notes provide an overview of topics such as important contract clauses, insurance provisions, and include useful tips. A list of HIROC's contracts resources can be accessed [here](#).

The guidance provided in this resource is not intended to be legal advice, and we encourage you to consult with legal experts before finalizing agreements.

Contract Review Checklist

Background / Preamble / Recitals:

Ensure there is a clear, concise, thorough summary of the how the agreement arose and its intent, which establishes context for the contract

Party Names:

Clearly identify all parties to the contract by their legal names

Term:

Specify the duration (i.e., effective date and expiry date) of the contract

Note: Terms and conditions under which the parties may extend, renew, or terminate the contract may be included under this section or in a separate part of the contract

Specifications (Obligations/Deliverables):

Ensure there is a clear, concise, and thorough summary of each party's responsibilities, including the products and/or services to be provided, or other subject of the contract

Governing Law:

Include a governing law provision that specifies a Canadian province or territory as HIROC's coverage is triggered when a cause of action is filed in Canada

Indemnification, Defense and Hold Harmless:

Include an indemnification clause that obligates the other party to defend, indemnify, and hold/save harmless the Subscriber organization and its employees, agents,volunteers, etc. against liability for bodily injury (including personal injury) or property damage arising out of the party's performance of the contract

Indemnification – a contract provision where one (the indemnifier) agrees to cover (or assume) the loss, damage or liability suffered by another party (the indemnitee)

Hold Harmless – the hold harmless provision of the indemnification clause absolves the second party of any blame for any loss caused by the first party’s negligence, after the loss has been determined by litigation, arbitration or settlement

Defend – the indemnifier agrees to pay the other party’s legal expenses as it defends a claim made against it by a third party

Note: Ideally, the contract’s indemnity provisions are in favour of the Subscriber organization. However, this may not be possible in all circumstances, e.g., with Ministries/Departments of Health, or other provincial/territorial authorities.

SAMPLE ONLY: Please note that wording for your own contract may vary according to the requirements involved and after final discussion with the other party. Please refer to your legal counsel before proceeding.

The **(name of the other party)** agrees to defend, indemnify and save the **(name of 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 hospital in defending any legal action pertaining to the above.

Insurance Requirements:

Clearly state the types of insurance coverage each party is required to have, the per occurrence limit of liability, aggregate limit of liability (if applicable), parties to be added as additional insureds (if any), evidence of insurance requirements, and days of notice. Be as specific as possible. Consider reviewing these provisions with HIROC.

Note: Insurance requirements and limits will vary for different types of contracts (refer to the table of common types of insurance and limits). Requirements should reflect the risk and nature of the goods and scope of work or services provided, and consider the types of losses or harm that could arise from activities contemplated in the contract.

SAMPLE ONLY: Please note that wording for your own contract may vary according to the requirements involved and after final discussion with the other party. Please refer to your legal counsel before proceeding.

During the term of this agreement **(other party)** shall maintain in full force and effect general liability insurance (and professional liability insurance, if required) for a minimum of **\$XXXX** any one occurrence. Such insurance shall name **(Subscriber)** as additional insured but only with respect to this agreement.

The general liability insurance shall include at least the following:

- Products and completed operations;
- Personal injury;
- Cross liability;
- Contractual liability;
- Thirty (30) days’ prior written notice of material change to, cancellation, or non-renewal of the policy.

(The other party) shall provide **(Subscriber)** with evidence of insurance upon request.

Common Types of Insurance and Limits

Commercial General Liability

- Designed for bodily injury and property damage arising from the insured's operation, general liability coverage is often sufficient for contracts involving the provision of services (e.g., maintenance of premises or equipment), or liability for non-clinical operations but is insufficient against liability arising out of professional work

- Include this coverage in contracts pertaining to commercial or business arrangements with contractors

- Core General Liability coverages include:

- Bodily Injury and Property Damage
- Personal Injury
- Products & Completed Operations
- Employer's Liability or Contingent Employer's Liability
- Tenant's Legal Liability
- Non-Owned Automobile Liability
- Contractual Liability
- Cross Liability

- The third party with whom you are contracting should add your organization as an additional insured under their policy

Tenants Legal Liability

- Designed to protect against liability for damages to premises leased or rented by the insured

