

Execution of Documents

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What is “Committing” the University?

- Usually, entering into contract or agreement
- “Approving” the purchase of goods or services in PeopleSoft
- Can be very broad, e.g., agreeing to allow University marks to be used





SCHOOL RELEASE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Pepperdine University ("School") hereby grants to General Motors ("GM"), its public relations agency, MS&L ("MS&L") and each of their respective parent companies, subsidiaries and affiliated companies, successors and assigns, and to other such persons as MS&L or GM may designate from time to time, the absolute right and permission to use and/or reference School's name, trademarks and logos (collectively, the "Marks"), in whole or in part, alone or together with other materials, in publicity and public relations materials (collectively, the "Materials"), which will be publicized, exhibited, broadcast, displayed and/or otherwise used in any and all media now known or hereafter invented, worldwide, in perpetuity, in connection with a broadcast journalism promotional program in which School's student, _____ and his broadcast crew will conduct and record interviews with Bob Lutz and other GM executives, and create video footage based on such experiences (the "Program"). The School understands that the use of the Marks will be positive and not disparaging in any way.

School hereby waives the right to inspect and approve the Materials. School agrees that all right, title and interest in and to the Materials, including the copyrights therein, shall vest exclusively in Client.

School warrants and represents (i) that it has the legal right to enter into this Release and to grant the rights contained herein; (ii) that the consent of no other person, firm, corporation or entity is required to enable MS&L and GM to use the Marks, (iii) that _____ is affiliated with the School; and (iv) that such use will not violate or infringe upon the rights of any third parties. Furthermore, School agrees that neither MS&L, GM, nor anyone who receives permission from either of them, shall be responsible for any liability resulting from the use of the Marks in accordance with the terms hereof.

The undersigned has full power and authority to execute this Release on behalf of School.

By:

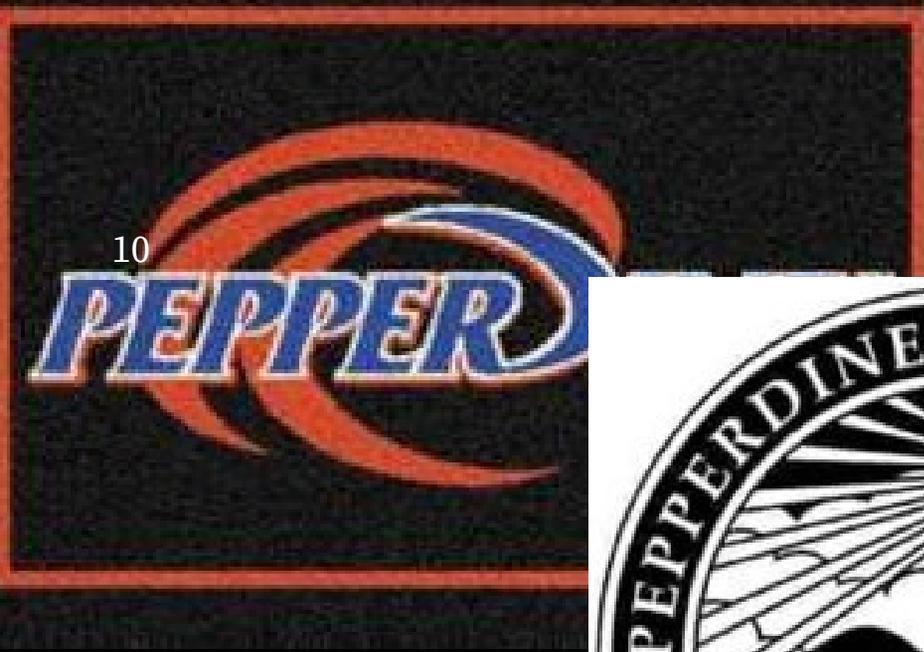
(Print name)

(Signature)

(Company Address)

A (very)
real
example . . .

