

Safe Harbors

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A Loss Control And Risk Management Communication

Contracting with Care



“Who will pay for damages or harm caused by the contractual relationship between the parties or as a result of any activities the parties perform?”

It goes without saying that contracts are a cornerstone in the smooth functioning of our society. They also can be the subject of great disputes too. With that in mind, we encourage you to reflect on the importance of contracting with care in your organization.

As a general matter, contracts are formed when there is an “offer” (typically, a promise to do something) by one party, and an “acceptance” (typically, a promise to accept the offer) by another party in exchange for mutual “consideration” (i.e., exchanging something of value, often money or services). Contracts can often be formed orally or in writing.

Your organization likely has a whole range of operational, financial and legal functions that involve the negotiation and creation of contracts. As your organization considers existing and new contractual relationships, we suggest asking some questions, such as:

- What do we expect to happen or obtain as a result of the contractual relationship?
- What assumptions or “rules” will govern the contractual relationship?
- What options might we want to end or terminate the contractual relationship?
- What might happen to resources developed jointly during the contractual relationship?
- Who will pay for things needed to make the contractual relationship work and when?

In addition, your organization might also ask, “Who will pay for damages or harm caused by the contractual relationship between the parties or as a result of any activities the parties perform?” If a party asks your organization to contractually protect it from such damages or harm, your organization might ask, “Is this fair and, if so, are we receiving adequate consideration to do so?” Despite the difficulty of asking (or answering) some of these questions, doing so can help your organization have more effective contractual relationships.

Another good rule of thumb to remember about contracting is that the best time to address expectations between contracting parties is before any actual contractual relationship has begun. Unfortunately, as we all know, it can often be very difficult to sort out problems and concerns after the fact. Therefore, it’s important to make sure your organization considers each contractual relationship very carefully.

While many oral contracts simply cannot be avoided, we encourage organizations to try to put contracts into written form. For example, although the process of drafting, reviewing and executing written contracts can be formal and tedious, written contracts can often help your organization better understand its obligations and commitments, as well as its rights, with respect to the parties involved. These parties can include clients, vendors, grantors, employees, and any number of other individuals or entities.



Finally, we suggest that you consider retaining competent legal counsel to assist you with contract negotiations, drafting, and reviews to the extent it's possible for your organization. And even though the expenses associated with hiring capable legal counsel to help you with your contracts may be higher than you want, incurring those expenses up front often ends up being less costly for your organization in the long run.

If you have questions or need more information about contracts, please contact a Riverport loss control consultant.

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