- This coverage is contained within General Liability policies

- Include this coverage in lease agreements

Property Insurance

- Designed to cover damage caused by insured perils to property owned by the insured or for which the insured is legally liable
- Include this coverage in contracts if Subscriber property is in the care, custody or control of a contractor

Professional Liability/Errors and Omissions/Medical Malpractice

- Designed to protect professionals against liability arising from errors and omissions in the performance of their duties
- Include this coverage in contracts that use the services of professionals, such as healthcare professionals, lawyers, accountants, IT consultants, architects, and engineers

Privacy/Cyber Liability

- Designed to protect the insured against liability arising out of data and network security breaches
- Include this coverage in contracts involving data sharing, or with managed service providers where the other party is granted access to sensitive information or your technology systems
- Ensure the coverage includes notification costs for privacy breaches and event support expenses

Limits of Insurance

We generally recommend that Subscribers require, at minimum:

- \$5,000,000 per occurrence limit for Commercial General Liability coverage
- \$5,000,000 per claim limit for Professional Liability/Errors and Omissions/Medical Malpractice if any clinical care is being provided.
 - Depending on the services provided, it may be advisable to require a higher coverage limit (e.g., \$10,000,000 to \$15,000,000 if collaborating with a private clinic; and \$15,000,000 to \$20,000,000 if the contract pertains to obstetrical services)
- \$5,000,000 per claim limit for Cyber & Privacy Liability
- \$2,000,000 Third Party Liability limit on a Commercial Automobile Policy
- Property Insurance including coverage for equipment, tools, and stock on a replacement cost basis

Limits of Insurance (continued)

- Ideally, the insurance coverages will not have an annual aggregate limit or general aggregate limit (i.e., the insurance policy does not have a dollar cap on the amount that will be paid over the course of the policy term). However, please note that it is quite common for standard market insurers to stipulate a general aggregate limit or annual aggregate limit on insurance policies.
- If it is anticipated that a potential loss could likely exceed \$5,000,000, then it is prudent to consider requiring a higher coverage limit. For instance, consider the possibility that a vendor, in the course of their work, causes injury to a person receiving care from you or if they complete the work but it was done incorrectly and those errors lead or contribute to your property experiencing a loss, what might the cost of such a loss be to your organization?
- Ultimately, the level of coverage that you require third parties to carry is at the discretion of your organization and the level of risk that you are willing to assume. The higher the limit levels that are required to be carried, the lower the potential risk for your organization. It is important to note, however, that the coverage you require third parties to carry has no bearing upon the coverage afforded to you under the HIROC Composite Liability Policy.

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Resources

● Contracts - Overview of Key Principles

- Elements of a valid contract
- Organization-wide contract management system to monitor contracts across their lifecycle

● Contracts - Important Clauses

- Overview of important clauses that should be included in all contracts

● Contracts - Insurance Clauses

- Definitions of common insurance terminology
- Insurance requirements vary depending on the type of contract, scope of services or kind of products involved, but should always be detailed and specific
- You may submit contracts to HIROC for review from an insurance perspective (contracts@hiroc.com)

● Contracts - Indemnification Clause with Hold Harmless and Defense Provisions

- Sample of a mutual indemnification clause (can be modified to suit your needs)
- Key elements of an indemnification: defend, indemnify, save harmless/hold harmless

● Contracts - Commercial Lease Agreements

- Lease agreements should specify what the landlord and tenant are respectively responsible for

● Contracts - Education Affiliation Agreements

- Clear wording is required with respect to each party's daily oversight, supervision, and training of students from the educational institution
- Educational facilities should be required to ensure students have the necessary immunization, training and experience, and satisfactory police checks before placement commences

● Contracts - Data Sharing Agreements

- Delineation of who is accountable for maintaining security and privacy of the shared data/info

● Contracts - Data Sharing Agreements PHI to Third Parties

- Mitigations to reduce the risk of a privacy breach when sharing personal health information with external parties
- Corporate legal counsel and your privacy officer should review all agreements

● Certificates of Insurance

- To obtain a Certificate of Insurance issued to a third party that evidences your insurance coverage, please log in to MEMBERS PORTAL and select REQUEST CERTIFICATE OF INSURANCE from the drop down menu
- Once you have the form open, you must save the document to your computer
- Upon completion of the form, please email it to certificates@hiroc.com as an attachment along with a copy of the contract