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PEPPERDINE



Legal Stuff: Contracting “101”

- ▶ **Exchange of promises that the law will enforce**
 - A promise in exchange for something of value
- ▶ **Writing is not required, oral contracts can be enforced**
- ▶ **Acting as an Agent**

Agency Basics

- ▶ **Example: Dean = Agent**
- ▶ **Pepperdine = Principal (no other legal entity exists)**
- ▶ **An Agent's acts commit the Principal**
 - **Actual authority: Expressly given by Pepperdine**
 - **Ostensible authority: Authority given that Pepperdine causes or allows a third party to believe the Dean possess; from an external viewpoint**
- ▶ **Principal is committed to third parties who have relied on agent's authority**
- ▶ **Agent who acts without authority or in excess of authority may be held accountable to the principal**

So, What Happens if You Commit the University Without Authority...

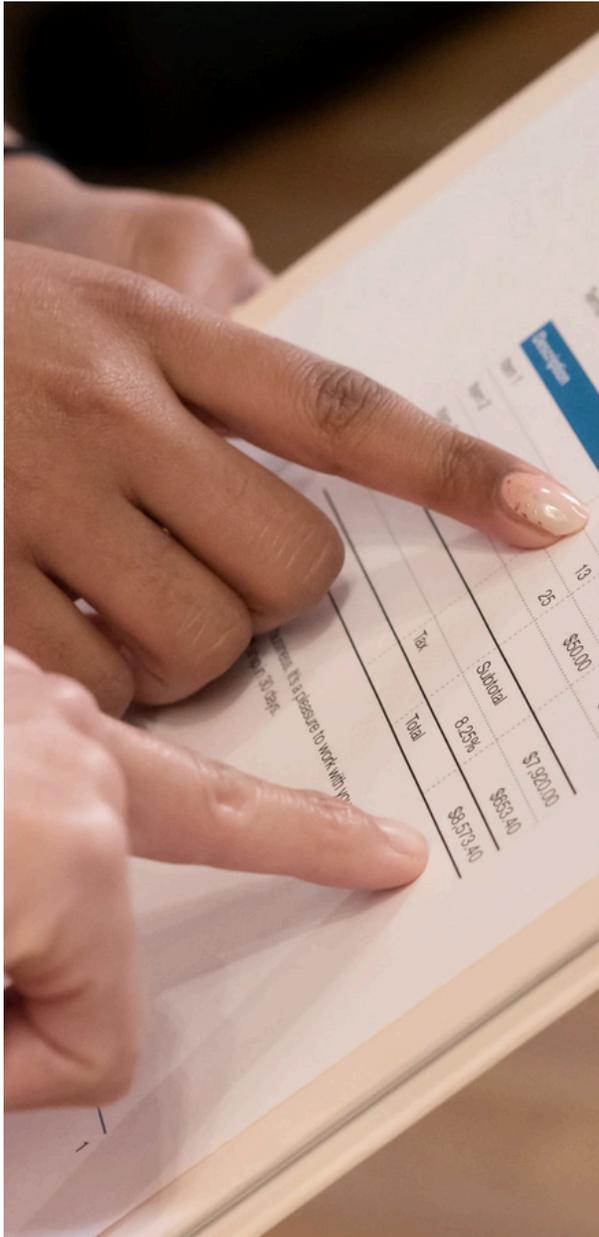
- ▶ University likely required to perform its obligations
- ▶ University may view event as outside the scope of job responsibilities and:
 - Hold employee personally responsible



Who Can Commit the University?

