

CONTRACT REVIEW PROCEDURES

OFFICE OF RESEARCH AND SPONSORED PROGRAMS

The responsibility for writing/reviewing a contract is shared by the faculty/staff responsible for the project and the staff of the Office of Research and Sponsored Programs (ORSP). Because contracts can be intimidating, ORSP is prepared to offer as much help as needed. The procedures for contract review are given below; adhering to them will expedite the review process.

Definition of a Contract. A contract is any agreement between the University and another party which is enforceable at law. In a contract, legally enforceable commitments are made by and/or to the university. Some people incorrectly believe that they can avoid the hassles of a contract by entering into other types of agreements (e.g., letters of agreement, memos of understanding, etc.). However, an agreement that is enforceable at law is, from a legal perspective, a contract--regardless of its title.

University Contracting Policy. The CMU Board of Trustees, in its bylaws, specifically addresses the issue of authorization to enter into contracts on behalf of the university. According to the bylaws, the size of the contract (dollar amount) determines who is authorized to sign the contract. ORSP will arrange for contract signatures and insure that University policies are followed in the execution of the contract.

If a university employee signs a contract that he/she is not authorized to sign, the individual runs the risk that he/she will be personally liable for the contract.

Writing a Contract. One of the two parties to the contract must prepare the document. If the contract is drafted by the outside party, you may skip to the next section of this procedure. If, however, the document is to be drafted by the university, you should begin by meeting with someone from ORSP who will determine whether initial meetings should include the University Counsel. During these meetings, we will clarify the terms of the contract and determine who will prepare the first draft of the written agreement. Depending on the complexity and size of the contract, it may take several meetings and several rewrites before you are ready to proceed to the next step.

Processing a Contract. Regardless of who drafted the contract (the outside party or the university), it must be reviewed following the procedure outlined here.

The faculty/staff responsible for the project will:

1. Obtain a complete copy of the contract, including attachments and exhibits.
2. Review the contract and complete Column A (originator's column) of the [checklist](#) titled "Contract Review Process".

3. Forward the following three items to ORSP: (a) the full written document, along with all attachments and exhibits; (b) the completed [Contract Review Process Checklist](#); and (c) a completed, signed transmittal form. For simple and routine contracts, this step may be done using campus mail. For more complex contracts, it is advantageous to meet with someone from ORSP to discuss the contract.

ORSP will:

1. Complete Column B of the [Contract Review Process Checklist](#) and take the following steps:
 - a. contact the faculty/staff member if there are questions or concerns about the terms of the contract;
 - b. if the contract contains a confidentiality clause, ORSP will arrange for the following:
 - i. prepare the confidentiality documents for signature by those working on the project;
 - ii. insure that the project director understands the implementation of the confidentiality agreement.
 - c. if ORSP has no questions for the faculty/staff member, we will determine whether the contract should be reviewed by the office of the University Counsel; the contract **MUST** be reviewed by the University Counsel if any of the following circumstances apply:
 - i. the amount involved exceeds \$200,000 or the contract goes to the Board of Trustees for other reasons;
 - ii. the contract will last more than two years without a cancellation clause;
 - iii. there are indemnification, warranty or guaranty provisions which ORSP does not understand;
 - iv. there are other unusual legal provisions or legalistic language which ORSP does not fully understand.
 - d. if the contract does not need to be reviewed by the University Counsel (or after the Counsel has read the contract), ORSP will arrange to have the contract signed by the appropriate university officials.
2. Arrange for the signed contract to be mailed to the other party. A copy of the contract will be retained in ORSP, and the faculty/staff member will be notified that the contract has been returned with signature.

Confidentiality Clauses. Contracts, particularly those with industry, often contain a clause

pledging the university to maintain confidentiality about corporate-related information acquired in the process of conducting the project. When a contract includes such a clause, we require that the project director and each person who works on the project sign an agreement with the University, indicating that they understand the confidentiality requirement and they agree to abide by it.

[Reprinted 3/97]
{dmr\forms\contract.pro}