

CE-CERT Business Service Contracts Desk Procedures and Responsibilities

Overview and Background

A contract is an agreement between two or more entities which creates an obligation to do or not do a particular thing. A business contract/agreement is one of a variety of formats used to document and carry out the business relationships of the campus.

Examples of documents that constitute a contract are memorandum of understanding (MOU), Purchase Orders containing terms and conditions, permits, or applications that are signed to accept terms and conditions. The University requires that all of its contracts/agreements be put in writing in advance to protect the interests of both parties and to reduce any misunderstandings.

Only the President of the University of California has signature authority for contracting, unless that authority has been specifically delegated pursuant to the University's Delegation of Authority-Signature Authority Policy, D-224-17. These delegations are limited to specific contract types and dollar amounts. If you do not have authority delegated under this policy, you are not authorized to enter into contractual relationships on behalf of The Regents.

A written contract is required when a contractual relationship is needed to lessen the potential liability to the University. The use of a contract will protect the assets of the University by setting forth terms and conditions governing the transaction. The types of contracts listed here are the contracts we do. (This list is not all inclusive.)

- Agreement for Services
- Entry Permits and Land Use Permits, less than one year
- Equipment Loan Agreements
- Facility Use Agreements, less than one year (various)
 - Facility Use Agreements explained
- Grower and Fruit Collection Agreements
- Interagency Agreements
- License Agreements less than one year for use of property
- Marketing-Promotional-Sponsorship-Vendor Agreements (Athletics)

- Miscellaneous Agreements
- Non Disclosure & confidentiality Agreements not related to Research Office, Sponsored Programs, Technology Transfer or those related to purchase orders issued by the Purchasing Department.
- Performance Agreements (music, dance, lecture, etc.)
 - Performance Agreements explained
 - Entertainment Contracts from other party
- Radio Broadcasting Agreement
- Test Service Agreements
- Ticketmaster Agreement
- University Extension Revenue Agreements
- Vehicle Loan Agreements
- Vending Agreements
- Youth Worksite Agreements

Contracting Basics and what to do when approached with a need for a contract/service agreement

Contracts 101

In its broadest sense the purpose of law is to provide order, stability, and justice. Government provides a system by which the rights of the parties under the law can be determined and enforced. Law is classified for convenience in terms of the subject matter involved. Contract law includes various laws that determine the rights and liabilities of parties taking part in business transactions. A written contract records what has been agreed upon so there is less chance of disagreement at a future date and it eliminates either party from effectively denying having made one.

Contract Basics:

In the simplest terms a contract is a binding agreement. All contracts should contain basic information necessary to understand the intent of the parties, and the contract should be clear and understandable. **The following is a list of basic contract needs in order to prepare the agreement:**

- Names of the contracting parties;
- Description of Services and/or Scope of Work of the Project or Product;
- Terms and Condition such as: Terms of payment, if any, Provision for early termination, Applicable Law, in addition to other Terms and Conditions not listed here.

- Indemnification, Hold Harmless and Insurance Requirements;
- Rights to Data when applicable;
- Signature lines for the persons authorized to execute the contract.

This information will need to be sought from the PI or Coordinator in charge of the project. The signatory for Business Service Agreements for lab services performed at CE-CERT is Bobbi McCracken. Any other employee does not have the official capacity to execute/sign on behalf of the Regents.

The Contracting Parties:

The legal names and status of each contracting party should be correctly stated. The official name used for the University is, "The Regents of the University of California" which is described as "a California corporation". The name may include a specific reference to the campus and the department. For example: "The Regents of the University of California, a California corporation acting for and on behalf of the University of California, Riverside, Department of Business Contracts."

It is not correct to use the "University of California" or some instrumentality thereof as the contracting party as the University and all its instrumentalities do business in the official name of "The Regents of the University of California".

Description of Services and/or Scope of Work:

This section is used to describe in detail, the exact nature of the project or product that needs to be accomplished to deliver the product, service, or result with the specified features and functions. When a description or scope of work is lengthy, a separate document can be provided and will be referenced as an exhibit. Exhibits often contain important and necessary information that assist in defining the obligations or other important issues relating to the interpretation of the contract.