Execution of Documents Policy

Amount of Transaction	Authorized Person
\$0 - \$25,000	Designated PeopleSoft "Approvers"
\$25,001 - \$50,000	Any "Authorized Officer"♦ acting alone
\$50,001 - \$3,000,000	Any two "Authorized Officers." It is preferred that one of the two authorized persons be either the Executive Vice President, the Chief Financial Officer or Controller. <i>See</i> Execution of Documents Policy, Section D.
2% or less of the current GOB ⁺	Any two of the President, Executive Vice-President, Provost, and Chief Operating Officer, in consultation with the Chief Financial Officer
Over 2% of the current GOB	Board of Regents
Recurring Transactions	<i>See</i> Execution of Documents Policy, Section E



Four "Golden Rules" of Contracting

Rule One

READ the contract from top to bottom



Rule Two

Determine whether the contract should be reviewed by General Counsel

- Is the contract amount \$75,000 or more?
- Does the contract involve a high or unusual risk?

That begs the question....



- ▶ **Question:** What if the contract amount is under \$75,000, but I've never negotiated a contract before?
- ▶ **Answer:** Review General Counsel's "Tips on Contracts Under \$75,000"



**...and more
questions...**

- ▶ **Question:** How can I assess whether the contract presents a high or unusual risk?

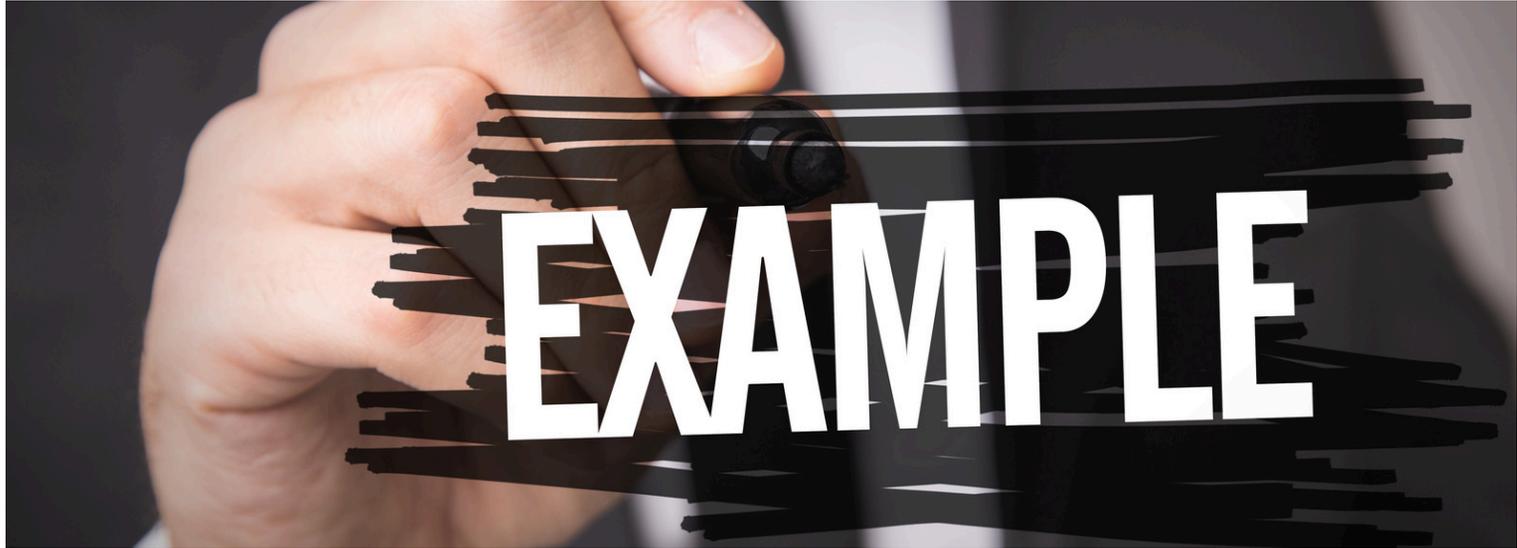
GREAT QUESTION!

- ▶ **Answer:** Analyze the risk and pay attention to your "Spidey sense."

