

# **MISSOURI STATE UNIVERSITY**

## **Checklist for Reviewing Contracts**

As a part of your job at the University, you may be asked to review contracts before they are forwarded to the Office of General Counsel for final review. This memorandum is designed to help you do that. It does not authorize you to sign contracts on behalf of the University. The authority to sign contracts is determined by Board resolution. The term “contract” includes Memorandums of Understanding, Letters of Agreement, and Affiliation Agreements, among others. If you have questions or need help, contact the Office of General Counsel. This memorandum is not intended to apply to construction contracts or sponsored programs.

### **The Parties**

1. Who are the contracting parties? Does the contract reflect it is between the Missouri State Board of Governors and another entity? If not, the contract needs to be changed, because that is the correct legal entity.
  
2. Does the university employee signing have authority to do so? (See Delegation of contracting Authority Memorandum from Dr. Nietzel) If it's Cooperative Agreement, call the Office of General Counsel (GC). Make sure the person signing has the authority from the BOG to do so.

### **Subject Matter of the Agreement**

3. Does the contract refer to other documents? If so, have they been read and agreed to? Make sure all documents referenced are attached and that you understand and agree to them. If they are “incorporated,” they are as much a part of the agreement as the document you sign. If there are inconsistencies or you don't understand the referenced documents, contact GC.
  
4. Does the agreement describe the intent of the parties? Does the written agreement correspond to the previous discussions? i.e. are all promises included in the written agreement? If not, the other party will probably not be bound by oral promises.
  
5. What is the term (length of time) of the contract? Is it renewable? When are payments due? The contract should indicate the start and stopping time and whether or not it is renewable. If it is renewable, check with Purchasing to verify there are no procurement rules problems.
  
6. How can contract be terminated? By whom? Notice? If the term is for longer than a year, a termination provision should generally be included.

## **Insurance Provisions and Limits on Liability**

7. Is there an indemnity provision? Hold harmless provision? If so, look at alternate language. **Do not sign an agreement without changing indemnity or hold harmless language. See attached Alternate to Insurance and Indemnity Language.** See GC if the other party refuses to modify the language.
8. Is the other party required to have insurance? It's usually a good idea. Is the University required to have insurance? If so, look at legal defense fund language and modify accordingly. **Do not sign an agreement indicating the University has insurance, because in most circumstances it does not. See attached Alternate to Insurance and Indemnity Language.** See GC if the other party refuses to modify the language.
9. Is there a provision regarding workers' compensation? If so, make sure it doesn't say we have workers' compensation insurance. You should modify the language to say "University has workers' compensation coverage as administered by the State of Missouri Attorney General's Office."
10. Warranties/guarantees—do they give satisfactory protection or are they waived? Contracts which waive all warranties or guaranties should be referred to GC.
11. Do they otherwise seek to limit their liability? If so, contact GC.

## **Governing Laws**

12. Is there a venue/choice of law/governing law provision for any other state than Missouri? If it is not Missouri, we may be waiving sovereign immunity. The language must be modified. It's **not** acceptable to agree to another state's laws governing the agreement.

## **Other Provisions**

13. For affiliation agreements:
  - a. Background checks. Who is responsible for conducting? Who is responsible for making decision? If possible, leave it to the facility's HR department to make the decision. (see Responsibility for Criminal Background Checks language attached)
  - b. Does agreement assume responsibility for students? If so, then the agreement needs to be changed to reflect that we will notify the students, but we cannot agree to accept responsibility for their actions.
14. Does the contract allow the other party to use the University's name and/or logo in any advertising, endorsement or promotion? If yes, contact the Vice President for University Advancement for approval.

15. Does the contract promise confidentiality? If so, need to make exception for “as otherwise required by law,” i.e. we need to make it subject to the Missouri Sunshine Law. **See suggested language on Sunshine Law attached.**

We have three final pieces of advice:

- Although many contracts contain legalese, you should be able to understand the contract-- if you don't, contact Purchasing or GC.
- You should always retain a signed original of the agreement.
- Make sure the appropriate departments have reviewed the document (i.e. purchasing, sponsored programs, in addition to the one signing the document).

## **Suggested Alternate Language**

### **Alternate to Indemnity and Insurance Language**

As a Missouri public institution of higher education, the University does not maintain general liability insurance, nor can agree to indemnify and hold harmless any individual entity. Instead, the school relies on the State Legal Expense Fund set forth in Missouri Revised States 105.711, as administered by the Office of the Attorney General of the State of Missouri.

The following language may also be added:

Each party shall be responsible for its own acts and omissions and shall be liable for payment of that portion of any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds that may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by said party, its employees, agents, or subcontractors, in the performance or omission of any act or responsibility of said party under this Agreement. In the event that a claim is made against both parties, it is the intent of both parties to cooperate in the defense of said claim and to cause their insurers to do likewise. Both parties shall, however, retain the right to take any and all actions they believe necessary to protect their own interests.

### **Responsibility for Criminal Background Checks**

In the event the results of the background check indicates a criminal conviction, School will contact the Facility's Human Resources Department for guidance on offenses which would exclude the student from the practicum.

### **Sunshine Law Language**

Parties acknowledge University's records, including this agreement, are subject to the Missouri Sunshine Law.