Terms and Conditions:

Terms of a contract need to be clearly stated and all important terms need to be included to minimize different interpretations by the parties. Contracts are written to prevent litigation caused by inadequate documentation of crucial legal points. If there is a dispute that the parties cannot resolve, a court of law will interpret the contract provisions which may result in an interpretation far different than the actual intent of the parties. General Counsel approved the use of standard University contracts with consistent terminology to increase clarity of certain legal points.

As previously mentioned clarity of the parties' intent is a priority in drafting and negotiating contracts but equally important is the parties' understanding of the anticipated outcome in the event of potential disputes and/or litigation.

That includes knowledge of the way courts will interpret or apply the laws applicable to the contract. When a contract is subject to the laws of another state, the University is at a disadvantage in anticipating the outcome. Additional costs to the University to retain counsel, resident and licensed in the state of jurisdiction, and the costs for witnesses traveling to and from the foreign state to participate in litigation-related proceedings, may strain department resources and severely disrupt the operations of the department.

Indemnification, Hold Harmless and Insurance Requirements:

Nearly every University contract contains an indemnification clause. Indemnification is an agreement of one party to assume financial responsibility for the liability of another party. Use of indemnification provisions in commercial contracts helps minimize the University's financial risk in business transactions.

Hold Harmless is a contract provision under which the risk of damages or loss is transferred from one party to another.

Insurance is usually required even if indemnification and/or hold harmless language is included in a contract. Insurance ensures that the indemnification provision can be enforced. An Indemnification and Hold Harmless agreement without insurance may result in the University being liable for the entire loss if the other party is negligent and does not have sufficient resources to pay for a loss if it occurs.

The Insurance and Risk Management office is responsible for reviewing all insurance and indemnification language of non-University contracts or when the other contracting party submits a formal request to modify the University's standard language.

Rights to Data:

The very nature of our campus as a public education and research university means that new information is developed here daily. Add to that the explosive growth of modern technology for information sharing and you have intellectual property in enormous amounts, which is subject to federal laws as old as our country and as new as yesterday. As a land-grant institution, the University is responsible for publicly disseminating the results of its efforts. While not all of the intellectual property created here is commercially valuable, some is and must be prudently managed.

The University's intellectual property policies are intended to promote the progress of science and technology, to assure that discoveries and inventions are used to benefit the public in various ways. The free and open exchange of ideas is a fundamental principle of the University environment of teaching and research. These policies establish the fundamental parameters for negotiating agreements with external parties to address rights and obligations associated

with the rights to data. Title to the copyrightable material that is developed under a contract from a commercial party normally belongs to the University.

Authorized Signatures:

Several offices regularly handle University contracts depending on the subject matter. The President of the University of California has signature authority for contracting, unless that authority has been specifically delegated pursuant to the University's Delegation of Authority-Signature Authority Policy, D-224-17. These delegations are limited to specific contract types and dollar amounts. If you do not have authority delegated under this policy, you are not authorized to enter into contractual relationships on behalf of The Regents.

The contract should be signed by an authorized representative of each party. Execution by an unauthorized individual may result in the contract being unenforceable against that party. This provision is particularly important in the case of corporations and partnerships.

Departmental Responsibilities (in a Nutshell)

Departments are responsible for providing assistance and their participation in the contracting process may vary significantly depending on the nature of the contract. Requesting Department is responsible for:

- Informally negotiate the "business arrangement" with the other party to determine:
 - Nature of the work
 - Where and when work is to be performed
 - What University resources may be required, if any
 - Whether other party provides a written agreement or purchase order
- Forwarding agreements from non-University entities from the private or public sector to Business Contracts to determine if the agreement is acceptable or if the agreement can be accepted with modifications or if an entirely new agreement needs to be created
- Send all attachments to the agreement, along with a detailed scope of work to Business Contracts
- Ensure that all terms and conditions of a business agreement are carried out. (e.g. payment of services, submission of invoices, preparation of reports, and compliance with schedules, etc.)

Modifications to contracts

Modifications to an existing contract require the same responsibilities as outlined previously. In addition, modifications should specifically indicate what has changed (Scope, budget, period performance, etc.). A redline document to track the changes will be sent to Business Contracts for review and approval along with any other supporting documentation necessary to execute the change.