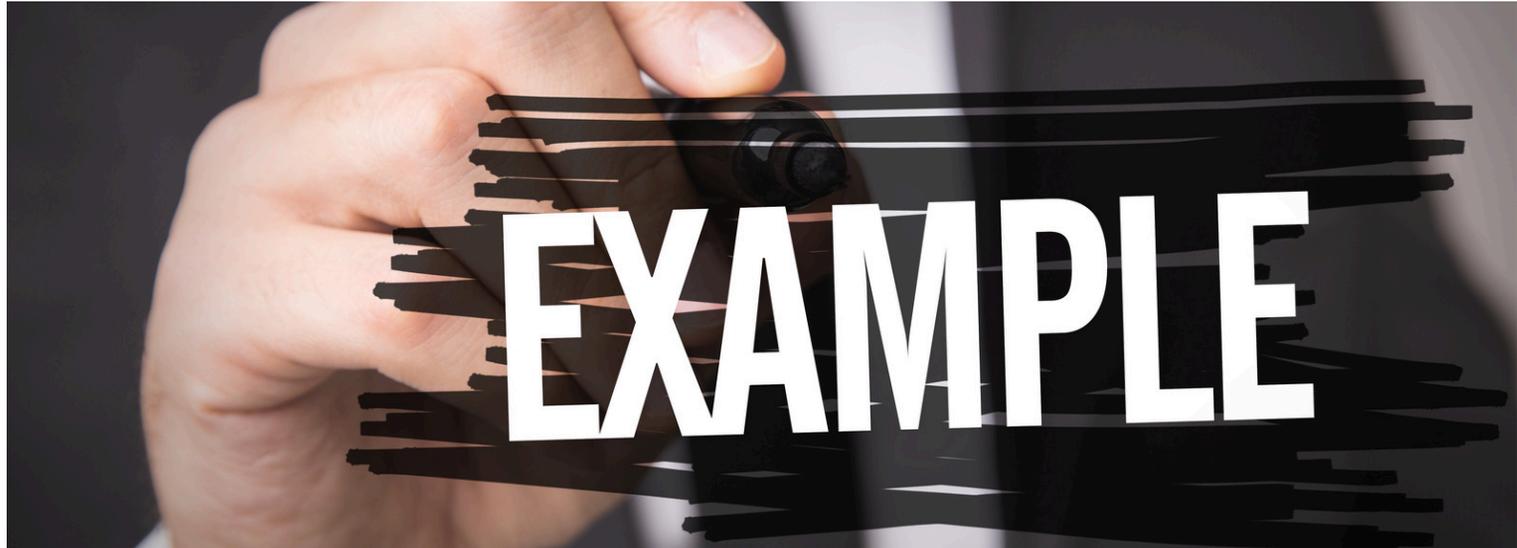


What is risk?

- ▶ **Financial**
- ▶ **Reputational**
- ▶ **Liability**



Scenario One: University enters into a large contract to buy cases of copy paper on a recurring basis.



Scenario Two: University enters into contract for a mobile rock climbing wall to be present at a University-sponsored event at a cost of \$1,500.

ANALYSIS



Nature of Risk: Although the contract amount is small, and the sponsoring of a rock climbing wall is a unique or infrequent event, this could be a high-risk event in that it combines potentially inexperienced or distracted climbers with potentially poorly maintained equipment and/or inexperienced or poorly-trained staff. There is a possibility of injury or death resulting from this type of activity.

Likelihood of Occurrence: The risk of falling could be high with respect to such an inherently risky activity.

Risk: HIGH

Managing Risk

- Identify exposures creating risk
- Quantify/qualify risk
- Conduct Risk Analysis
 - Nature of Risk x Likelihood of Occurrence = **RISK**
- Mitigate Risk
 - Reduce Likelihood of Occurrence
 - Minimize Impact of Occurrence



Contractual Transfer of Risk

- ▶ **Indemnification**
- ▶ **Insurance**
- ▶ **Limitation of liability and disclaimers**
- ▶ **Termination for Convenience**



Rule Three

Information, Information, Information:

How the Contract Review Form Helps
the Office of the General Counsel

A scenic landscape featuring a winding asphalt road with yellow double lines that curves through lush green fields and dense forests. The sky is a vibrant blue with scattered white clouds. The entire image has a torn-paper edge effect.

The Road to General Counsel



Rule Four

Take the comments received from the Office of the General Counsel to negotiate a better contract.

REMEMBER:

CONFIDENTIAL

Knowledge
Empowers
You



Attorney/Client Privilege

Empowerment

Negotiate (everything is negotiable)

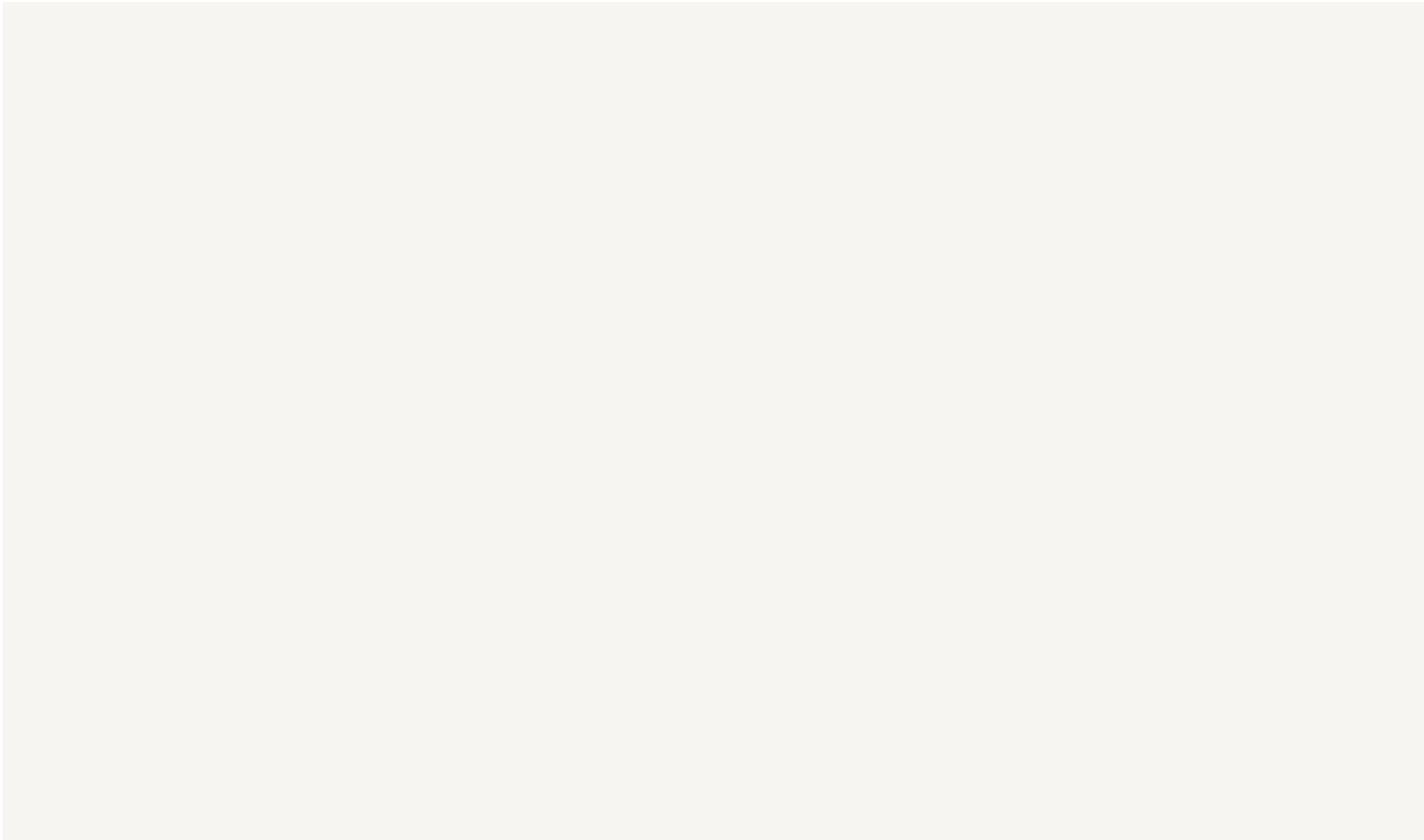
Negotiation of Contracts

- University employees may engage in the negotiation of any contract only after obtaining the express approval of an appropriately authorized University officer, agent, or employee.
- Under no circumstances should any employee give verbal or written assurances or commitments on behalf of the University without being so authorized.

Written Final Approval Required

All employees negotiating contracts on behalf of the University shall inform the other party that no terms are final until approved in writing by a University officer, agent, or employee who is authorized to do so.

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Answer: YES! Before renewal, take the opportunity to propose adjustments in the terms as necessary and communicate with the General Counsel's Office regarding potential new requirements.

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Question: Which contract should I choose?

Answer: There are several options, including:

- 1. Standard Consultant Services Agreement**
- 2. Construction Contracts**
- 3. Purchase Order Terms & Conditions**
- 4. Other Party's Contract**
- 5. Special Contracts**

Common Questions

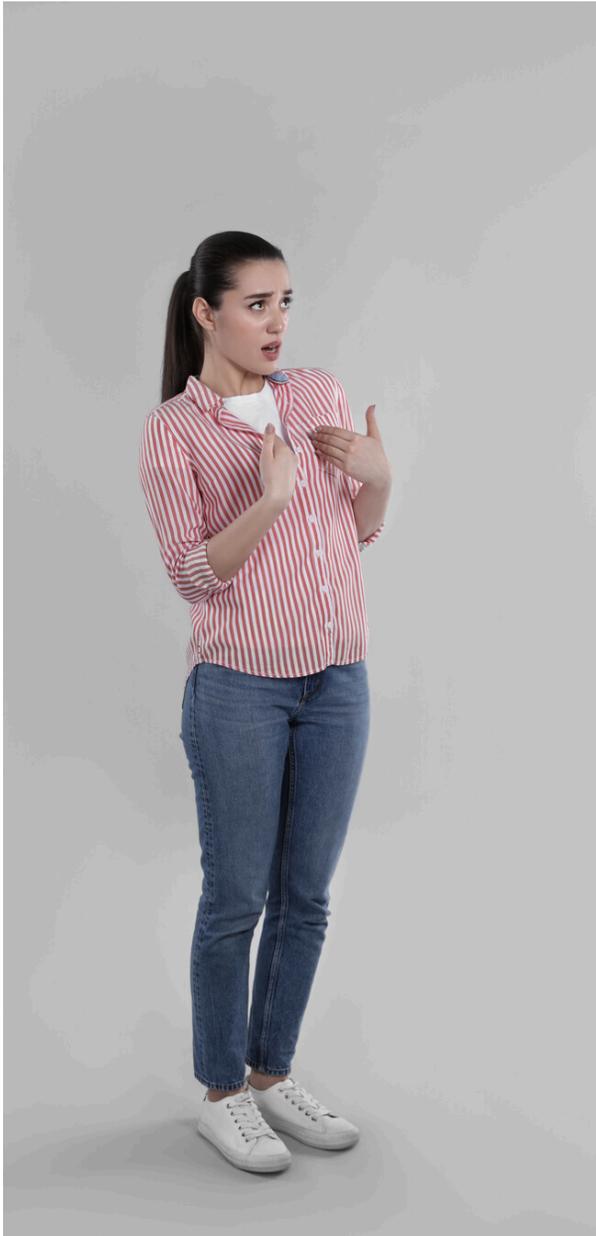
Question: Are there any limits as to where and when vendors may make deliveries to the Malibu Campus?"

Answer: Yes. The University will direct delivery trucks and similar vehicles, where feasible, to use the Seaver Drive entrance to the University at all times of the day. Such restrictions are not considered feasible if delivery trucks are unable to maneuver the Seaver Drive grade; if they are making deliveries along the portion of John Tyler Drive, between Banowsky Boulevard and Stotsenberg Track, that borders Malibu Country Estates residences; or cause unsafe traffic congestion. The University will further prohibit deliveries to the loading dock area of "Campus Walk" located adjacent to the Tyler Campus Center, which have the potential to cause noise disturbance at the MCE, between 10:00 p.m. and 7:00 a.m. unless necessary due to safety, security, or extraordinary circumstances. The University will notify its vendors of this restriction and include such provisions in vendor contracts where appropriate.

Contracting Protocol Take-Aways

1. Obtain Express Authority.
2. Seek General Counsel Review
3. Negotiate Contract.
4. Obtain Written Final Approval.





Indemnification

An indemnification clause in a contract identifies ahead of time, who is responsible for what.

One Party agrees to be financially responsible for specific types of damages.

Creates incentives for the parties involved to be responsible!

**In-N-Out Burger
is responsible
for their own
mobile
kitchen truck's
maintenance...**



**A vendor is
responsible for
its driver's safe
driving while on
our campus...**



**An Earth Day
vendor is
responsible for
properly
installing and
maintaining
their booth
display...**



Insurance Requirements

Why does Pepperdine require outside parties to have insurance?

▶ **The other party's insurance will pay the indemnification. Pepperdine wants this!**

▶ **We do not want to have the University's insurance respond.**



Certificates of Insurance

What are they good for?

- ▶ **They serve as evidence of coverage.**
- ▶ **They will disclose that the policy(ies) includes protection for the indemnification.**
- ▶ **Acord format is the standard format utilized by the industry.**

Insurance Requirements

Pepperdine's Consultant Services Agreement:

- ▶ **“Consultant” must maintain specified insurance during the term of the agreement**
- ▶ **Insurance limits to look for:**
 - Per Occurrence – this is the most that the policy will pay as the result of a particular incident/claim
 - Aggregate - the "Aggregate Limit" is the most the policy will pay as a result of all occurrences during the policy term (usually one year)

Insurance Requirements

Pepperdine's Consultant Services Agreement:

- ▶ **Commercial General Liability: \$3,000,000**
 - Personal injury
 - Independent contractors
 - Contractual
 - Participants
- ▶ **Workers' Compensation (statutory limit): \$1,000,000**
- ▶ **Business Auto Liability: \$1,000,000**
- ▶ **Sexual Abuse, Harassment, and Molestation: \$3,000,000**

Why Sexual Misconduct Coverage?

Penn State

- \$250M+ defending the claims
- \$109M settlement

Michigan State

- \$500M settlement

University of Southern California

- \$1.1B settlement

Los Angeles Unified School District

- \$52M settlement

Reputational costs

Insurance Requirements

Pepperdine's Consultant Services Agreement:

- **Add the University as an additional insured on the actual certificate of insurance**
 - Many policies require a written contract to provide additional insured status
- **State that they cannot be canceled without 30 days notice**
- **Documentation must be received prior to the effective date of the contract**



Contracting at Pepperdine

Process of contracting

- Signing authority
- Review with Supervisor
- Contracts over \$75,000 or those that may present a unique risk should be reviewed by the General Counsel Office

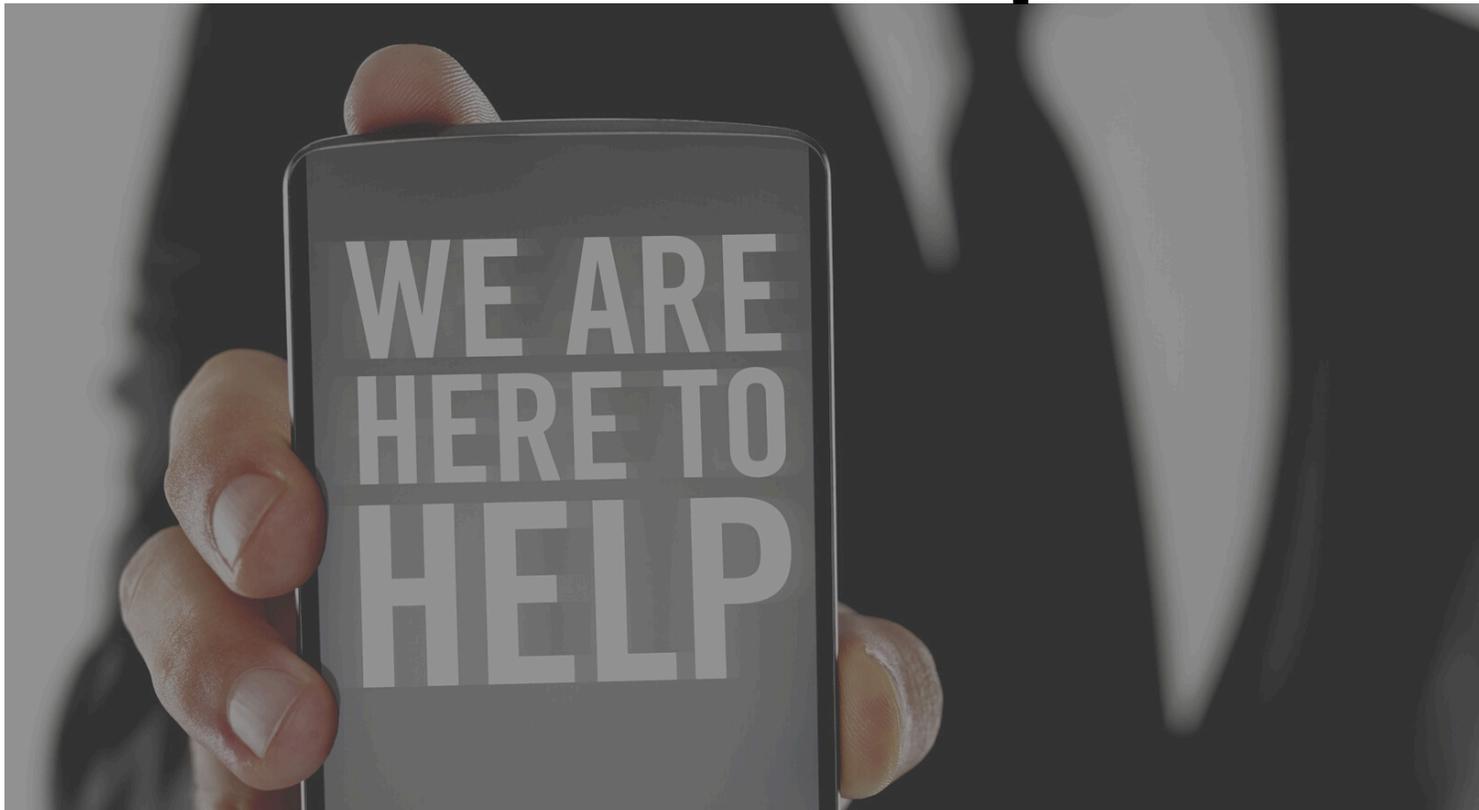
Troubleshooting

What happens when the outside party will not or cannot agree?



- ▶ **Duty to manage University resources**
- ▶ **Who has the leverage?**
- ▶ **Business decisions**
 - Benefits: how important?
 - Potential costs: safety, assets, and University reputation

**Insurance & Risk and
the General Counsel's Office
are here to help!**





QUESTIONS